



Securities Industry Association

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May 8, 2006

Grace B. Vogel
Executive Vice President of Member Firm Regulation
New York Stock Exchange
20 Broad Street
New York, NY 10005

Dear Grace:

Thank you for taking time to discuss with us the securities industry's concerns regarding NYSE Information Memorandum 06-22 ("IM 06-22"). (I have attached a list of participants for your information.) Your comments helped greatly to alleviate much of this concern. As promised, this letter summarizes our discussion.

As we noted, our concerns stem from the following two sentences in IM 06-22:

- (i) The last sentence of the second paragraph, after describing important steps that FOCUS signatories should take to assure themselves of the accuracy of the reports, goes on to say that these steps "may be insufficient if the report is later determined to be inaccurate or incomplete; ultimate responsibility cannot be delegated." While we agree fully that this important responsibility cannot be delegated, we are concerned that the preceding clause could be read to suggest that FOCUS signatories could be held strictly liable for any inaccuracies in the report, regardless of materiality or whether reasonable steps had been taken to test the report for accuracy;
- (ii) The first sentence of the third paragraph states "[m]ember organizations should have systems in place to ensure that processes for reconciliation, posting and preparation of books and records are performed accurately and on a timely basis." This could be read to suggest that member organizations have an obligation to "ensure" the accuracy and timeliness of their processes for reconciling, posting and preparing books and records. A requirement that the processes themselves must ensure 100 per cent accurate and timely books and records would be a difficult standard to meet.¹

¹ Notably, such a standard would go beyond even the management certification requirement for financial reporting adopted by the SEC under Section 302 of the Sarbanes Oxley Act, which requires that management certify that the information produced by its financial reporting systems "provide reasonable assurance regarding the reliability of financial reporting," rather than that it "ensure" the reliability of all of the information reported. See Para. 4(b) to Exhibit to Exchange Act Rule 13a-4, Release Nos. 33-8238, 34-47986, File Nos. S7-40-02, S7-06-03 (June 5, 2003), available at <http://www.sec.gov/rules/final/33-8238.htm>.

Our discussion with you was very productive in addressing these concerns. Specifically, we appreciate your sharing with us that the impetus for 06-22 was a specific problem with a vendor that certain floor brokers were using to outsource most or all of their financial operations functions, and that the Staff did not intend 06-22 to change existing standards regarding the responsibilities of all those who sign FOCUS reports. In light of that, we are pleased that you were receptive to the suggestion that the last sentence in paragraph 2 could be restated as follows:

“A close review of the report, questioning of those who have prepared elements of it and inquiry into specific items on a random basis generally would be sufficient to assure that a FOCUS Report appropriately reflects the financial condition of the broker/dealer. The signatory may not delegate ultimate responsibility for the accuracy of the report.”

This formulation may be a more effective way of capturing what the staff intends without creating the false impression that signers of FOCUS reports face strict liability for the accuracy of their contents.

With regard to the first sentence of paragraph 3, based on our discussion, the staff’s meaning might be better expressed by the following revision: “Member organizations should ensure that processes are designed and implemented for reconciling, posting and preparing books and records accurately and on a timely basis.”

Assuming that this letter fairly summarizes our discussion, we would like to request a confirmation from you or staff confirming our discussion and the summary described above. We intend to put your confirmation on our website so that all our members can have the benefit of the discussions and this summary.

Thank you for your time and patience with our concerns.

Sincerely,

/s/ George Kramer

George R. Kramer
Deputy General Counsel