

**Securities Industry Association**

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April 28, 1998

Jonathan G. Katz
Secretary
United States Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Release No. 34-39455

Dear Mr. Katz:

The Federal Regulation Committee and Self-Regulation Committee ("Committees") of the Securities Industry Association ("SIA")¹ appreciate the opportunity to submit this comment letter in response to the release by the Securities and Exchange Commission ("Commission" or "SEC") regarding the Commission's proposed amendments to Rule 15c2-11 and Rule 17a-4. The proposed amendments contain positive ideas for fighting "microcap" fraud. As currently framed, the proposal also contains some flaws that could inadvertently work against its purpose of deterring microcap fraud. With the changes that we suggest in this letter, the proposal can become an effective tool against microcap fraud.

The Committees strongly support efforts to detect and eradicate fraudulent activity in every aspect of the securities markets. The securities business depends upon trust. Fraud not only harms the individuals involved but undermines the industry as a whole. SIA believes that fraud must be vigorously prosecuted. For that reason, SIA has long supported providing the SEC with a wide range of enforcement tools and resources. However, regulatory resources must target bad conduct, rather than merely discourage honest professionals from participating in markets without deterring unscrupulous behavior. Likewise, regulatory solutions to bad conduct should not drive activity to areas where regulatory scrutiny is difficult or impossible. The growth of the Internet has made this concern particularly important.

For these reasons, a balance has to be carefully reached between the need to extend broker-dealer self-policing obligations in corners of the capital markets that have been vulnerable to abuse, and the need not to discourage broker-dealers from making markets. In our view some adjustments are needed to ensure that the proposal fully achieves its goals. As

we discuss below, the proposal should be limited to the microcap markets. More highly liquid and transparent over-the-counter ("OTC") markets, or OTC markets where institutional investors or regulated issuers predominate, should continue to be subject to the requirements of existing Rule 15c2-11. In some instances, particularly with regard to many types of debt securities, even the provisions of existing Rule 15c2-11 appear unnecessary, and the Commission should consider exempting those types of securities from both current and proposed Rule 15c2-11 requirements. The Commission should also amend the definition of "quotation" to exclude unpriced quotations.

Public Policy Concerns Raised by the Proposal.

The Committees believe that in many respects the proposed amendments should be helpful in discouraging fraud in the microcap markets.² We also believe, however, that the proposed rules are so broadly written that they will have the effect of discouraging a wide range of legitimate transactions involving OTC securities. While increasing broker-dealer "due diligence" for disclosures by some issuers may be a reasonable approach to deterring microcap fraud, there are some important disadvantages to that approach that the release does not address.

Impact Beyond the "Microcap" Markets. In an effort to address "microcap" fraud, the Commission proposes a solution that would apply far beyond the thinly capitalized, unknown and unregulated issuers that are the source of "pump and dump" schemes and other abuses. The proposal should be limited to the microcap securities that are the source of the Commission's concern, without creating unnecessary regulatory burdens for securities markets such as equities of large foreign and domestic issuers, securities of regulated domestic entities such as banks, high yield debt, corporate debt or convertible debt -- that have none of the characteristics that lead to abuses in the microcap markets. The proposal will better achieve its aim if it defines what it considers to be the "microcap" market and applies exclusively to that market. Alternatively, the proposal might exclude unpriced expressions of interest from its coverage. Quotations of other OTC securities should either continue to be treated as they are under current Rule 15c2-11, or should be dropped entirely, as the Commission suggests it might do for debt securities.³

Disincentives to Broker-Dealer Participation. The Commission's proposed amendments are based on the sensible belief that "some microcap fraud could be prevented if there were greater investor access to information about these securities and their issuers."⁴ While the release suggests some ways of providing greater direct access by investors (e.g., requesting comment on the feasibility of a clearinghouse for information on unregistered securities), its primary focus is to significantly expand the obligation of broker-dealers to review information about issuers of all OTC securities.

Increasing broker-dealer obligations to monitor (and provide to investors upon request) the disclosures of the issuers whose securities they trade may be an appropriate way to address the issue of microcap fraud. However, there are possible adverse consequences to this approach that are not addressed in the Commission's release. In particular, the Commission should carefully consider the possibility that, rather than diminishing bad conduct, enhanced requirements might drive legitimate market participants out of some OTC markets, or might drive some OTC market activity into venues that are far less susceptible to SEC oversight such as the Internet or offshore markets made by foreign broker-dealers.

Broker-dealer oversight of the conduct and activities of the issuers of securities is fundamentally different from self-policing of their own conduct. Issuers are typically independent third parties, and updating some information beyond what is publicly available may be difficult, particularly with regard to issuers that are not required to file financial information, and with regard to foreign issuers. Moreover, broker-dealers may face the threat of private civil litigation if information about the issuer that they reviewed and/or provided to investors is alleged to have been misleading.⁵

Faced with these expanded requirements and potential litigation exposures, many broker-dealers may simply choose to stop making markets in securities -- particularly the types of unregistered securities that we understand are central to the Commission's concern about microcap fraud -- where it finds the oversight responsibility too onerous. This could result in markets for those securities that are less liquid or transparent than they would have been otherwise.⁶ Ironically, this could also mean that unscrupulous broker-dealers would have a greater role in making markets for those securities. These concerns get little attention in the Commission's proposing release, and we urge the Commission to measure these points in shaping any final rules.⁷

The Need for Continued Vigorous Law Enforcement. Ultimately it may be old-fashioned law enforcement, not new regulatory requirements, that is most effective in the war against securities fraud. Therefore, aside from these rule proposals, we urge the Commission to continue, or even expand, its vigorous use of current enforcement tools and resources to prosecute fraud in the microcap securities market. The Committees believe that, with the close cooperation of other civil and criminal authorities, there is much that the Commission has done and can continue to do with the means now at its disposal. If the Commission believes that it needs additional resources to attack microcap fraud, SIA is ready to support any reasonable Commission request to Congress for such resources.⁸

B. Positive Aspects of the Proposed Amendments.

Although the Committees think that the proposed amendments should be limited to microcap issuers, and that the Commission should give further consideration to the overall wisdom or relying too heavily on broker-dealer monitoring to police the microcap markets, we believe that the Commission's proposal contains many good ideas for deterring wrongdoing in those markets. The central idea behind the proposal giving investors better information about the issuers of microcap securities is absolutely sound. In particular, the Committees support applying the following provisions to broker-dealer quotations of microcap securities:

Broker-Dealer Monitoring of Microcap Issuers. The Committees support the requirement that broker-dealers who quote microcap securities should review, initially and on an annual basis thereafter, key information about the security (e.g., number outstanding, total number of security-holders, etc.), controlling persons of the issuer, and financial information about the issuer. The review requirement is appropriate, especially for microcap securities that are unregistered as to which broker-dealers may be the only conduit of information.

In response to Question 7, asking if the annual update requirement should be eased or eliminated for reporting issuers that are current in their Exchange Act obligations, the Committees believe that since the information is available over the EDGAR system, the annual

update requirement should be dispensed with for such issuers.⁹ The Committees see little value in requiring a market-maker to review information that is subject to SEC review, and to public review via home or library computers. The Committees do not believe that broker-dealers should bear the cost of delivering issuers' disclosures to investors, at least where the information is available on the EDGAR system.

Elimination of Piggy-Back Exemption for Microcap Securities. The Committees support eliminating the piggy-back provision for priced quotations of microcap securities. We have some doubts about the Commission's rationale for eliminating the piggy-back exemption, and we arrive at our conclusion for very different reasons than the Commission.¹⁰ The Committees believe that under the increased broker-dealer monitoring that the proposal would engender, piggy-backing may simply be untenable for many microcap securities, especially unregistered microcap securities. Firms may seek to avoid being in the position of carrying the enhanced due diligence responsibility, and the possibility of litigation exposure, while competing market-makers escape that responsibility and exposure entirely. As a result, broker-dealers may resist being the first to initiate quotations for microcap securities. This could increase the chance of the perverse consequence that we noted earlier -- that in some instances only less scrupulous broker-dealers would be willing to initiate quotations, or that liquidity of even legitimate microcap issuers might disappear from view.

With regard to priced quotations of OTC securities outside the microcap market, and unpriced quotations of any OTC security, the Committees believe that neither eliminating the piggy-back provision nor any other of the proposal's provisions are necessary. For OTC securities, such as investment-grade debt securities traded primarily in institutional markets, securities of regulated entities such as banks, equities of large foreign and domestic issuers, etc., this increased regulatory cost seems unrelated to the Commission's concerns about microcap fraud. The Commission has also not pointed to any abuses involving any form of unpriced quotations, and even hypothetically it is not clear to us how unpriced quotations can lend themselves to serious abuses. The Committees see no need to eliminate the piggy-back exemption in these contexts. Nothing in the Commission's release explains how eliminating the piggy-back provision for these types of issuers will facilitate efforts to stamp out microcap fraud.

As an alternative to eliminating the piggy-back provision for non-microcap OTC securities, the Commission may want to consider retaining the requirements of current 15c2-11 for these securities, but requiring broker-dealers that piggy-back to use a quotation indicator or other method to clearly indicate to investors which broker-dealer has reviewed the required financial information. An approach such as this would make it easier for investors and regulators to identify which broker-dealer is responsible for reviewing the issuer's information, without creating regulatory burdens that might reduce the number of market-makers providing liquidity to the security.

Information Repository. In response to questions 51 and 52, the Committees support creating one or more central repositories for information about microcap issuers, and to permit broker-dealers to meet their obligations under 15c2-11 by providing all information required by the Rule to a central repository. The "nationally recognized municipal securities information repository" provided for by Rule 15c2-12 might provide a general model for such a repository. The proposed amendments, if adopted, should not become effective until such repositories are operating.

C. Suggestions for Improving of the Proposed Amendments.

While the Committees agree with the Commission that some tightening of Rule 15c2-11 could help to reduce microcap fraud, we are concerned that some aspects of the proposal might not be helpful in combating microcap fraud, while unnecessarily burdening markets that are not the source of the Commission's concerns. We urge the Commission to address these concerns before adopting final rules to assure that the amendments do not unnecessarily handicap legitimate markets, or inadvertently drive trading from the OTC market to the Internet.

Need for Definition of "Microcap" Securities. The Commission's proposing release states that "[m]icrocap securities generally are characterized by low share prices and little or no analyst coverage. The issuers of microcap securities typically are thinly capitalized and often are not required to file periodic reports with the Commission."¹¹ However, the Commission's proposal extends well beyond microcap securities, to encompass OTC equity securities of regulated U.S. issuers such as banks, as well as high yield bonds, corporate bonds, convertible securities and major foreign and domestic equities¹² that are traded in over-the-counter markets. The Committees believe that the proposed changes to Rule 15c2-11 should be limited to securities that are the sources of the SEC's concerns the "microcap" market.

There are a variety of ways in which the rule could be sharpened so that it focuses on the types of issuers that appear to be the source of the SEC's concerns. In a number of contexts the Commission has created two-tiered regulatory requirements, making distinctions between more thinly capitalized issuers and larger issuers, based on its recognition that securities of the former can be more vulnerable to abuse.¹³ The same policy considerations that drove the Commission to make those distinctions based on the size of the issuer in setting disclosure or conduct requirements in those contexts are equally relevant here.

For example, in adopting its penny stock rules, the Commission created several exemptions based on the size of the issuer or price of the security.¹⁴ The Committees believe that the Penny Stock Rules were largely targeted at the same types of securities, and the same types of abuses, that now bear the label "microcap." Consequently, the Committees urge that the Penny Stock Rules should be the model for setting a threshold for microcap securities subject to enhanced broker-dealer monitoring.

In addition to an overall size threshold for microcap securities, the Committees urge the Commission to exclude two other categories of securities altogether from the proposed new requirements, regardless of issuer or market size. First, in response to Question 45, the Committees urge that debt securities (including non-convertible preferred stock), particularly non-convertible investment grade debt securities and debt securities resold pursuant to Rule 144A, should be excepted from the proposed requirements. The Commission notes that "[d]ebt securities frequently are held by institutional investors, and it does not appear that they have been the subject of the abuses that the Rule is intended to address." Given that the Commission itself does not seem to think that debt securities have raised the concerns that 15c2-11 seeks to address, it may be appropriate for the Commission to exempt debt securities, or at least non-convertible investment grade debt securities and Rule 144A debt resales, from ALL 15c2-11 requirements, both existing and proposed. In any event, it seems illogical, in light of the Commission's observation about the lack of abuses in this area, to impose any additional

requirements on broker-dealers that make quotations in debt securities. ¹⁵

Second, the Committees also believe that securities of issuers that are regulated by domestic governmental entities, such as state- or federal-regulated banks, should be excluded from the enhanced requirements. While the release does not address this aspect of the OTC market, the Committees do not believe that the Commission's concerns about microcap abuses extend to securities of issuers that are licensed and regulated by state or federal governments.

Regulatory Status of Unpriced Quotations. The Commission should revise the proposal to expressly provide that unpriced quotations do not trigger the requirements of Rule 15c2-11. None of the new requirements of the proposed amendments should apply to unpriced quotations, since nothing in the Release indicates that these types of quotations have been the source of, or can lend themselves to, serious abuses.

The Committees believe that quotations that do not contain a price do not pose any of the dangers of manipulation or other abuses that concern the Commission. While we believe that the Commission could justifiably exclude unpriced quotations altogether from the definition of "quotation" under Rule 15c2-11, at a minimum the Commission should exclude unpriced quotations from the categories of "quotations" that would be subject to the proposed heightened requirements.

Consequences for ADR Markets in Foreign Equities. Responding to Question 28, the Committees strongly agree that the Commission should continue to require broker-dealers to review only the home-country information that certain foreign issuers submit to the Commission under Rule 12g3-2b. Requiring broker-dealers to try to collect and review information beyond what an issuer has prepared to meet its home country requirements would be enormously burdensome. Given the remote likelihood that "microcap" abuses might migrate to large foreign issuers, such a requirement would be very difficult to justify. While the Commission's suggestion that it might eventually exclude foreign microcap issuers from the Rule 12g3-2b exemption ¹⁶ is worth further consideration, the Commission should keep in mind that imposing a requirement to independently extract, and keep current, information about foreign microcap issuers would be even more onerous than it would be for domestic microcap issuers, and the possible adverse effects on liquidity and transparency might therefore be even greater. If the Commission does decide to limit the application of the Rule 12g3-2b exemption, we urge that the Commission preserve the exemption for all quotations of foreign issuers that are outside the suggested microcap definition, or at a minimum, that the exemption still apply to unpriced quotations of non-microcap foreign issuers.

Responding to Question 12, the Committees believe that the period by which a broker-dealer must perform an annual review of a foreign issuer should be longer than seven months after the issuer's fiscal year end. Many nations, such as the United Kingdom and Germany, permit their domestic issuers to report financial information on a semi-annual rather than a quarterly basis. Seven months after these issuers' fiscal year-end may not correspond to the time when their semi-annual reports are issued. Some of these issuers may issue semi-annual reports more than 30 days after their semi-annual reporting period ends. To ensure that disparate foreign issuers' reporting cycles do not create unnecessary compliance problems, the Committees recommend that the period for conducting an annual review should be nine months, rather than seven months, after a foreign issuer's fiscal year end.

Responding to Question 23, the Committees think that it would be very unwise to require that foreign issuers' financial statements conform to U.S. GAAP in order for U.S. broker-dealers to offer quotations on those securities. Foreign issuers that have not chosen to list their securities on U.S. exchanges would have little incentive to undertake the expense of such a reconciliation. Consequently, this approach would likely preclude the ability of U.S. broker-dealers to make markets in these securities, to the significant detriment of U.S. investors. In addition, such a requirement might be viewed by foreign regulators as an attempt by the Commission to export U.S. financial accounting requirements. This could invite retaliatory actions by foreign regulators that could hurt access of U.S. companies to foreign capital markets.

Information and Documentation Requirements. In response to Question 3, the Committees strongly oppose the suggestion that a broker-dealer's compliance officer should be expressly required to review Rule 15c2-11 information before a quote is submitted. Broker-dealers organize their legal and compliance functions in many different ways. In some firms legal and compliance officials are delegated to make many business decisions. In other firms, legal and compliance departments advise other senior officers, but final decisions about matters such as whether to initiate quotations in a security are not made by legal and compliance officers. The Committees believe that each broker-dealer should be permitted to determine who is responsible for its compliance with the provisions of Rule 15c2-11. The recordkeeping requirements of Rules 15c2-11 and 17a-4 should suffice.¹⁷

Possible Expansion of Civil Litigation Exposure. The proposal expands the obligations of broker-dealers under current Rule 15c2-11 so that broker-dealers must (i) have a "reasonable basis under the circumstances for believing that [current information about issuers] . . . is accurate *and current* in all material respects, and that it is obtained from reliable sources. . . " ¹⁸ and (ii) make information about any issuer that they are required to review and maintain "promptly available upon request to any person." ¹⁹ These obligations increase the chance that broker-dealers, with their perceived "deep pockets," could be named as third-party defendants in class action lawsuits involving OTC securities, on the theory that the requirement is tantamount to a duty to vouch for the current accuracy of issuers' financial statements. The expense and uncertainty of litigating claims that creative lawyers might construct based on a supposed "duty" that this provision could be deemed to create -- to ensure the "accuracy and currency" of the issuer's disclosures to anyone entitled to request them -- may lead to spurious claims against broker-dealers in situations where, for example, the broker-dealer had reviewed an issuer's public disclosures that are subsequently alleged to have been materially false, or to have contained material omissions.

The proposal also could expand suitability claims by broker-dealer clients, especially when coupled with an NASD interpretation that, especially in the context of low-priced securities, a broker-dealer's suitability obligation requires disclosure of "material adverse facts about which the salesperson is, or should be, aware." ²⁰ Many facts that might surface after the fact about an issuer could be alleged in hindsight to be something of which a registered representative "should" have been aware, especially in light of the obligation of his or her firm to have a "reasonable basis" to know that the issuer's disclosures were "accurate and current."

These litigation exposure issues are not a significant concern with existing Rule 15c2-11

because it does not require ongoing due diligence on the part of all broker-dealers who make quotations, and it does not require broad dissemination of information about all OTC securities for which a broker-dealer issues quotations. In contrast, the proposed expansion of these obligations could create substantial new litigation exposure. At a minimum, there would be considerable uncertainty about whether a broker-dealer's new responsibilities can be privately actionable under Rule 10b-5. While it would not entirely dispel our concern about litigation exposure, it would be helpful if the Commission could clarify in any adopting release that the review and dissemination requirements are not intended to create a duty to investors that is actionable under Rule 10b-5. The Commission could also reduce liability concerns if it limited the new dissemination requirement to microcap securities, and/or to priced quotations.

Conclusion.

Thank you for providing the Committees with the opportunity to comment on the proposed amendments to Rules 15c2-11 and 17a-4. As discussed above, we believe that, while vigorous enforcement of existing laws is the key to eradicating microcap fraud, many of the proposed changes could be helpful in that battle. Other requirements should be modified to avoid creating regulatory burdens that are unrelated to fighting microcap fraud, or that inadvertently undercut those efforts. We hope that the comments offered above will help the Commission in strengthening the integrity of the microcap markets. If we can be of further assistance, please do not hesitate to contact the undersigned, or George Kramer of the SIA staff at 202/296-9410.

Sincerely,

Lee B. Spencer, Jr., Chairman
Federal Regulation Committee

R. Gerald Baker, Chairman
Self-Regulation Committee

cc: The Honorable Arthur Levitt, Chairman; The Honorable Norman S. Johnson, Commissioner; The Honorable Isaac C. Hunt, Jr., Commissioner; The Honorable Paul Carey, Commissioner; The Honorable Laura S. Unger, Commissioner; Dr. Richard R. Lindsey, Director, Division of Market Regulation; Robert L.D. Colby, Deputy Director, Division of Market Regulation; Catherine McGuire, Associate Director and Chief Counsel, Division of Market Regulation; Nancy J. Sanow, Assistant Director, Division of Market Regulation; Sara Nelson Bloom, Associate General Counsel, The Nasdaq Stock Market; David Spotts, Senior Attorney, NASD

Footnotes:

¹ The Securities Industry Association brings together the shared interests of nearly 800 securities firms, employing more than 380,000 individuals, to accomplish common goals. SIA members including investment banks, broker-dealers, and mutual fund companies are active in all markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans and accounts for \$270 billion of revenues in the U.S. economy.

² The Committees also note that all the microcap fraud tactics described by the Commission's release are already illegal. In particular, fraudulent or fictitious quotations are barred by NASD rules, and can constitute violations of a host of anti-fraud provisions. See NASD Information Memorandum 3310; NASD Rule 3310.

³ 63 Fed. Reg. 9669.

⁴ 63 Fed. Reg. 9669.

⁵ This is discussed more extensively on pages 10-11.

⁶ Another result of the heightened due diligence requirement may be that a security's underwriter, which typically has greater access to information about the issuer at the outset as a result of its underwriting due diligence obligation, will be significantly better positioned to make a secondary market in the security than other broker-dealers. This could reduce competition among broker-dealers.

⁷ When it amended Exchange Act Rule 15c2-12 in 1994, the Commission added a requirement that broker-dealers that recommend municipal securities to customers have in place procedures to receive current information about the securities and their issuers. However, the amended rule did not impose a specific review requirement. The Committees do not think that publication of a quotation should trigger a higher standard of due diligence than making a recommendation to a customer.

⁸ For many years, securities market participants have paid much more in fees to the federal government than the SEC has received in its budget appropriation. SIA has long urged that, while the SEC should be fully funded, these fees should not be a source for reducing the overall federal deficit (or adding to the surplus). Currently SIA is supporting the efforts of a coalition that is urging Congress to reduce certain fees under Section 31 of the Exchange Act. Even if these fees are reduced, fees collected from the industry by the federal government would greatly exceed the SEC's budget.

⁹ Moreover, it could be very burdensome for a broker-dealer to ensure that a microcap or other OTC issuer that is current with required Form 10-K and 10-Q filings is also current with other Exchange Act filing obligations. In particular, it would be very difficult for a broker-dealer to know if an issuer has timely filed a Form 8-K to report an unexpected occurrence. Since an unanticipated occurrence can occur at any time, the broker-dealer could feel obligated to confirm current reporting with the issuer each time that it intends to publish a quotation. This could be a substantial disincentive for publishing quotations for reporting issuers.

¹⁰ The Commission states that "microcap fraud is facilitated by broker-dealers that publish quotations for a security without reviewing any issuer information. . . . In the Commission's view, responsible broker-dealers would be deterred from publishing quotations if they were aware of basic information about the issuer that suggested a possible fraud." 63 Fed. Reg. 9963-64.

The Committees agree with this statement as far as it goes. However, the Commission's analysis misses two important points. First, the Commission does not consider that responsible broker-dealers might be deterred from publishing quotations not by evidence of fraud, but by the extra expense, and possible litigation exposure, of having to monitor issuer information. This might be particularly true of unregistered microcap issuers. Second, it is unclear why the Commission believes that the withdrawal of responsible broker-dealers from quoting prices for a microcap security because of signs of wrongdoing is helpful in combating microcap fraud. It seems quite conceivable that unscrupulous promoters and unethical broker-dealers often might find this to their advantage.

¹¹ 63 Fed. Reg. 9661 (Feb. 25, 1998).

¹² Importantly, the proposal does preserve the provision of existing Rule 15c2-11 that permits broker-dealers to obtain and review the information submitted by a foreign private issuer under Rule 12g3-2(b).

¹³ Instances where the Commission has provided a two-tiered approach to disclosure or conduct requirements include its penny stock rules, the threshold for registration under Form S-3 and the threshold for liberalized restricted trading periods under Regulation M. The thresholds provided in the latter two instances are, however, much too high to be appropriate in this context.

¹⁴ For example, the SEC excluded from the enhanced requirements of its Penny Stock Rules, among other things: (i) securities of issuers with net tangible assets in excess of \$2,000,000 (or \$5,000,000 if the issuer has been in continuous operation for less than three years); (ii) securities of issuers with average revenue of at least \$6,000,000 for the previous three years; (iii) securities with a price of five dollars or more; and (iv) transactions by a broker-dealer whose revenues derived from transactions in penny stocks during specified periods did not exceed five per cent of its overall transaction-based revenue. See Exchange Act Rule 3a51-1 and Rule 15g-1. The latter provision would be workable in this context if the term "quotation" is substituted for "transaction" and a defined term "microcap" is substituted for "penny stock."

¹⁵ It should be pointed out that the NASD's Fixed Income Pricing System ("FIPS") for high-yield debt *requires* dealers to post quotations in FIPS securities in which they are actively trading. See NASD Rule 6230(b)(1).

¹⁶ 63 Fed. Reg. 9667.

¹⁷ Additionally, the Commission should not require waiver of the attorney-client privilege where it applies.

¹⁸ Proposed Rule 15c2-11(c)(2), 63 Fed. Reg. 9677 (emphasis added). In contrast, current Rule 15c2-11 requires only an initial review of information about the issuer, and is further limited by the "piggyback" provision.

¹⁹ Proposed Rule 15c2-11(j), 63 Fed. Reg. 9679. In contrast, currently Rule 15c2-11 requires that a broker-dealer only make information about *non-reporting issuers* "reasonably available upon request to any person expressing an interest in a proposed transaction." See Exchange Act Rule 15c2-11(a)(5).

²⁰ NASD Notice to Members 96-32.