necessary to allow interested parties time to develop meaningful and substantive comments.

While the FAA agrees with the petitioners' requests for an extension of the comment period on Notice No. 02–17, the FAA believes that a 4–6 month extension would be excessive. The FAA believes an added 90 days would be adequate for these petitioners to collect economic data necessary to provide meaningful comment to Notice No. 02–17. This will also allow commenters who may have anticipated an extension in the comment period to send their comments by a date certain. Absent unusual circumstances, the FAA does not anticipate any further extension of the comment period for this rulemaking.

Extension of Comment Period

In accordance with § 11.47(c) of Title 14, Code of Federal Regulations, the FAA has reviewed the petitions made by AIA, Boeing, and GAMA for extension of the comment period to Notice No. 02–17. The FAA finds that extension of the comment period is consistent with the public interest, and that good cause exists for taking this action. These petitioners have a substantive interest in the proposed rule and good cause for the extension.

Accordingly, the comment period to Notice No. 02–17 is extended until March 3, 2003.

Issued in Washington, DC, on November 27, 2002.

John J. Hickey,

Director, Aircraft Certification Service.

[FR Doc. 02–30695 Filed 11–29–02; 12:22 pm]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–46920; File No. S7–48–02]

RIN 3235–AI68

Broker-Dealer Exemption from Sending Certain Financial Information to Customers

AGENCY: Securities and Exchange Commission (''Commission'')

ACTION: Proposed rule.

SUMMARY: We are proposing for comment amendments to a rule under the Securities Exchange Act of 1934 that would provide a conditional exemption from the rule's requirement that a broker-dealer that carries customer accounts send its full balance sheet and certain other financial information to each of its customers twice a year. Under the proposed amendments, the broker-dealer could send its customers only certain information regarding its net capital, as long as it also provided customers with a toll-free number to call for a free copy of its full balance sheet and made its full balance sheet available to customers over the Internet. The proposed amendments are intended to reduce the cost of doing business for a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer.

DATES: You should send us your comments so that they arrive at the Commission by January 2, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only. Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Alternatively, you may submit your comments electronically to the following electronic-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–48–02; please include this file number in the subject line if you use electronic mail. We will make all comment letters available for public inspection and copying in our public reference room at the above address. We will post electronically submitted comment letters on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 942–0132; Thomas K. McGowan, Assistant Director, at (202) 942–4886; or Rose Russo Wells, Attorney, at (202) 942–0143; Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

A broker-dealer that carries customer accounts must generally send its full balance sheet to each of its customers twice a year (once audited and once unaudited) under Section 17(e)(1)(B) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a–5(c).[2] The full balance sheet includes footnote disclosures required by generally accepted accounting principles (''GAAP'') and a footnote disclosing the amount of net capital the broker-dealer held as of the balance sheet date and the minimum amount of net capital we required the broker-dealer to hold as of that date.[3] According to the Commission's Office of Economic Analysis, there are currently 412 broker-dealers subject to the rule that carry a total of approximately 103 million public customer accounts.[4]

When we adopted Rule 17a–5(c) on June 30, 1972,[5] our goal was for broker-dealers to ''directly'' send a customer essential information so that a customer could ''judge whether his broker or dealer is financially sound.'')[6] We adopted the Rule in response to the failures of many broker-dealers holding customer funds and securities in the period between 1968 and 1971. When first adopted, Rule 17a–5(c) required a broker-dealer to send its balance sheet

[1] We do not edit personal identifying information, such as names or electronic-mail addresses, from electronic submissions. You should submit only information that you wish to make publicly available.

[2] Section 240.17a–5(c).

[3] Exchange Act Rule 15c3–1 defines net capital and sets minimum net capital requirements for a broker-dealer. Rule 15c3–1 is designed to ensure that each broker-dealer maintains sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. A broker-dealer that fails to meet the minimum net capital requirements must cease conducting a securities business.

[4] These estimates are based on reports broker-dealers are required to file with the Commission on Form X–17a–5, ''Financial and Operational Combined Uniform Single Report'' (commonly referred to as FOCUS Reports).

[5] We adopted Rule 17a–5(c) pursuant to Exchange Act Sections 17(a), 10(b), 15(c)(1), (2) and (3), and 23(a). In 1975, Congress passed the Securities Acts Amendments, Pub. L. No. 94–29, 89 Stat. 97, which gave the Commission explicit authority, pursuant to Exchange Act Section 17(e), over the accounting practices of broker-dealers. Section 17(e) provides:

(1)(A) Every registered broker or dealer shall annually file with the Commission a balance sheet and income statement certified by a registered public accounting firm, prepared on a calendar or fiscal year basis, and such other financial statements (which shall, as the Commission specifies, be certified) and information concerning its financial condition as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Every registered broker and dealer shall annually send to its customers its certified balance sheet and such other financial statements and information concerning its financial condition as the Commission, by rule, may prescribe pursuant to subsection (a) of this section.

(C) The Commission, by rule or order, may conditionally or unconditionally exempt any registered broker or dealer, or class of such brokers or dealers, from any provision of this paragraph if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(2) The Commission, by rule, as it deems necessary or appropriate in the public interest or for the protection of investors, may prescribe the form and content of financial statements filed pursuant to this title and the accounting principles and accounting standards used in their preparation.

[6] Exchange Act Release No. 9658 (June 30, 1972).

to its customers five times a year. We later reduced this to two times a year.[7]

The staff of the Commission's Division of Market Regulation (''Division'') has taken steps to reduce the cost to broker-dealers of complying with Rule 17a–5(c). In a letter of February 26, 2001, the Division provided no-action relief to allow a broker-dealer to send its balance sheet with its quarterly mailing of customer account statements, provided that the broker-dealer also sent certain updated net capital information.[8] Further, the Commission has provided that, with the consent of the customer, a broker-dealer may send its balance sheet electronically.[9]

In July 1998, the Securities Industry Association (''SIA'') [10] requested additional relief on behalf of broker-dealers due to the cost of sending a full balance sheet to each customer and the availability of the Internet as an alternative method of delivery.[11] Full balance sheets for large broker-dealers may be six or more pages long, primarily due to the footnote disclosures required by GAAP.

In response to the request for relief, we issued a conditional exemptive order establishing a pilot program that permitted a broker-dealer that elected to take advantage of the relief to send only its net capital footnote to its customers when it otherwise would have had to send its full balance sheet.[12] One condition of the order was that a customer of the broker-dealer wishing to obtain a copy of the firm's full balance sheet was able to do so, at no cost to the customer, by calling a toll-free number to promptly obtain a paper copy or, with the customer's consent, an electronic copy or by accessing the broker-dealer's Internet website. The relief was designed to reduce the cost to broker-dealers of complying with Rule 17a–5(c) while making it as easy as possible for customers to get the information they need to evaluate the financial soundness of a broker-dealer that may be holding their cash and securities. Participation in the pilot program was voluntary, and broker-dealers that participated in the pilot program were the firms that were likely to benefit most from taking advantage of the exemption. No broker-dealer dropped out of the pilot program. On December 20, 2001, the Commission issued an order extending the pilot program for one year, until December 31, 2002.[13] Today, the Commission issued an order extending the pilot program for six months, until June 30, 2003 (Exchange Act Release No. 46921), during which time the Commission, after receiving and considering comments on these proposed rule amendments, may adopt amendments to Rule 17a–5(c).

During the pilot program, we required a broker-dealer taking advantage of the relief to submit to us a report on the number of times its balance sheet was viewed on its website and the number of requests it received for copies via its toll-free number, and, during the December 31, 2001 to December 31, 2002 extension of the pilot program, written customer complaints it received regarding the exemption. As of July 1, 2002, 29 firms, which hold a total of about 40 million customer accounts, had elected to take advantage of the relief. The reports filed since the program was established on December 10, 1999, through July 1, 2002, show that 1,384 customers have called the toll-free numbers to request copies of the balance sheets and that there were 139,888 total viewings of the balance sheets on the websites of the firms participating in the pilot program. This indicates that customers are using the mechanisms provided by the pilot program to access broker-dealers' financial information. In addition, the reports show that the firms taking advantage of the exemption received no customer complaints regarding the exemption.

II. Description of the Proposed Amendments

We now propose to amend Rule 17a–5(c) to codify the relief we granted in the pilot program. The proposed amendments closely track the text of the orders establishing and extending the pilot program with two substantive exceptions.[14] First, as discussed below, the proposed amendments contain a modification from the pilot program regarding when a firm could take advantage of the relief if it had a net capital deficiency or other disqualifying factor. We also propose to eliminate the requirement contained in the pilot that broker-dealers taking advantage of the relief submit reports to us concerning the number of requests for copies of their balance sheets via their toll-free numbers, the number of viewings of their balance sheets on their websites, and the number of complaints they have received regarding the exemption. The reason for requesting this information in the pilot was to permit the Commission to be able to evaluate how the relief was working, so that the Commission could decide whether to propose permanent relief. At this time, we no longer believe such a reporting requirement would be necessary in the proposed rule amendments. We seek comment on whether the proposed rule amendments should contain a reporting requirement.

The pilot program prevented a broker-dealer from taking advantage of the relief in the event of a net capital deficiency or other disqualifying factor. The proposed amendments would extend the circumstances in which the relief would not be available. The amendments would not allow a broker-dealer to take advantage of the relief if, during the year prior to the date of the broker-dealer's balance sheet, the broker-dealer was required to provide notice to the Commission of the occurrence of any disqualifying event specified in the rule.[15] Disqualifying events would include net capital deficiencies, net capital early warning deficiencies, books and records failures, and internal control or financial disclosure inadequacies and are set out in Exchange Act Rule 17a–11 (b)(1), (c)(2), (c)(3), (d), and (e). In such a situation, a broker-dealer would be required to send all mandated financial information directly to each customer because customers would be more likely to want to review the broker-dealer's balance sheet under the circumstances. In the pilot program, the relief was available to a broker-dealer that had a capital deficiency within the past year that was not corrected within 24 hours as long as the deficiency was corrected by the next date that financial disclosures were required. We changed this provision in the proposed amendments because even if the deficiency was promptly cured, the deficiency might indicate that the broker-dealer's overall financial condition has changed significantly. In those circumstances, we believe that customers should receive the full balance sheet for at least one year after the deficiency is cured. We request comment on whether customers should receive the full balance sheet for a time

[7] Exchange Act Release No. 11187 (Jan. 17, 1975).

[8] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

[9] Exchange Act Release No. 37182 (May 15, 1996).

[10] The 600 member firms of the SIA include investment banks, broker-dealers, and mutual fund companies.

[11] Letter of July 17, 1998 from Mark Holloway, Chairman, SIA Capital Committee to Michael A. Macchiaroli, Associate Director.

[12] Exchange Act Release No. 42222 (Dec. 10, 1999).

[13] Exchange Act Release No. 45179 (Dec. 20, 2001), 66 FR 67341 (Dec. 28, 2001).

[14] In addition to the two changes discussed here, we have made minor technical corrections and clarifications to the conditions previously set out in the pilot program.

[15] *See* proposed paragraph (c)(5)(vi) of Rule 17a–5.

period that is more than one year or less than one year after the deficiency is cured. In addition, as specified in the proposed amendments, we have extended the disqualifying events to include a failure by the broker-dealer to make and keep current certain of its books and records. We request comment on whether the disqualifying events specified in the proposed amendments, certain of the ''Notification Provisions for Brokers and Dealers'' enumerated in paragraphs (b)(1), (c)(1), (c)(2), (c)(3), (d), and (e) of Rule 17a–11, are appropriate. In particular, are there other circumstances in which it would not be appropriate for us to permit a broker-dealer to take advantage of the relief, should any of the specified circumstances not be included in the rule amendments, or should the disqualifying events in the proposed rule amendments be revised? For example, should the levels of net capital that constitute disqualifying events for purposes of the proposed amendments be different from those requiring notification under Rule 17a–11?

The proposed amendments reflect our view that it is not necessary for a broker-dealer to send a full balance sheet two times a year to keep a customer informed of the financial condition of the broker-dealer if the customer receives the broker-dealer's net capital information twice a year and if the full balance sheet is available through a call to a toll-free number or is posted on the website of the broker-dealer. Under the proposed amendments, a broker-dealer that elects to take advantage of the relief provided to broker-dealers through the proposed amendments would continue to send to its customers or have readily available for its customers the financial information about the broker-dealer that is necessary in order for the customer to assess the broker-dealer's financial condition. In turn, we anticipate that if we were to adopt the proposed amendments, the cost to broker-dealers of complying with Rule 17a–5(c) would be substantially reduced. As a result, and as described below, we believe that the conditional exemption, as proposed today, would be consistent with the public interest and the protection of investors.

The amendments would require a broker-dealer taking advantage of the relief to continue to send specified financial information to each customer twice a year. This financial information would consist of the amount of the broker-dealer's net capital as of the date of the balance sheet the broker-dealer would have sent absent the exemption, the amount of the broker-dealer's required net capital as of that date, and information on how to obtain the full balance sheet of the broker-dealer via a toll-free number or on the broker-dealer's website. Sending this financial information twice a year would remind customers that the full balance sheet of the broker-dealer is available to them at no cost and would highlight and keep them informed of the firm's net capital position. We request comment on whether a broker-dealer taking advantage of the relief should send either more or less information to its customers and whether it should send the information more or less often than two times a year.

The amendments would require that the financial information be ''given prominence in the materials delivered to customers. . . .'' [16] We request comment on whether the rule should include additional requirements. For example, should the rule mandate that the financial information be on a separate page, to help make customers aware that the financial information is included in the materials sent to them by their broker-dealer taking advantage of the exemption? Further, should the broker-dealer be required to use other methods to inform its customers how to obtain its full balance sheet?

We believe that customers must have the opportunity to evaluate for themselves whether the broker-dealer is sufficiently financially sound to be entrusted to hold their securities and cash. The net capital requirements are designed to ensure that brokers and dealers have sufficient liquid assets (those assets that can be readily converted into cash) in excess of liabilities to promptly satisfy the firm's liabilities, including those to customers. Information about a broker-dealer's net capital is therefore useful in gauging the financial soundness of the broker-dealer. The amendments would require that a broker-dealer send customers its net capital information directly and give customers directions on how to obtain the full balance sheet of the broker-dealer.

Under the amendments, the full balance sheet of a broker-dealer taking advantage of the exemption would be available to a customer at no cost—by calling a toll-free number to obtain a copy and by accessing it on the firm's website. We request comment on whether there should be other ways in which customers could obtain the broker-dealer's full balance sheet.

The proposed amendments are intended to make it easy and convenient for a customer to obtain the firm's balance sheet. When posting its balance sheet to its website, the broker-dealer would be required to place a prominent link directly to the balance sheet on any web page that a customer would typically use to enter the website. The links would have to be placed on the broker-dealer's home page and on each page at which a customer can enter or log on to the broker-dealer's website. We request comment on how the full balance sheet and hyperlinks to the full balance sheet of a broker-dealer taking advantage of the relief should be placed on its website.

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 semiannually 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. The Commission's staff has provided no-action relief to allow a broker-dealer to send the balance sheets after the 105 and 65-day time limits, provided that the broker-dealer sent the balance sheets with its next mailing of quarterly customer account statements [17] and 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 that statements are sent to customers.[18]

We request comment on whether the time-frames for the sending of broker-dealer financial information to customers required by Rule 17a–5(c) and the no-action relief are appropriate. Should the 105 days for the sending of audited balance sheets be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of unaudited balance sheets be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments. Further, should we codify the time frames in the no-action letter by which the broker-dealer must send

[16] *See* proposed paragraph (c)(5)(ii) to Rule 17a–5.

[17] A broker-dealer that carries customer accounts must send account statements to customers at least quarterly under New York Stock Exchange Rule 409 and Section 45 of Article III of the NASD Rules of Fair Practice.

[18] Letter of February 26, 2001 from Michael Macchiaroli, Associate Director, to Cheryl M. Kallem, Chairperson, Securities Industry Association (2001 SEC No-Act. LEXIS 523).

its balance sheets to each customer into Rule 17a–5(c)? Should such a rule provide a time period that is shorter than the time period permitted in the no-action letter? Should such a rule require that the updated net capital information that a broker-dealer sends with its mailing of quarterly customer account statements under the no-action relief be as of a fiscal month end that is within a time period that is shorter or longer than 75 days?

Under amendments as currently proposed, a broker-dealer taking advantage of the exemption would be required, within 105 days of the date of the audited balance sheet, to send its financial disclosure statement to each customer (as described in paragraphs (5)(i)–(ii) of the proposed amendments), to place its audited balance sheet on its website, and to make its audited balance sheet available to customers who call its toll-free number to request it. The corresponding time frame is 65 days for the unaudited balance sheet. Should we codify the no-action relief to allow a broker-dealer taking advantage of the exemption to send its financial disclosure statement with its next mailing of quarterly customer account statements after the expiration of the prescribed time limits?

We request comment on whether some or all of these time frames for broker-dealers taking advantage of the proposed exemption are appropriate. For example, should a broker-dealer taking advantage of the exemption be required to place its balance sheets on its website sooner than it is required to send the financial disclosure statement to customers? Should the time period for posting the balance sheet on the website be somewhere between 60 and 105 days of the date of the audited balance sheet? Should the time period be somewhere between 45 and 60 days of the date of the unaudited balance sheet? We request comment on whether the time-frames for the sending the financial disclosure statement to each customer under the proposed exemption are appropriate. Should the 105 days for the sending of the financial disclosure statement relating to the audited balance sheet be shortened, for example, to somewhere between 105 and 75 days? Should the 65 days for the sending of the financial disclosure statement related to the unaudited balance sheet be shortened, for example, to somewhere between 65 and 45 days? We also request comment on whether these shortened time frames should apply if the firm has experienced the occurrence of financial or operational difficulties, such as a disqualifying event under paragraph (c)(5)(vi) of the proposed amendments.

We encourage any interested person to submit comments on the proposed amendments from the point of view of broker-dealers, their customers, and investors and other users of information about the financial condition of broker-dealers. Comments are of greatest assistance to us if accompanied by supporting data and analysis of the issues addressed in those comments.

III. Paperwork Reduction Act

The proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[19] We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[20] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title for the collection of information affected by the proposed amendments is ''Rule 17a–5(c)'' (OMB Control No. 3235–0199).

If adopted, the proposed amendments would allow a broker-dealer that elects to take advantage of the exemption, instead of sending its full balance sheet, to send a financial disclosure statement, consisting of its net capital information and information on how to obtain its full balance sheet, to its customers twice a year, as long as the broker-dealer also posts its balance sheet on its website and promptly sends its balance sheet to its customers who request it via a toll-free number. We estimate that the proposed amendments would reduce the existing paperwork burden on broker-dealers taking advantage of the exemption.

The current PRA burden for Rule 17a–5(c) is 542,222 hours and $19.52 million. The hour burden is based on an estimated average of 10 seconds to send each balance sheet times 97.6 million public customer accounts times two balance sheets per year (195,200,000 responses * 10 seconds /60 seconds/60 minutes = 542,222 hours per year). The cost burden is based on an estimated average of 10 cents per response for postage and printing costs (195,200,000 responses * $.10 = $19.52 million).

Since the time of the last calculation of the PRA burden, the number of public customer accounts has increased to 103 million. Further, industry sources represented that it now costs approximately 11 cents to mail a full balance sheet to a customer, primarily due to the additional postage required to mail the approximately six pages of footnotes required by GAAP, and that few customers agreed to accept the balance sheets electronically. We are now using that estimate of 11 cents instead of the 10 cents per balance sheet we had used previously. We request comment on the accuracy of that estimate.

Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

Broker-dealers currently taking advantage of the exemption send the financial disclosure statement, instead of their full balance sheet, twice a year. Some broker-dealers print the financial disclosure statement, which is typically about one paragraph in length, on a separate page, and some broker-dealers print it on the account statement.

We estimate that the 29 broker-dealers currently taking advantage of the exemption would spend 222,000 hours per year sending the financial disclosure statements to their customers. This estimate is based on an estimated average of 10 seconds to send each statement times 40 million customers times 2 financial disclosure statements per year. We have estimated in previous Paperwork Reduction Act filings that it requires 10 seconds to send a full balance sheet to a customer. Sending the financial disclosure statement instead of the full balance sheet may require less time. We request comment on the accuracy of the estimate of the amount of time required to send each financial disclosure statement.

We estimate that broker-dealers taking advantage of the exemption would save up to 11 cents each on postage and printing to send the financial disclosure statement instead of the full balance sheet to their customers. We estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year (40 million accounts * 2 mailings * up to 11 cents). If adopted, the proposed amendments would allow these firms to

[19] 44 U.S.C. Section 3501 *et seq.*

[20] 44 U.S.C. Section 3507(d) and 5 CFR § 1320.11.

continue to realize these savings. We request comment on the accuracy of this estimate.

Broker-dealers that take advantage of the exemption must send balance sheets to customers who request them via a toll-free number. Based on requests received by broker-dealers participating in the pilot program, we estimate that the firms that take advantage of the exemption would send approximately 550 balance sheets per year to customers who request them via the firms' toll-free numbers (1384 requests from December 31, 1999 to July 1, 2002/30 months * 12 months = 554).[21] We request comment on how much time would be required to send each balance sheet to a customer. Even if it takes 10 minutes to send each balance sheet, the total annual burden would be small (10 minutes * 550 balance sheets/ 60 =92 hours). In addition, we estimate that it would cost approximately 74 cents in postage to mail the balance sheet (two 37-cent stamps to mail six pages) for a total of $407 and that there may be small printing costs, which we are not able to quantify. We request comment on these estimates. We believe that the firms that would take advantage of the exemption already maintain a toll-free number for their customers and already have an Internet website. We request comment on those assumptions.

We therefore estimate the total burden for broker-dealers who take advantage of the exemption to be 222,000 hours and less than $10,000.

We estimate the burden for broker-dealers who do not take advantage of the exemption (383 broker-dealers carrying approximately 63 million customer accounts) to be about 350,000 hours per year and $13.9 million per year. The hour burden was calculated by multiplying the estimated number of balance sheets to be sent annually (63 million customers times two balance sheets sent per year) by the estimated average amount of time required to send each balance sheet (10 seconds). The cost burden was calculated by multiplying the number of balance sheets sent per year (126 million) by estimated postage and printing costs for each balance sheet (11 cents). We request comment on the accuracy of these estimates.

If the amendments are adopted, therefore, we estimate that the total annual hour burden for Rule 17a–5(c) would be approximately 572,000 hours (350,000 hours for firms not taking advantage of the exemption and 222,000 hours for firms taking advantage of the exemption), and the total annual cost burden would be approximately $13.9 million. The hour burden would increase by 29,778 hours from our previous estimate (572,000 hours—542,222 hours). All of this increase is due to an increase in the total number of public customer accounts since the time of the last submission. The estimated cost burden is $2.38 million higher due to an increase in the number of public customer accounts and an increase in estimated average postage and printing costs and is $8 million lower due to the proposed amendments. The cost burden is therefore lower by $5.62 million ($8 million − $2.38 million=$5.62 million).

We request comment on the proposed collection of information in order to: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) evaluate the accuracy of our estimates of the burden of the proposed collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Affairs, Washington, DC 20503, and send a copy of the comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. 270–199. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. 270–199, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington DC 20549. Because the OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

IV. Costs and Benefits of the Proposed Amendments

The proposed amendments are intended to reduce the cost of doing business to a broker-dealer while providing customers of the broker-dealer with free and easy access to the information they need to evaluate the financial soundness of the broker-dealer. No costs to customers are expected. The proposed amendments provide regulatory relief for those broker-dealers that take advantage of the exemption. The broker-dealers who take advantage of the exemption do so because they believe that the benefits of doing so outweigh the costs.

There are currently 412 broker-dealers that carry customer accounts. These firms carry a total of approximately 103 million accounts. Since the inception of the pilot program on December 10, 1999, to July 1, 2002, 29 broker-dealers, carrying a total of approximately 40 million customer accounts, have taken advantage of the relief. If the Commission adopts the proposed amendments, some additional firms may take advantage of the exemption. Because these firms have not yet taken advantage of the relief and because they may be smaller firms than some of the firms that have already taken advantage of the relief, these firms may realize fewer benefits from the exemption than those firms already taking advantage of the exemption.

The proposed amendments reflect our view that subject to certain conditions it is not necessary for a broker-dealer to send its balance sheet two times a year to customers to keep them informed of the financial condition of the broker-dealer if customers receive the broker-dealer's net capital information twice a year and if the full balance sheet is available on the Web site of the broker-dealer or by a call to a toll-free number. In fact, customers with Internet access would be able to obtain the full balance sheet of their broker-dealer within minutes at any time. Customers without Internet access could call at any time to be promptly sent a free copy of the full balance sheet.

We expect that the proposed amendments will provide benefits to broker-dealers and to investors. We expect that broker-dealers taking advantage of the exemption would reduce their cost of compliance with Rule 17a–5(c). As discussed above, we estimate that the 29 firms currently taking advantage of the exemption have reduced their postage and printing costs by up to $8.8 million per year. If

[21] Customers, when requesting that the full balance sheet be sent to them, have not requested that the balance sheet be sent electronically.

adopted, the proposed amendments would allow these firms to continue to realize these savings. Larger broker-dealers are likely to realize greater benefits than smaller firms as larger firms carry more customer accounts. As election of the exemption is voluntary, we would expect a broker-dealer to elect the exemption only if the firm would be able to conduct business at a lower cost than under current Commission rules. The proposed amendments could reduce overall costs to broker-dealers. In general, to the extent that costs to broker-dealers are reduced, such cost reductions may ultimately be passed on to consumers.

We estimate that the proposed amendments will result in certain costs to broker-dealers. Firms taking advantage of the exemption must have and maintain a toll-free telephone line and must have and maintain Web sites containing their balance sheets. We expect, however, that firms taking advantage of the exemption will already have a toll-free number for their customers and will already have a Web site, as these tend to be the larger firms. Firms taking advantage of the exemption must also send their full balance sheet to customers who request it via the toll-free telephone number. However, as election of the relief is voluntary, any new associated costs only reduce the net benefit of the election and do not impose a new burden.

Commenters are requested to provide their views and data relating to any costs and benefits associated with these proposals to aid us in our evaluation of the costs and benefits that may result from the amendments to Rule 17a–5(c) proposed in this release.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act [22] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rules on small entities unless the Commission certifies that the rule change, if adopted, would not have a significant economic impact on a substantial number of small entities.[23]

The Commission hereby certifies, pursuant to 5 U.S.C. Section 605(b), that the proposed amendments to Rule 17a–5(c) contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. These provisions would apply only to broker-dealers that carry customer funds, securities, or property. According to the Commission's Office of Economic Analysis, as of October 2001, there were approximately 412 such firms and, of these firms, approximately 14 were small businesses.[24] Further, election of the relief provided by the proposed rule amendments is voluntary. The proposed amendments, therefore, should not have a significant impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[25] a rule is ''major'' if it has resulted, or is likely to result, in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. We request that commenters provide empirical data and other factual support for their views.

VII. Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act [26] requires us, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act [27] requires us to consider the anticompetitive effects of any rules that we adopt under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes the proposed amendments should improve efficiency, competition, and capital formation by decreasing the costs of doing business for a broker-dealer that carries customer accounts and elects to take advantage of the relief. Additional firms taking advantage of the relief, however, may be smaller firms that may realize fewer benefits from taking advantage of the exemption than larger firms currently taking advantage of the relief. In addition, the proposed amendments should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because any broker-dealer should be able to use the exemption, because the complexity and length of financial statements generally varies proportionately with the volume and complexity of the broker-dealer's business, and because the number of financial statements that a broker-dealer must send to its customers is proportional to the number of customers of the broker-dealer.

We solicit comments on these matters with respect to the proposed rule amendments. Would the amendments have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposed amendments, if adopted, promote efficiency, competition, and capital formation? Commenters are requested to provide empirical data and other factual support for their views, if possible.

VIII. Statutory Basis

The amendments contained in this release are being proposed under the Exchange Act, particularly Section 17 and Section 23(a).

[22] 5 U.S.C. Section 603(a).

[23] 5 U.S.C. Section 605(b).

[24] Pursuant to 17 CFR 240.0–10, ''the term *small business* or *small organization* shall: [. . .] (c) [w]hen used with reference to a broker or dealer, mean a broker or dealer that: (1) [h]ad total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) [i]s not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section . . .'' (17 CFR 240.0–10(c)). Further, pursuant to § 240.0–10(i), ''[f]or purposes of paragraph (c) of this section, a broker or dealer is affiliated with another person if [. . .] [s]uch broker or dealer introduces transactions in securities, other than registered investment company securities or interests or participations in insurance company separate accounts, to such other person or introduces accounts of customers or other brokers or dealers, other than accounts that hold only registered investment company securities or interests or participations in insurance company separate accounts, to such other person that carries such accounts on a fully disclosed basis.'' (17 CFR 240.0–10(i)).

[25] Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[26] 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78w(a)(2).

List of Subjects in 17 CFR Part 240

Brokers, Customers, Dealers, Reporting and recordkeeping.

Text of Proposed Rule

For the reasons set out in the preamble, the Commission proposes to amend Title 17, Chapter II of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–5 is amended by:

a. Revising the phrase ''except if the activities'' to read ''except as provided in paragraph (c)(5) of this section or if the activities'' in the introduction text of paragraph (c); and

b. Adding paragraph (c)(5).

The addition reads as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(c) * * *

(5) *Exemption from sending certain financial information to customers.* A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker's or dealer's net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of § 240.15c3–1; and

(C) Any statements otherwise required by paragraph (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker's or dealer's Web site at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker's or dealer's specified toll-free telephone number.

(iii) The broker or dealer publishes the statements in accordance with paragraphs (c)(2) and (c)(3) of this section on its Web site, accessible by hyperlinks, in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker's or dealer's Web site home page; and

(B) On each page at which a customer can enter or log on to the broker's or dealer's Web site; and

(C) If the Web sites for two or more brokers or dealers can be accessed from the same home page, on the home page of the Web site of each broker or dealer.

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

(vi) During the year prior to the date as of which the statements prescribed by paragraphs (c)(2) and (c)(3) of this section were prepared, the broker or dealer was not required to provide notice to the Commission of the occurrence of any circumstance enumerated in paragraph (b)(1), (c)(1), (c)(2), (c)(3), (d), or (e) of § 240.17a–11.

* * * * *

Dated: November 26, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–30664 Filed 12–2–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25835; File No. S7–47–02]

RIN 3235–AI57

Certain Research and Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment a new rule under the Investment Company Act of 1940 that would provide a nonexclusive safe harbor from the definition of investment company for certain bona fide research and development companies. The rule is intended to allow research and development companies greater flexibility to raise and invest capital pending its use in research, development and other operations and would also clarify the extent to which a company relying on the rule may make investments in other research and development companies pursuant to collaborative research and development arrangements.

DATES: Comments must be received on or before January 15, 2003.

ADDRESSES: To help us process and review your comments more efficiently, comments should be sent by one method only.

Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. S7–47–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, Janet M. Grossnickle, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed rule 3a–8 [17 CFR 270.3a–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Act'').

I. Introduction and Summary

The Commission is proposing for comment new rule 3a–8 under the Act

[1] We do not edit personal identifying information, such as names or electronic mail addresses, from electronic submissions. You should submit only information that you wish to make available publicly.