

Material Incorporated by Reference

(i) Rolls-Royce plc Service Bulletin No. RB.211-71-D509, Revision 2, dated April 17, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011-44-1332-242424; fax: 011-44-1332-245-418. You may review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, suite 700, Washington, DC.

Related Information

(j) CAA airworthiness directive 005-09-2001, dated April 17, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on July 24, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03-19475 Filed 8-5-03; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 30****Foreign Futures and Options Transactions; Correction**

AGENCY: Commodity Futures Trading Commission.

ACTION: Corrections to order.

SUMMARY: This document contains corrections to the Order that was published in the *Federal Register* of July 1, 2003 (68 FR 39006). The Order, issued pursuant to Commission Rule 30.10, granted an exemption to firms designated by the ASX Futures Exchange Proprietary Limited ("ASXF") from the application of certain of the Commission's foreign futures and options rules based on substituted compliance with Australia's comparable regulatory and self-regulator regime.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT:

Lawrence B. Patent, Esq., Deputy Director, Susan A Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st St., NW., Washington, DC 20581. Telephone: (202) 418-5430.

SUPPLEMENTARY INFORMATION:**Background**

Commission Rule 30.4 requires that persons that solicit or accept orders, and

funds related thereto, from customers located in the U.S. for trading on futures exchanges located outside the U.S. must register as futures commission merchants. Commission Rule 30.10 permits persons to petition for exemption from any Part 30 rule. Under Rule 30.10, the Commission has issued numerous orders to foreign futures exchanges that petition, on behalf of their members, for relief from compliance with the Commission's Part 30 rules based on the members' substituted compliance with their home country regulatory framework. The Commission's Order under Rule 30.10 as published in the *Federal Register* incorrectly identified the order recipient, ASXF, as the ASX Futures Exchange Party Limited. ASXF has informed the Commission that the abbreviation "Pty" stands for "Proprietary" and not "Party."

Need for Correction

As published, the Order contains errors that may be misleading and need clarification.

Correction of Publication

Accordingly, the publication on July 1, 2003 of an Order, which was the subject of FR Doc. 03-16516, is correct as follows:

On page 39006, in the first column, in the Summary, line 5, and in the second column, in the Supplementary Information, second paragraph, line 3, the word "Party" is corrected to read "Proprietary" in both instances.

Issued in Washington, DC, on July 30, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03-19948 Filed 8-5-03; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION**17 CFR Part 240**

[Release No. 34-48272; 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: Final rule.

SUMMARY: We are adopting amendments to a rule under the Securities Exchange Act of 1934 that 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 amendments, the broker-dealer can send its customers summary information regarding its net capital, as long as it also provides customers with a toll-free number to call for a free copy of its full balance sheet, makes its full balance sheet available to customers over the Internet, and meets other specified requirements. The amendments are intended to reduce the cost of doing business for a broker-dealer while providing customers of the broker-dealer with easy access to the information they need to evaluate the financial soundness of the broker-dealer.

EFFECTIVE DATE: September 5, 2003.

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: We are amending Rule 17a-5(c)¹ under the Securities Exchange Act of 1934 ("Exchange Act"). We proposed these amendments for comment in November 2002.²

I. Background

A broker-dealer that carries customer accounts must generally send its full balance sheet to each of its customers twice a year under section 17(e)(1)(B) of the Exchange Act and Exchange Act Rule 17a-5(c). Rule 17a-5(c) requires the broker-dealer to send an audited balance sheet within 105 days of the date of the audited balance sheet and 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 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 There are currently

¹ 17 CFR 240.17a-5(c).

² Exchange Act Release No. 46920 (Nov. 26, 2002), 67 FR 71909 (Dec. 3, 2002) ("Proposing Release").

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

approximately 400 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 to its customers five times a year. We later reduced this to two times a year.⁷

In a letter of February 26, 2001, the staff of the Commission's Division of Market Regulation ("Division") provided no-action relief to allow a broker-dealer to send its balance sheet with its next mailing of quarterly customer account statements after the expiration of the time limits prescribed by Rule 17a-5(c), provided that the broker-dealer also sent certain updated

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 numbers 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).

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

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

II. Pilot Program Granting Exemptive Relief

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.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 two-year pilot program ending December 31, 2001 that permitted a broker-dealer that elected to take advantage of the exemption to send only a "financial disclosure statement" to its customers containing summary information regarding its net capital when it otherwise would have had to send its customers its full balance sheet, 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 on its Internet Web site.¹² The exemptive order required that the financial disclosure statement include certain of the broker-dealer's net capital information as of the balance sheet date and information on how to obtain the broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy. The no-action relief allowing a broker-dealer to send its financial information with its next mailing of quarterly customer account statements after the expiration of the Rule 17a-5(c) time limits as long as it also sent certain updated net capital information also applied to broker-dealers taking advantage of the exemption. These broker-dealers would therefore send customers net capital information as of the balance sheet date, as required by the exemptive order, and updated net

capital information, as required by the no-action relief.

A broker-dealer taking advantage of the exemption and the no-action relief could send its financial disclosure statement with the updated net capital information to its customers and publish its balance sheet on its Web site at the time of its next mailing of quarterly customer account statements after the expiration of the Rule 17a-5(c) time limits. For example, a broker-dealer with a fiscal year end of November 30 is required by Rule 17a-5(c) to send an audited balance sheet to customers by March 15 (105 days after November 30). The broker-dealer would use a calendar year for its mailings of quarterly customer account statements. If the broker-dealer sends its first quarterly customer account statements at the beginning of April, the no-action relief allows it to send its audited balance sheet with certain updated net capital information to its customers with those first quarterly account statements. If the broker-dealer takes advantage of the exemption and the no-action relief, it could send its financial disclosure statement and updated net capital information to its customers with the first quarterly account statements at the beginning of April and publish its November 30 audited balance sheet on its Web site at the same time.

The pilot program 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.

In December 2001, we extended the pilot program for one year, until December 31, 2002.¹³ As of July 2002, 29 broker-dealers holding a total of about 40 million customer accounts participated in the pilot program. In November 2002, we extended the pilot program to June 30, 2003.¹⁴ As of June 2003, 3 additional broker-dealers holding a total of approximately 300,000 customer accounts were taking advantage of the exemption.

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 Exchange Act Release No. 46921 (Nov. 26, 2002), 67 FR 72005 (Dec. 3, 2002).

III. Proposing Release and Comments

Based upon our experience with the pilot program, we proposed to amend Rule 17a-5(c) to codify the relief we granted in the pilot program.¹⁵ At the same time, we extended the pilot program to June 30, 2003 to allow us time to receive and consider comments on the proposed amendments.

Specifically, the proposed amendments would have permitted a broker-dealer that elected to take advantage of the exemption to send only a "financial disclosure statement" to its customers when it otherwise would have had to send its customers its full balance sheet. This financial disclosure statement consisted 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 broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy.

The proposed amendments would have required that the financial information be "given prominence in the materials delivered to customers" and also would have required that, when posting its balance sheet to its Web site, the broker-dealer place a prominent link directly to the balance sheet on any Web page that a customer would typically use to enter the Web site.¹⁶

The proposed amendments would not have allowed 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. Disqualifying events would have included net capital deficiencies, net capital early warning deficiencies, books and records failures, and internal control or financial disclosure inadequacies.

In the Proposing Release, we solicited comment on whether we should 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

time limits prescribed by Rule 17a-5(c) and whether a broker-dealer taking advantage of the exemption should be required to place its balance sheet on its Web site sooner than it is required to send the financial disclosure statement to customers.

We received six comments in response to the proposed rule amendments: four comments from individuals, a comment from an industry representative, and a comment from a broker-dealer that is taking advantage of the exemption.¹⁷ Three individuals were opposed to the proposed amendments. Two of them stated that investors need more information. The third stated that having the full balance sheet sent to each customer was a more "up-front trustworthy approach." One of them suggested that broker-dealers distribute their balance sheets to customers electronically in PDF format. The fourth individual supported the amendments but was concerned that some mutual fund companies might try to use the amendments to raise fund expenses.

The industry representative and broker-dealer taking advantage of the exemption strongly supported the proposed amendments. Both were in favor of codifying 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 time limits under Rule 17a-5(c). The industry representative also proposed requiring a broker-dealer taking advantage of the exemption to place its full balance sheet on its Web site within 90 calendar days after the date of the balance sheet. Under this proposal, the broker-dealer with a fiscal year end of November 30 in the example above that takes advantage of the exemption would be required to place its audited balance sheet on its Web site by February 28.

Since the financial disclosure statement typically consists of less than a half-page of printed material, we also requested comment on whether the statement should be required to be on a separate page, to help make customers

aware that the financial information is included in the materials (which generally include the customer's quarterly account statement) sent to them by their broker-dealer. The only comments we received on that issue were from the industry representative and the broker-dealer taking advantage of the exemption, both of whom were opposed to requiring that broker-dealers taking advantage of the exemption send the financial disclosure statement on a separate page from other materials sent to customers. The industry representative stated that the requirement that the financial information be "given prominence in the materials delivered to customers" provides sufficient guidance for broker-dealers. The broker-dealer taking advantage of the exemption stated that requiring the financial information to be reported on a separate page would add to the expense and paperwork burden on firms taking advantage of the exemption.

IV. Final Rule Amendments

After considering the comment letters, we are adopting rule amendments substantially as proposed. Specifically, pursuant to amended Rule 17a-5(c), a broker-dealer that elects to take advantage of the exemption must send only a "financial disclosure statement" to its customers when it otherwise would have had to send its customers its full balance sheet. The financial disclosure statement consists 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 broker-dealer's full balance sheet, at no cost to customers, by accessing the broker-dealer's Internet Web site or by calling a toll-free telephone number to promptly obtain the customer's choice of either a paper copy or an electronic copy. We are adding a requirement that a broker-dealer taking advantage of the exemption place its full audited balance sheet on its Web site within 90 days after the date of the audited balance sheet and its full unaudited balance sheet on its Web site within 75 days after the date of the unaudited balance sheet.

We solicited comment on whether a broker-dealer taking advantage of the exemption should be required to post its balance sheet on its Web site sooner than it is required to send the financial disclosure statement to customers. In its comments, the industry representative proposed requiring a broker-dealer

¹⁵ Exchange Act Release No. 46920 (Nov. 26, 2002), 67 FR 71909 (Dec. 3, 2002).

¹⁶ Proposed paragraphs (c)(5)(i) and (iii) of Rule 17a-5.

¹⁷ Division staff has prepared a summary of the comment letters received on the proposed rule amendments entitled "Comment Summary, Broker-Dealer Exemption From Sending Certain Financial Information to Customers" ("Comment Summary"). Copies of the comment letters and Comment Summary have been placed in Public Reference File No. S7-48-02 and are available for inspection in the Commission's Public Reference Room. The commenters are as follows: *Individuals* Carolyn Allen, James Marolda, Keith McCallion, Fred Winkler; *Broker-Dealer* Merrill Lynch, Pierce, Fenner & Smith; *Industry Representative* Securities Industry Association Capital Committee.

taking advantage of the exemption to place its full balance sheet on its Web site within 90 calendar days after the date of the balance sheet. We have concluded that it would be feasible for a broker-dealer taking advantage of the exemption to place its full audited balance sheet on its Web site within 90 days of the date of the audited balance sheet and, since unaudited financial statements can be published more quickly than audited financial statements, to place its full unaudited balance sheet on its Web site within 75 days of the date of the unaudited balance sheet. These time limits will allow broker-dealers sufficient time to prepare the statements and to place them on their Web sites and will enable customers with Internet access to obtain the most recent audited balance sheet of a broker-dealer taking advantage of the exemption more quickly than customers would obtain such information from the broker-dealer under the existing rule.

In addition, as discussed below, we have eliminated certain of the disqualifying events included in the proposed amendments. Finally, we have codified the no-action relief, with the addition of time limits, to allow a broker-dealer to send its audited balance sheet 30 days after the 105-day time limit has expired and to send its unaudited balance sheet 70 days after the 65-day time limit has expired, if the broker-dealer sends the balance sheets with its next mailing of quarterly customer account statements. In order to take advantage of this provision, the broker-dealer must include a footnote with the mailing containing the amount of the broker-dealer's net capital and its required net capital as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. We chose the 30- and 70-day time limits because they provide the minimum amount of time needed, based on an analysis of broker-dealers' year-ends, for a broker-dealer with a November 30 fiscal year-end to send its financial information with the next mailing of quarterly customer account statements. There are approximately 15 broker-dealers that carry customer accounts that have November 30 fiscal year-ends.

Individual customers of broker-dealers need timely access to reliable information. We believe that these amendments will not compromise that access. Interested customers of broker-dealers taking advantage of the exemption can call a toll-free number to have a full balance sheet sent to them promptly after it is requested at no cost. The toll-free number, along with net capital and other information, will be

sent to customers when they would have received the full balance sheet of the broker-dealer absent the exemption. Customers with Internet access can obtain the most recent audited balance sheet of broker-dealers taking advantage of the exemption within 90 days after the date of the audited balance sheet—sooner than broker-dealers not taking advantage of the exemption would be required to send their audited balance sheets to customers.¹⁸

The amendments add paragraph (5) to Rule 17a-5(c). The new paragraph provides an exemption from the Rule's requirement that broker-dealers carrying customer accounts send their full balance sheets to their customers twice a year.¹⁹ In order to take advantage of the exemption, broker-dealers must meet six conditions.

First, a broker-dealer taking advantage of the exemption must send a financial disclosure statement to each customer twice a year at the times that it otherwise would have been required by Rule 17a-5(c) to send its full balance sheet to each customer. The financial disclosure statement must include the amount of the broker-dealer's net capital as of the date of that full balance sheet and the amount of the broker-dealer's required net capital as of that date.

Second, the financial disclosure statement must be "given prominence" in the materials delivered to the broker-dealer's customers and must include information on how to obtain the full balance sheet of the broker-dealer via a toll-free number or on the broker-dealer's Web site. After considering the comment letters, we have determined that requiring the financial disclosure statement to be on a separate page would add unnecessary additional costs of complying with Rule 17a-5(c) and therefore we have not included such a requirement in the amendments.

Third, a broker-dealer taking advantage of the exemption must place its full audited balance sheet on its Web site not later than 90 days after the date as of which the audited balance sheet is prepared and must place its full unaudited balance sheet on its Web site not later than 75 days after the date as

of which the unaudited balance sheet is prepared. The broker-dealer must place separate, prominent links to the balance sheet on its Web site Home page and at each Internet location from which a customer can enter or log on to the broker-dealer's Web site.

Fourth, a broker-dealer taking advantage of the exemption must maintain a toll-free telephone number that customers can call to request a copy of the full balance sheet.

Fifth, if a customer requests a copy of the full balance sheet, the broker-dealer must send it promptly at no cost to the customer.

Finally, a broker-dealer cannot take advantage of the exemption 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 under Exchange Act Rule 17a-11(e) of the existence of any "material inadequacy" in certain of its internal controls, its accounting system, or certain of its practices and procedures. These practices and procedures include, for example, periodic net capital computations and periodic counts of securities. In such a situation, it is appropriate that a broker-dealer be required to send all mandated financial information directly to customers because material inadequacies in its internal controls or accounting systems directly impact the accuracy and reliability of the broker-dealer's past financial statements. In that case, it is important that customers receive a full description of the broker-dealer's current financial statements. In the proposed amendments, certain net capital deficiencies and certain books and records failures that the firm is required to report to the Commission under Exchange Act Rule 17a-11 were included as disqualifying events.

After further consideration, the staff has concluded that to include these occurrences in the events that would disqualify a broker-dealer from taking advantage of the exemption could create many triggers that would not actually be indicia of broker-dealers in financial difficulty. The Commission believes that in the vast majority of instances in which broker-dealers eligible for the relief notify the Commission of such occurrences, the firms are not in danger of insolvency.

V. Paperwork Reduction Act

As set forth in the Proposing Release, the amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction

¹⁸ We note that reporting companies must meet certain criteria for accelerated filing of their financial statements. See, for example, 17 CFR 240.13a-10(j). These amendments do not alter or affect those requirements.

¹⁹ In addition to requiring that a broker-dealer send audited and unaudited statements to customers, Rule 17a-5(c)(1) requires that the broker-dealer file the statements with the Commission and with each national securities exchange and registered national securities association of which it is a member. These amendments do not affect the requirement to make those filings.

Act of 1995 ("PRA").²⁰ We have submitted the collection of information requirements of the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.²¹ The OMB has approved the amended PRA collection and assigned control number 3235-0199 to them. 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.

As stated in the Proposing Release, we estimate that the amendments will reduce the existing paperwork burden on broker-dealers taking advantage of the exemption. The Proposing Release solicited comments on the proposed collections of information. We received no comments that addressed the PRA submission. However, we did receive comments on other aspects of the proposed amendments. After carefully considering the comments received, we are not changing our collection of information burden estimate.

As discussed above, today we are adopting amendments to Rule 17a-5(c) that are substantially similar to the proposed amendments. We note, however, that the rule amendments as adopted and changed from the proposal do not change the PRA estimate. The amendments 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 certain 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 Web site and promptly sends its balance sheet to its customers who request it via a toll-free number. We estimate that the amendments will reduce the existing paperwork burden on broker-dealers taking advantage of the exemption.

The previous PRA burden for Rule 17a-5(c) was 542,222 hours and \$19.52 million. The hour burden was 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 was 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 previous 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.

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. Now that the Commission has adopted 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 will 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 PRA 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 estimate that broker-dealers taking advantage of the exemption will 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).

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 will 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).²² 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 will 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 believe that the firms that will take advantage of the exemption already maintain a toll-free number for their customers and already have an Internet Web site.

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 therefore estimate that, with the amendments, the total annual hour burden for Rule 17a-5(c) will 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 will be approximately \$13.9 million. The hour burden will 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

²⁰ 44 U.S.C. section 3501 *et seq.*

²¹ 44 U.S.C. section 3507(d) and 5 CFR 1320.11.

²² Customers, when requesting that the full balance sheet be sent to them, have not requested that the balance sheet be sent electronically.

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 amendments. The cost burden is therefore lower by \$5.62 million (\$8 million – \$2.38 million = \$5.62 million).

VI. Costs and Benefits of the Amendments

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

There are currently approximately 400 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, had taken advantage of the relief. Now that the Commission has adopted the 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 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 will be able to obtain the full balance sheet of broker-dealers taking advantage of the exemption within minutes at any time and will be able to obtain the most recent audited balance sheet of those broker-dealers within 90 days after the date of the balance sheet—sooner than broker-dealers not taking advantage of the exemption would be required to send their audited balance sheets to customers. Customers without Internet

access can call at any time to be promptly sent a free copy of the full balance sheet.

We expect that the amendments will provide benefits to broker-dealers and to their customers. We expect that broker-dealers taking advantage of the exemption will reduce their cost of compliance with Rule 17a-5(c). As discussed above, we estimate that the 29 firms taking advantage of the exemption as of July 2002 have reduced their postage and printing costs by up to \$8.8 million per year. 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 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 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.

VII. Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act,²³ the Commission has certified that the amendments would not have a significant economic impact on a substantial number of small entities. This certification was incorporated into the Proposing Release. We received no comments concerning the impact on small entities or the Regulatory Flexibility Act Certification.

²³ 5 U.S.C. section 605(b).

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

Section 3(f) of the Exchange Act²⁴ 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 Act²⁵ 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 believes the 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 amendments should have no anticompetitive effects. Any broker-dealer, providing it can meet the conditions, may use the exemption.

IX. Statutory Basis

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

List of Subjects in 17 CFR part 240

Brokers, Customers, Dealers, Reporting and recordkeeping.

Text of Rule

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended 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, 78l, 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, 80b-11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

²⁴ 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78w(a)(2).

- 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)(1);
 - b. Revising the introduction text of paragraph (c)(2);
 - c. Revising paragraph (c)(3); and
 - d. Adding paragraph (c)(5).
- The revisions and addition read as follows:

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

* * * * *

(c) * * *

(2) *Audited statements to be furnished.* Audited statements shall be furnished within 105 days after the date of the audited financial statements required by paragraph (d) of this section. The statements may be furnished 30 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker’s or dealer’s quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker’s or dealer’s net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The audited statements shall include the following:

* * * * *

(3) *Unaudited statements to be furnished.* Unaudited statements dated 6 months from the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section shall be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker’s or dealer’s quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker’s or dealer’s net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements shall contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

* * * * *

(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 paragraphs (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) Not later than 90 days after the date of the audited statements prescribed by paragraph (c)(2) of this section and not later than 75 days after the date of the unaudited statements prescribed by paragraph (c)(3) of this section, the broker or dealer publishes the statements 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 of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer was not required by paragraph (e) of § 240.17a-11 to give notice and transmit a report to the Commission.

* * * * *

By the Commission.
Dated: August 1, 2003.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03-20077 Filed 8-5-03; 8:45 am]
BILLING CODE 8010-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. PL03-4-000; Order No. 635]

Policy Statement on Consultation With Indian Tribes in Commission Proceedings

Issued: July 23, 2003.
AGENCY: Federal Energy Regulatory Commission, DOE.
ACTION: Final rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this policy statement to articulate its commitment to promote a government-to-government relationship between itself and federally-recognized Indian tribes. The policy statement recognizes the sovereignty of tribal nations and the Commission’s trust responsibility to Indian tribes. The policy statement also establishes a tribal liaison position. Finally, the policy statement establishes certain actions specific to the hydroelectric program.

EFFECTIVE DATE: The rule will become effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Molloy, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202-502-8771.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. To encourage and facilitate involvement by Indian tribes in the areas over which the Commission has jurisdiction, the Commission is issuing this policy statement to articulate its