



Invested in America

October 28, 2014

James Schnurr

Chief Accountant, Office of the Chief Accountant

Stephen Luparello

Director, Division of Trading and Markets

Securities and Exchange Commission

100 F Street Northeast

Washington, DC 20549

RE: Broker-Dealer Reports; Final Rule, 78 Fed. Reg. 51910 (Aug. 21, 2013)

Dear Messrs. Schnurr and Luparello:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates and acknowledges the benefit to both our members’ customers and the financial markets from the updated and strengthened regulatory framework for the Securities and Exchange Commission’s (the “Commission”) financial responsibility rules (i.e., customer protection rule (Rule 15c3-3), net capital rule (Rule 15c3-1), books and records rules (Rules 17a-3 and 17a-4), and notification rule (Rule 17a-11)) pursuant to the above-referenced rulemaking proceeding.

We write to highlight two areas, as noted below and previously discussed with staff of both the Office of the Chief Accountant and the Division of Trading and Markets, where there appear to be implementation inconsistencies in the industry, and where we therefore believe it would be helpful for Commission staff to provide additional clarity for the audited firms and auditing professionals.

1. Basis for broker-dealer compliance reports

Some audit firms are interpreting the Commission’s final rule as requiring broker-dealers to establish and maintain controls beyond those we believe were contemplated by the Commission. Because the audit firms’ varying interpretations are causing confusion in the industry and resulting in significantly increased costs for the broker-dealers, we request that Commission staff clarify the proper basis for broker-dealer compliance reports, as discussed in this section.

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit <http://www.sifma.org>.

New York | Washington

120 Broadway, 35th Floor | New York, NY 10271-0080 | P: 212.313.1200 | F: 212.313.1301

www.sifma.org

More specifically, we understand that some audit firms have communicated to SIFMA member firms that the broker-dealers will need to develop an internal control over financial reporting (“ICFR”) framework, as required for issuers under the Sarbanes-Oxley Act of 2002 (“SOX”),² in order for the audit firms to conduct the required examinations with respect to the broker-dealers’ compliance reports.

However, in adopting amendments to the financial responsibility rules including broker-dealer reports, the Commission made clear, in response to requests for clarifications, that it was not requiring *either* a broker-dealer to include in its compliance report a statement regarding the effectiveness of its ICFR *or* an independent public accountant to attest to the effectiveness of ICFR.³ Rather, the Commission stated that the focus of a broker-dealer’s internal control over compliance and its compliance report should be an oversight of net capital, custody arrangements, and protection of customer assets.⁴ This distinction was similarly noted by the Public Company Accounting Oversight Board (the “PCAOB”) in its release relating to the adoption of Attestation Standard No. 1 for examination engagements regarding compliance reports of broker-dealers.⁵

The SOX requirements applicable to issuers (as defined in SOX) with respect to ICFR over financial reporting do not currently apply to all broker-dealers, and audit firm requirements that these broker-dealers implement an ICFR framework in connection with examination of their compliance reports is adding significant additional compliance costs to these broker-dealers. In addition, as noted above, the mixed interpretations by different audit firms have caused confusion for both broker-dealers and auditors. We thus request that Commission staff issue guidance clarifying that broker-dealers are not required to implement ICFR frameworks in order to comply with the final rule.

2. Scope expansion beyond required management statements for books and records

We understand that some audit firms are requiring SIFMA member firms to test the effectiveness of certain internal controls, including internal controls over the accuracy of their books and records when information from the books and records is used for Rule 15c3-1, Rule 15c3-3(e) or any other financial responsibility rule. We believe this is again an expansion of the scope of the Commission’s final rule beyond that contemplated by the Commission that significantly increases compliance costs for the impacted broker-dealers.

The Commission made clear in its adopting release that,

although a broker-dealer is required to state in the compliance report that the information it used to state whether it was in compliance with Rule 15c3-1 and paragraph (e) of Rule 15c3-3 was derived from its books and records, the final rule

² Pub. L. No. 107–204, 116 Stat. 745 (2002).

³ See Broker-Dealer Reports, 78 Fed. Reg. 51910 (Aug. 21, 2013), at n.150 and accompanying text. See also *id.* at 51934 (“Under the final rule, the independent public accountant is not required to opine on the effectiveness of the broker-dealer’s internal control over financial reporting.”)

⁴ See *id.* at 51920.

⁵ See Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards, PCAOB Rel. No. 2013-007 (Oct. 13, 2013), at p. A4-30.

does not require that the broker-dealer include a statement regarding the effectiveness of its internal control over the accuracy of its books and records, nor does it require that the independent public accountant attest to the effectiveness of internal control over the accuracy of the broker-dealer's books and records.⁶

The expectations of certain audit firms with respect to internal controls over the accuracy of books and records thus appear to increase the scope of the final rule(s), and we request that Commission staff provide clarification.

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We request that Commission staff clarify the matters discussed above in order to eliminate differing regulatory implementation approaches and auditing scope creep. We thank you again for the thoughtful regulatory approach taken to strengthen the regulatory framework for the financial responsibility rules, and appreciate your consideration of these concerns.

Please feel free to contact me at 212-313-1331 or at mscucci@sifma.org if I can be of assistance.

Regards,



Mary Kay Scucci, PhD, CPA
Managing Director

cc: Securities and Exchange Commission
Brian Croteau, Deputy Chief Accountant, Office of the Chief Accountant
Daniel Murdock, Deputy Chief Accountant, Office of the Chief Accountant
Jeffrey Minton, Chief Counsel, Office of the Chief Accountant
Michael Macchiaroli, Associate Director, Division of Trading and Markets
Thomas McGowan, Associate Director, Division of Trading and Markets
Randall Roy, Assistant Director, Division of Trading and Markets
Paula Jenson, Acting Chief Counsel, Division of Trading and Markets

Public Company Accounting Oversight Board
James Doty, Chairman

American Institute of Certified Public Accountants
Stockbrokerage and Investment Banking Expert Panel

⁶ 78 Fed. Reg. at 51934. *See also id.* at 51920 (“[T]he examination of the compliance report would pertain solely to certain statements in the compliance report and not to the broker-dealer’s process for arriving at the statements. The report of the independent public accountant, based on the examination of the compliance report, requires the accountant to perform its own independent examination of the related internal controls. Consequently, it is not necessary for the independent public accountant to provide an opinion with regard to the process that the broker-dealer used to arrive at its conclusions.”).