



Securities Industry Association

1401 Eye Street, NW • Washington, DC 20005-2225 • (202) 296-9410, Fax (202) 296-9775

January 9, 2003

Jonathan G. Katz
Secretary, United States Securities and Exchange Commission
450 Fifth Street NW
Washington, D.C. 20549-0609

Re: Proposed Rule on Broker-Dealer Exemption from
Sending Certain Financial Information to
Customers, File No. S7-48-02

Dear Mr. Katz:

Thank you for giving the Capital Committee (“the Committee”) of the Securities Industry Association (“SIA”)¹ the opportunity to comment on the above-referenced proposal of the U.S. Securities and Exchange Commission (“SEC” or “Commission”) to provide more meaningful, timely and efficient financial information to customers about their broker-dealer’s financial condition under Exchange Act Rule 17a-5(c). The Committee applauds the Commission for the constructive steps that it has taken to keep this rule up to date with new technologies, particularly the Internet, that enable customers to receive more timely information more efficiently. The Commission’s pilot program enabling broker-dealers to elect to comply with the rule by sending full balance sheet information electronically, via posting on the Internet, rather than by a physical mailing, has been very helpful, and the Committee strongly supports making this program permanent.

¹ SIA brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift and pension plans. The industry generates over \$350 billion of revenue and employs approximately 760,000 individuals. (More information about SIA is available on our web site: <http://www.sia.com>).

Comments:

Should the Commission codify the relief permitting a broker-dealer to send only the balance sheet footnotes regarding its net capital and make available its balance sheet prepared in accordance with Generally Accepted Accounting Principles via its website and toll-free number?

Response:

The Committee strongly supports the Commission's proposal to codify the relief in allowing a broker-dealer to send only the balance sheet footnotes regarding its net capital and make available its full balance sheet prepared in accordance with Generally Accepted Accounting Principles via a toll-free number and its website.

Comments:

Should the rule mandate that a broker-dealer taking advantage of the exemption be required to report its net capital information on a separate page to help make the customers aware that the financial information is included in the materials sent to them?

Response:

Requiring the net capital information to be reported on a separate page within the materials sent to customers would add to the expense and paperwork burden on broker-dealers taking advantage of the exemption. The Committee therefore requests that the net capital information not be reported on a separate page, but that the information is given prominence within the materials sent to customers.

Comments:

Should the Commission codify the no-action relief allowing a broker-dealer to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the prescribed time limits?

Response:

Many broker-dealers continue to mail customer statements to all customers with a position, money balance or other activity on a quarterly basis. This timeframe could extend past the existing reporting deadline under Rule 17a-5(c).

Maintaining the existing no-action relief without taking this opportunity to codify it in the rule could cause unnecessary confusion. The Committee therefore encourages the Commission to codify the exemption, thereby allowing a broker-dealer that publishes its financial information on the internet, and that provides the requisite information on their next quarterly statement, to be deemed to have met the requirements of Rule 17a-5(c).

Comments:

Rule 17a-5(c) requires a broker-dealer that carries customer accounts to annually send each customer certain financial information, including an audited balance sheet, within 105 days of the date of the balance sheet and to semi-annually send each customer certain financial information, including an unaudited balance sheet dated six months after the date of the audited balance sheet, within 65 days of the date of the unaudited balance sheet.

In addition, the Commission's staff has provided no-action relief to allow a broker-dealer to send its balance sheets after the 105 and 65-day time limits, provided that the broker-dealer also sent certain net capital information as of a fiscal month end that is within 75 days of the date of the date that the statements are sent to customers.

Should the time-frames for sending of broker-dealer financial information to customers required by Rule 17a-5(c) and the no-action relief be shortened?

Response:

The Committee, taking into consideration such factors as year end time constraints in producing the audited financial statements, the due date for filing of the monthly FOCUS

report, and the lead time required in preparing and printing the customer statements, concluded that the time-frames as described above should remain unchanged.

Comments:

Should a broker-dealer taking advantage of the exemption be required to place its balance sheet on its website sooner than it is currently required to send its financial disclosure statement to its customers?

Response:

Currently broker-dealers taking advantage of the exemption are required to place their full balance sheet on the website at the next mailing of the quarterly customer account statements. The Committee proposes advancing this deadline by requiring broker-dealers that take advantage of this exemption to place their full balance sheet on their website no more than 90 calendar days after the date of their audited annual and unaudited semi-annual balance sheets.

For example, a broker-dealer with a November fiscal year end that mails its quarterly customer statements at the end of March would be required to post its full balance sheet to the website by the end of February.

Comments:

Should the amendment to Rule 17a-5(c) require firms taking advantage of the exemption to continue to report the number of requests for copies of their balance sheet via their toll free number, the number of viewings of their balance sheet on their websites, and the number of complaints they have received regarding the exemption?

Response:

The pilot program requiring broker-dealers that elected to take advantage of the exemption to file such information with the Commission has served to confirm that customers are content in using the mechanisms provided to access the broker-dealers' financial information.

The Committee concludes therefore that the requirement to report the number of requests for copies of the full balance sheet via the toll free numbers, the number of viewing of the full balance sheet on the websites, and the number of complaints received regarding the exemption not be included within the amendment to the Rule.

Conclusion.

Thank you for giving SIA this opportunity to comment on the SEC's proposed rule changes. We believe that the proposal will provide meaningful, timely and efficient financial information to customer's about their broker-dealers financial condition. If you have any questions on any aspect of this letter, please contact George Kramer, Vice President and Associate General Counsel, at 202-296-9410, or by e-mail to gkramer@sia.com.

Sincerely,

Cheryl Kallem
Chair, SIA Capital Committee

cc:

Chairman Harvey L. Pitt, U.S. Securities and Exchange Commission
Commissioner Paul Atkins, U.S. Securities and Exchange Commission
Commissioner Roel Campos, U.S. Securities and Exchange Commission
Commissioner Cynthia A. Glassman, U.S. Securities and Exchange Commission
Commissioner Harvey J. Goldschmid, U.S. Securities and Exchange Commission
Annette Nazareth, Director, Division of Market Regulation
Michael A. Macchiaroli, Associate Director, Division of Market Regulation
Thomas K. McGowan, Assistant Director, Division of Market Regulation
Rose Russo Wells, Attorney, Division of Market Regulation