Schleicher) applied for validation of a type certificate change to add the Model ASK 21 B glider in accordance with the ''Technical Implementation Procedures for Airworthiness and Environmental Certification Between the FAA and the European Aviation Safety Agency (EASA),'' Revision 6, dated September 22, 2017. This model is a modified version of the Model ASK 21 glider and will be documented on existing Type Certificate Number (No.) G47EU. The Model ASK 21 B is a two-seat, mid-wing glider constructed from glass-fiber reinforced plastic and features a 55.8 foot (17 meters) wingspan with airbrakes on the upper wing surface. The glider has a non-retractable landing gear with a nose wheel and shock-absorbed, braked main wheel and a T-type tailplane. The glider has a maximum weight of 1,323 pounds (600 kilograms).

EASA type certificated the Model ASK 21 B glider in the utility and aerobatic categories and issued Type Certificate No. EASA.A.221, dated August 9, 2018. The associated EASA Type Certificate Data Sheet (TCDS) No. EASA.A.221 defined the certification basis, which Alexander Schleicher submitted to the FAA for review and acceptance.

Gliders are type certificated by the FAA as special class aircraft for which airworthiness standards have not yet been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those found by the FAA to be appropriate and applicable to the specific type design. FAA Advisory Circular (AC) 21.17–2A [1] provides guidance on acceptable design criteria for the type certification of gliders and powered gliders in the United States. AC 21.17–2A allows applicants to utilize the Joint Aviation Requirements (JAR)–22,[2] other airworthiness criteria comparable to 14 CFR part 23, or a combination of both as the means for showing compliance for glider certification.

Comments

Airworthiness Criteria: Glider Design Criteria for Alexander Schleicher GmbH & Co. Segelflugzeugbau Model ASK 21 B Glider was published in the **Federal Register** on April 2, 2019 (84 FR 12529). No comments were received and the airworthiness design criteria are adopted as proposed.

[1] *Ref* AC 21.17–2A, ''Type Certification—Fixed-Wing Gliders (Sailplanes), Including Powered Gliders,'' dated February 10, 1993.

[2] *Ref* JAR–22, ''Sailplanes and Powered Sailplanes.''

Type Certification Basis

The certification basis for the Model ASK 21 B will be the same as the certification basis for the Model ASK 21 as shown on TCDS No. G47EU, Revision 1, except for areas affected by the change, which will use EASA Certification Specification (CS)–22 [3] as shown in these airworthiness design criteria.

Citation

The authority citation for these airworthiness design criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701.

The Airworthiness Design Criteria

Applicable Airworthiness Criteria Under 14 CFR 21.17(b)

Based on the Special Class provisions of § 21.17(b), the following airworthiness requirements form the FAA certification basis for the Model ASK 21 B:

1. 14 CFR part 21, effective February 1, 1965, including amendments 21–1 through 21–53.

2. Lufttuechtigkeitsforderungen fuer Segelflugzeuge and Motorsegler (LFSM) Airworthiness Requirements for Sailplanes and Powered Sailplanes, dated October 23, 1975.

3. JAR–22, dated April 1, 1980, including amendment 1, dated May 18, 1981.

4. CS–22, amendment 2, dated March 5, 2009, for the following regulations: CS 22.147, 22.455, 22.477, 22.561 except (b)(2), 22.595, 22.597, 22.629, 22.677, 22.685, 22.689, 22.721, 22.771, 22.773, 22.777, 22.779, 22.780, 22.781, 22.785, 22.786, 22.787, 22.788, 22.807, and 22.831.

5. AC 21.23–1, section 5(e)(6), dated January 12, 1981.

6. Operations are limited to Day VFR and to flying in Instrument Meteorological Conditions (IMC) if the glider is equipped as required under 14 CFR 91.205. Night operation is prohibited.

7. FAA Type Certificate Application Date: August 16, 2018.

8. EASA Type Certificate No. EASA.A.221, Issue 05, dated August 9, 2018.

[3] *Ref* EASA CS–22, ''Certification Specifications for Sailplanes and Powered Sailplanes,'' amendment 2, dated March 5, 2009.

Issued in Kansas City, Missouri, on June 5, 2019.

Pat Mullen,

Manager, Small Airplane Standards Branch, Policy & Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–12626 Filed 6–13–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–86073; File No. S7–21–18]

RIN 3235–AM47

Amendment to Single Issuer Exemption for Broker-Dealers

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

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to an exemptive provision in the broker-dealer annual reporting rule under the Securities Exchange Act of 1934 (''Exchange Act''). The exemption provides that a broker-dealer is not required to engage an independent public accountant to certify the broker-dealer's annual reports filed with the Commission if, among other things, the securities business of the broker-dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.

DATES: *Effective Date:* August 13, 2019.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Deputy Associate Director, at (202) 551–5522; Timothy C. Fox, Branch Chief, at (202) 551–5687; or Rose Russo Wells, Special Counsel, at (202) 551–5527, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is amending 17 CFR 240.17a–5 (''Rule 17a–5'').

I. Final Rule Amendment

Most broker-dealers registered with the Commission must annually file with the Commission a financial report and either a compliance report or exemption report.[1] In addition, paragraph

[1] 15 U.S.C. 78q(a)(1); 15 U.S.C. 78q(e)(1)(A); paragraph (d) of Rule 17a–5. *See also* paragraphs (d)(1)(iii) and (iv) of Rule 17a-5 (setting forth the limited circumstances under which the annual reports need not be filed). Pursuant to paragraphs (d)(1)(i)(B)(*1*) and (*2*) of Rule 17a–5, a broker-dealer

(d)(1)(i)(C) of Rule 17a–5 requires the broker-dealer to include with the annual reports reports prepared by an independent public accountant covering the financial report and, as applicable, the compliance or exemption report.[2] The accountant must be qualified and independent in accordance with 17 CFR 210.2–01 (''Rule 2–01 of Regulation S–X'') and must be registered with the Public Company Accounting Oversight Board (''PCAOB'') if required by the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'').[3] However, paragraph (e)(1)(i)(A) of Rule 17a–5 exempts a broker-dealer from engaging an independent public accountant to provide the accountant's reports if, since the date of the registration of the broker-dealer with the Commission or of the previous annual reports filed with the Commission:

- The securities business of the broker-dealer has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of the issuer;
- The broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction; and
- The broker has not otherwise held funds or securities for or owed money or securities to customers.

In September 2018, the Commission proposed amending this exemption to correct an error that inadvertently amended the rule in 2013 and to clarify that the exemption is available only for a broker-dealer that acts as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer.[4] More particularly, the 2018 proposal followed a series of amendments to the exemption, which occurred in 1975, 1977, and 2013, that inadvertently resulted in the rule text providing that the exemption applies if the broker-dealer solicited subscriptions for ''the issuer'' rather than for ''an issuer.'' [5]

The Commission received two comment letters in response to the proposed amendment to this exemptive provision.[6] The first commenter did not address the proposed amendment.[7] The second commenter stated that it was a ''one-person sole proprietorship,'' that the ''only business conducted is acting as an agent for redeemable mutual funds and variable insurance products,'' that the ''firm does not engage in underwriting, nor does the firm hold or owe customer funds or securities,'' that ''[c]ustomer checks are made payable to the mutual fund or insurance company,'' and that ''[a]pplications and checks are promptly sent to the company.'' [8] The commenter stated that the proposed amendment ''would block the use of the exemption for firms that do not hold or owe customer funds or securities and act as an agent for mutual funds,'' that it ''forces limited business firms, operating under a SEC Rule 15c3–3 exemption, to hire a PCAOB-registered accountant,'' that for ''a small firm . . . the cost of compliance is an onerous burden,'' and that ''increased PCAOB requirements make the cost unaffordable for the firm.'' The commenter stated that the ''firm provides personalized service to customers and has a valuable place in the community of broker-dealers.'' For these reasons, the commenter ''request[ed] that the proposed regulation be amended to allow such limited business firms [such as the commenter's firm] to file an annual report prepared by an independent public accountant (CPA), but not necessarily registered with the [PCAOB].''

In response to the commenter's request, the Commission notes that the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 that was proposed to be modified in this rulemaking addresses whether a broker-dealer must comply with paragraph (d)(1)(i)(C) of the rule, which requires the broker-dealer to file reports prepared by an independent public accountant with its annual reports. The Commission's proposal did not address the requirement that the independent public accountant must be registered with the PCAOB, which is prescribed in Section 17(e)(1)(A) of the Exchange Act and paragraph (f)(1) of Rule 17a–5. The proposal also did not address the requirement that the independent public accountant must undertake to prepare the reports in accordance with PCAOB standards, which is prescribed in paragraph (g) of Rule 17a–5. The commenter's request, consequently, asks the Commission to create a new and different exemption. In particular, the commenter requests that the Commission create an exemption pursuant to which a broker-dealer engaged in the business described in the comment letter would be exempt from the requirements in Section 17(e)(1)(A) of the Exchange Act and paragraph (f)(1) of Rule 17a–5 to the extent they require that the broker-dealer's independent public accountant be registered with the PCAOB. The proposed amendment that is the subject of this rulemaking would not alter these requirements, nor did the Commission contemplate doing so in the Proposing Release. For these reasons, the commenter's request ''that the proposed regulation be amended to allow such limited business firms to file an annual report prepared by an independent public accountant (CPA), but not necessarily registered with the [PCAOB]'' is beyond the scope of this rulemaking.[9]

The Commission understands that the comment letter addresses only the PCAOB-registration component of the audit requirement. Nonetheless, the Commission recognizes that this commenter in a separate Commission adjudicatory proceeding took the view that the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 should cover a broker-dealer acting as an agent for multiple issuers (which would exempt such broker-dealers from the audit requirement entirely).[10] Accordingly, the Commission believes that it is appropriate to address in the context of this rulemaking why the Commission does not believe that an expansion of the exemption to include broker-dealers

that does not claim it was exempt from 17 CFR 240.15c3–3 (''Rule 15c3–3'') throughout the most recent fiscal year must file the compliance report, and a broker-dealer that claims it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the exemption report. The compliance report must contain statements about the broker-dealer's internal control over, and compliance with, certain financial responsibility rules. The exemption report must contain statements about the broker-dealer's exemption from Rule 15c3–3.

[2] *See* 17 CFR 240.17a–5(d)(1)(i)(C).

[3] Public Law 107–204, 116 Stat. 745 (2002). *See* 17 CFR 240.17a–5(f)(1).

[4] *See Amendment to Single Issuer Exemption for Broker-Dealers,* Exchange Act Release No. 84225 (Sept. 20, 2018), 83 FR 48733 (Sept. 27, 2018) (''*Proposing Release*''). *See also Broker-Dealer Reports,* Exchange Act Release No. 70073 (Jul. 30, 2013), 78 FR 51910, 51943 (Aug. 21, 2013).

[5] *See Proposing Release* 83 FR at 48734 (describing the series of events that led to the inadvertent amendment to the rule).

[6] The comment letters are available at *https://www.sec.gov/comments/s7-21-18/s72118.htm.*

[7] *See Letter from Amr A Daoud,* dated Sept. 24, 2018.

[8] *See Letter from Howard Feigenbaum,* dated Oct. 24, 2018 (''*Feigenbaum Letter*'').

[9] The Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions stated that ''[t]he Office of the Chief Accountant and the Division of Trading and Markets are considering recommending amendments to certain broker-dealer annual reporting, audit and notification requirements that could differentiate the requirements according to different classes of broker-dealers.'' *See* Commission, *Spring 2019 Unified Agenda of Federal Regulatory and Deregulatory Actions. Available at https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=3235-AM46.* The potential issues involved in adopting such an approach as the commenter recommends, as well as the scope and form such potential action could take, would likely involve various policy issues that would warrant careful consideration following public comment.

[10] *See In the Matter of the Application of Sharemaster,* Exchange Act Release No. 83138 (Apr. 30, 2018).

that provide broker-dealer services for more than a single issuer (even if the broker-dealer limits its business in the manner described in the comment letter) would be appropriate.

The annual reports a broker-dealer files with the Commission are used by the Commission and the broker-dealer's designated examining authority to monitor the financial and operational condition of the broker-dealer and are one of the primary means of monitoring compliance with the Commission's broker-dealer financial responsibility rules. The requirement that the annual reports be covered by reports prepared by an independent public accountant is intended to enhance the reliability of the information filed by the broker-dealer, including information relevant to its financial condition, ability to continue as a going concern, and its handling of customer securities and cash. This also benefits investors who are customers or potential customers of the broker-dealer and who do not have access to the same level of information about the financial condition and operations of the broker-dealer as the independent public accountant engaged by the broker-dealer. These investors rely on the independent public accountant to audit this information.

The limited exemption to the requirement that a broker-dealer's annual reports be audited by an independent public accountant is consistent with the objectives of the rule. The exemption applies to a broker-dealer that acts as broker (agent) for a single entity—an issuer that is typically affiliated with the broker-dealer. Therefore, the issuer is in a privileged position to access sufficient information about the financial condition and operations of its agent—the broker-dealer affiliate—to make an informed decision about continuing to use the broker-dealer to effect transactions in its securities. Moreover, by permitting the broker-dealer to act as its agent, the issuer has agreed that the broker-dealer can legally bind the issuer. This implies that the two entities have a special relationship. For these reasons, requiring that an independent public accountant audit this information would not provide a meaningful benefit to the issuer, and the risk of harm to the issuer is mitigated by its ability to access information about its agent.

Expanding this exemption to broker-dealers similarly situated to the commenter's firm would not be consistent with the objectives of Rule 17a–5 as described above. The comment letter describes a firm that sells ''redeemable mutual funds and variable insurance products'' and that in doing so ''[c]ustomer checks are made payable to the mutual fund or insurance company'' and states that ''[a]pplications and checks are promptly sent to the company.'' [11] The comment letter also stated that the firm ''provides personalized service to customers.'' In other words, the business described in the comment letter involves acting on behalf of, and selling securities and insurance products to, retail investors. These customers are not similarly situated to an issuer that is affiliated with a broker-dealer and for whom the broker-dealer is acting as agent. Unlike such an issuer, the customers do not have a privileged position that allows them to access sufficient information about the financial condition and operations of the broker-dealer to make an informed decision about continuing to use the broker-dealer to act on their behalf in purchasing securities, including entrusting the broker-dealer to promptly forward their checks. Moreover, selling the securities of multiple issuers, including mutual funds in a single family of mutual funds, is different from acting as agent for a single affiliated issuer. These issuers may not be in the privileged position of the affiliated issuer in terms of accessing information about the broker-dealer. Consequently, the Commission believes that this type of broker-dealer should continue to be required to have its annual reports covered by reports prepared by an independent public accountant.

For the reasons described above and in the Proposing Release, the Commission is adopting the amendment to Rule 17a–5 as proposed.

II. Paperwork Reduction Act

The rule amendment clarifies the scope of an existing exemption available to certain broker-dealers from the requirement to file with the Commission reports prepared by an independent public accountant pursuant to paragraph (d)(1)(i)(C) of Rule 17a–5. As stated in the Proposing Release, the Commission believes that the amendment does not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act of 1995.[12] Accordingly, no information was submitted to the Office of Management and Budget for review.

The Commission did not receive any comments regarding its belief that the rule amendment would not create any new, or revise any existing, collection of information pursuant to the Paperwork Reduction Act.

III. Economic Analysis

The Commission is mindful of the costs imposed by, and the benefits obtained from, its rules. As explained below, the Commission expects that the amendment will benefit issuers by helping ensure that broker-dealers do not inappropriately rely on the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. Whenever the Commission engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, Section 3(f) of the Exchange Act requires the Commission to consider whether the action would promote efficiency, competition, and capital formation, in addition to the protection of investors. Further, when engaged in rulemaking under the Exchange Act, Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact such rules would have on competition. Section 23(a)(2) of the Exchange Act also prohibits the Commission 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 following analysis considers the potential economic effects that may result from the rule amendment, including the benefits and costs to market participants as well as the broader implications of the proposal for efficiency, competition, and capital formation.

Broker-dealers serve an important role in capital formation by performing numerous services, including with respect to the distribution of securities. Broker-dealer annual reports are one of the primary means of monitoring compliance with the Commission's broker-dealer financial responsibility rules, and the requirement that the annual reports be certified by a PCAOB-registered independent public accountant is intended to help enhance the reliability of the information filed by the broker-dealer. The exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 is designed to streamline regulatory compliance for certain broker-dealers by permitting broker-dealers that underwrite offerings by a single issuer—typically an affiliate of the broker-dealer—to do so without needing to meet this requirement.

Broker-dealers rarely rely on the very limited exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. Staff analysis of annual reports filed by broker-dealers revealed that only four broker-dealers—out of approximately 4,000 registered with the Commission—claimed the

[11] *Feigenbaum Letter.*

[12] 44 U.S.C. 3501 *et seq.*

exemption in the last year. The low level of use suggests that broker-dealers generally do not avail themselves of the existing exemption to compete with one another or to improve the efficiency of their underwriting activities.

The Commission recognizes the value of requiring that broker-dealer annual reports be certified by an independent public accountant. However, when a broker-dealer is acting solely as an agent for a single issuer's securities, typically an affiliate, the issuer is likely to have sufficient information about the broker-dealer's financial and operational condition. In that case, there would be minimal benefit in a requirement that the broker-dealer-dealer's annual reports be certified by an independent public accountant. At the same time, a broker-dealer required to obtain such certification for its annual reports could bear significant costs to do so. The Commission notes that one broker-dealer estimated the cost for a small broker-dealer to obtain certification of its annual reports by a PCAOB-registered independent public accountant in accordance with paragraph (d)(1)(i)(C) of Rule 17a–5 could be approximately $3,266 per year.[13]

While it is possible that a broker-dealer might act as an agent for a single unaffiliated issuer, the Commission does not believe such a narrow arrangement is likely. The Commission expects that a broker-dealer that is able to successfully market its services as an agent for the securities of one unaffiliated issuer would seek to market those services to additional unaffiliated issuers. In that case, the cost of having the firm's annual reports certified by a PCAOB-registered public accountant would likely be lower than the revenue generated from acting as an agent for multiple unaffiliated issuers.

However, in the event such an arrangement were to exist, the Commission acknowledges that the benefits associated with certification by an independent public accountant could be greater than when the broker-dealer is acting as agent for a single affiliated issuer. However, the incremental benefit likely would be limited because, even though the entities are not affiliated, they would likely have a special relationship by virtue of the fact that the broker-dealer's underwriting business relies on that single issuer. Therefore, the issuer likely would have better access to information relating to the broker-dealer's financial and operational condition than if the issuer were one of several issuers for whom the broker-dealer acted as agent. For these reasons, the Commission does not believe that the incremental benefit of requiring the annual reports to be certified by an independent public accountant would justify the costs in this scenario.

The Commission expects the amendment to benefit issuers that rely on broker-dealers to underwrite securities offerings by providing increased regulatory certainty about a broker-dealer's obligation to have its annual reports certified by an independent public accountant when the broker-dealer acts as an agent for multiple issuers. This will benefit issuers by helping ensure that broker-dealers do not inappropriately rely on the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. When the broker-dealer is not acting solely as an agent for a single affiliate's securities, the benefits of certification are likely to be more substantial because the issuers are less likely to have sufficient information about the broker-dealer's financial condition.

One commenter asserted that the cost of compliance with the separate requirements in Rule 17a–5 to engage an independent public accountant registered with the PCAOB (as compared to an accountant that is not registered with the PCAOB) represented an ''onerous burden'' for a firm that ''survives on a thin profit margin'' and that ''increased PCAOB requirements make the cost unaffordable for the firm.'' The Commisson acknowledges that the incremental costs associated with engaging an independent public accountant registered with the PCAOB as compared to an accountant that is not so registered could result in certain broker-dealers exiting the market if their revenues are too low to cover the incremental costs and remain profitable. However, as discussed above, the exemptive provision being modified in this rulemaking addresses whether or not the broker-dealer needs to file the accountant's reports (*i.e.,* engage an independent public accountant in the first place). It does not address the separate requirement in Rule 17a–5 that the accountant be registered with the PCAOB. With respect to the amendment being adopted in this rulemaking, the Commission continues to believe that because of the low reliance on the exemption currently, and the expectation that the number of broker-dealers relying on the exemption will not increase or decrease as a result of the amendment, the overall economic impact of the amendment is likely to be small.

The Commission expects the amendment to have only a marginal impact on efficiency, competition, and capital formation. This assessment is primarily based on the belief that the amendment does not revise the scope of the exemption or change current practice and that the exemption is claimed by only a few broker-dealers. The Commission nevertheless acknowledges that the amendment could marginally impair capital formation if it prompts broker-dealers to reduce underwriting activity or to increase the price of underwriting activities for potential issuers, and the amendment could marginally reduce efficiency if it prompts certain broker-dealers to exit the market, forcing issuers to move their business to a different broker-dealer.

The Commission considered several alternatives in terms of the scope of the exemption. First, the Commission considered broadening the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. Staff analysis of information provided by broker-dealers indicates that a substantial number of registered broker-dealers underwrite corporate securities or are selling group participants for corporate securities and may otherwise be eligible to take advantage of the exemption if its scope were broadened in this way.[14]

Relatedly, a commenter suggested that the Commission include an exemption for ''limited business broker-dealers'' from the requirement to engage a PCAOB-registered accountant (*i.e.,* an exemption that would permit the broker-dealer to engage an accountant that is not registered with the PCAOB). The commenter stated that it was a ''one-person sole proprietorship,'' that the ''only business conducted is acting as an agent for redeemable mutual funds and variable insurance products,'' that the ''firm does not engage in underwriting, nor does the firm hold or owe customer funds or securities,'' that ''[c]ustomer checks are made payable to the mutual fund or insurance company,'' and that ''[a]pplications and checks are promptly sent to the company.''

Rule 17a–5 provides only two exemptions from the requirement that

[13] According to one broker-dealer, an audit prepared by a PCAOB-registered accountant would cost $2,800 in 2010. *See In the Matter of the Application of Sharemaster,* Exchange Act Release No. 83138 (Apr. 30, 2018), at n. 4. Adjusting this amount for inflation yields approximately $3,266 in February 2019 (inflation calculator available at *https://www.bls.gov/data/inflation_calculator.htm*).

[14] Commission staff analysis of Form BD data indicates that 948 registered broker-dealers reported engaging in, or expecting to engage in, the underwriting of securities at the end of 2018.

broker-dealer annual reports be certified by an independent public accountant.[15] The Commission has provided for only these very limited exemptions from the requirement that annual reports of broker-dealers be audited due to the importance of reliable financial and operational information concerning registered broker-dealers for investor protection and the integrity of the capital markets. Broadening the exemption could benefit broker-dealers by no longer requiring them to engage independent public accountants when they act as an agent for multiple issuers in soliciting subscriptions for securities and thereby reducing their costs. However, an alternative that broadens these exceptions could impose costs on issuers to the extent that making the certification by the independent public accountant voluntary for broker-dealers that serve multiple issuers reduces the reliability of these broker-dealers' annual reports.

Further, an alternative that broadens the exemption to broker-dealers that limit their business in the manner described by the commenter would impact retail customers who are not similarly situated to an issuer that is affiliated with a broker-dealer and for whom the broker-dealer is acting as agent. Unlike such an issuer, the customers do not have a privileged position that allows them to access sufficient information about the financial condition and operations of the broker-dealer to make an informed decision about continuing to use the broker-dealer to act on their behalf in purchasing securities, including entrusting the broker-dealer to promptly forward their checks. Consequently, this alternative could impose costs on retail customers to the extent they currently rely on the reports of the independent public accountants.

Given the significance of the verification of a broker-dealer's financial and operational information by an independent public accountant, the Commission is not broadening the scope of the exemption to include broker-dealers whose securities business is limited to acting as an agent for multiple issuers. When a broker-dealer acts as an agent on behalf of an issuer, the financial condition of the broker-dealer is important to the issuer because if a broker-dealer is financially constrained, it may be less able to bear the risks associated with underwriting activities, such as holding securities in inventory. If a broker-dealer acts as an agent on behalf of multiple issuers, its financial condition is important to capital formation for multiple issuers, and so the benefits of certification are likely higher for the broker-dealer. Moreover, the Commission notes that the benefits to broker-dealers from such an alternative may be limited by competitive effects, because an issuer that is concerned about the reliability of a broker-dealer's financial statements may choose to hire a broker-dealer with certified annual reports to act as its agent.

Second, the Commission considered eliminating the exemption. While the Commission is mindful of the significance of broker-dealer audits, as explained above, the Commission believes that the cost of this alternative to broker-dealers who are now eligible to take advantage of the exemption does not justify the benefits that would accrue to the single issuer for which the broker-dealer is acting as agent, which is typically an affiliate of the broker-dealer, as a result of an audit. Therefore, the Commission believes the exemption should continue to be available where a broker-dealer is acting as an agent for a single issuer in soliciting subscriptions for securities of that issuer.

Finally, the Commission considered further specifying that the limited exemption in paragraph (e)(1)(i)(A) of Rule 17a–5 would apply only if the broker-dealer were engaged in underwriting the securities of an affiliate. While this alternative would narrow the limited exemption, based on its observation of broker-dealers' use of this exemption to date, the Commission does not believe the benefits yielded by narrowing the exemption would be substantial.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[16] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[17] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have significant economic impact on a substantial number of small entities. In the proposing release, the Commission certified, under section 605(b) of the Regulatory Flexibility Act, that, when adopted, the proposed amendments to paragraph (e)(1)(i)(A) of Rule 17a–5 would not have a significant economic impact on a substantial number of small entities.[18]

Based on filings with the Commission, the Commission believes that four broker-dealers are currently claiming the exemption in paragraph (e)(1)(i)(A) of Rule 17a–5. The rule amendment will not change whether a broker-dealer would or would not qualify for the exemption. For these reasons, the Commission certifies that the rule amendment will not have a significant economic impact on a substantial number of small entities for purposes of the RFA.

V. Statutory Authority

The Commission is adopting amendments to Rule 17a–5 under the Exchange Act (17 CFR 240.17a–5) pursuant to the authority conferred by Exchange Act Sections 17(e)(1)(A), 17(e)(1)(C), and 36.[19]

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Rules

In accordance with the foregoing, the Commission is amending 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, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

■ 2. Amend § 240.17a–5 by revising paragraph (e)(1)(i)(A) to read as follows.

[15] One exemption is the ''single issuer'' exemption provided for in paragraph (e)(1)(i)(A) of Rule 17a–5, which is the subject of this rulemaking. The other exemption is contained in paragraph (e)(1)(i)(B) of Rule 17a–5. The second exemption applies to broker-dealers whose securities business is ''limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and the broker or dealer has not carried any margin account, credit balance, or security for any securities customer.'' Staff analysis of annual reports filed by broker-dealers revealed that only one broker-dealer claimed this exemption in the last year.

[16] *See* 5 U.S.C. 601 *et seq.*

[17] 5 U.S.C. 551 *et seq.*

[18] *See Proposing Release,* 83 FR at 48737.

[19] 15 U.S.C. 78q(e)(1)(A); 15 U.S.C. 78q(e)(1)(C); 15 U.S.C. 78mm.

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

* * * * *

(e) * * *

(1)(i) * * *

(A) The securities business of the broker or dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or

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By the Commission

Dated: June 10, 2019.

Vanessa A. Countryman,

Acting Secretary.

[FR Doc. 2019–12563 Filed 6–13–19; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Allocation of Assets in Single-Employer Plans; Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans to prescribe certain interest assumptions under the benefit payments regulation for plans with valuation dates in July 2019 and interest assumptions under the asset allocation regulation for plans with valuation dates in the third quarter of 2019. These interest assumptions are used for valuing benefits and paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective July 1, 2019.

FOR FURTHER INFORMATION CONTACT: Gregory Katz (*katz.gregory@pbgc.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400, ext. 3829. (TTY users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 3829.)

SUPPLEMENTARY INFORMATION: PBGC's regulations on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) and Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulations are also published on PBGC's website (*https://www.pbgc.gov*).

Lump Sum Interest Assumption

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay as a lump sum. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefit payments regulation to provide the rates for July 2019 measurement dates.

The July 2019 lump sum interest assumptions will be 0.75 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for June 2019, these assumptions represent a decrease of 0.25 percent in the immediate rate and are otherwise unchanged.

Valuation/Asset Allocation Interest Assumptions

PBGC uses the interest assumptions in appendix B to part 4044 (''Interest Rates Used to Value Benefits'') to value benefits for allocation purposes under section 4044 of ERISA, and some private-sector pension plans use them to determine benefit liabilities reportable under section 4044 of ERISA and for other purposes. The third quarter 2019 interest assumptions will be 2.92 percent for the first 25 years following the valuation date and 3.07 percent thereafter. In comparison with the interest assumptions in effect for the second quarter of 2019, these interest assumptions represent an increase of five years in the select period (the period during which the select rate (the initial rate) applies), a decrease of 0.15 percent in the select rate, and an increase of 0.02 percent in the ultimate rate (the final rate).

Need for Immediate Guidance

PBGC updates appendix B of the asset allocation regulation each quarter and appendices B and C of the benefit payments regulation each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available to value benefits and, for plans that rely on our publication of them each month or each quarter, to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the valuation and payment of benefits under plans with valuation dates during July 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 309 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

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