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Commission Proposes to Amend Broker-Dealer Net Capital, Customer Protection Rules

Introduction

The Securities and Exchange Commission (the "Commission") has issued a release requesting comment on several proposals to amend the net capital, customer protection, books and records, and notification rules for broker-dealers under the Securities Exchange Act of 1934 (the "Exchange Act").[1] The amendments touch on a broad range of provisions of the rules that are in need of clarification or that have become obsolete in some respects.

Amendments to the Customer Protection Rule

Customer Protection Rule

Rule 15c3-3 (the "Customer Protection Rule") requires broker-dealers to take certain steps to protect the credit balances and securities they hold for customers. Most importantly, broker-dealers must (i) segregate customer funds, and (ii) maintain physical possession or control of fully paid and excess margin securities carried for customers.

Under the rule, a broker-dealer must segregate customer funds and fully paid and excess margin securities held by the firm for the accounts of customers. The amount of customer funds required to be segregated is calculated pursuant to a formula set forth in Exhibit A to Rule 15c3-3.[2] If, under the formula, customer credit items exceed customer debit items, the broker-dealer must maintain cash or qualified securities in that net amount in a "Special Reserve Bank Account for the Exclusive Benefit of Customers."

The Customer Protection Rule also requires broker-dealers to maintain physical possession or control of all fully paid and excess margin securities carried for customers. This means the broker-dealer cannot lend or hypothecate these securities and must hold them itself or, as is more common, in a satisfactory control location, such as a U.S. bank or clearing agency.[3]

The Commission proposes to amend Rule 15c3-3 to require broker-dealers to treat accounts they carry for domestic and foreign broker-dealers in the same manner generally as "customer" accounts for the purposes of the reserve formula of Rule 15c3-3. Because broker-dealers are not "customers" for purposes of Rule 15c3-3, a broker-dealer that carries the proprietary accounts of other broker-dealers is not required

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1 *Amendments to Financial Responsibility Rules for Broker-Dealers*, Release No. 34-55431, 72 FR 12862 (Mar. 19, 2007) (the "Release").

2 Generally, a broker-dealer with a deposit requirement of $1 million or more computes its reserve requirement on a weekly basis as of the close of the last business day of the week (usually Friday). Rule 15c3-3(e)(3).

3 Rule 15c3-3(c). The amount of assets subject to this requirement must be calculated on a daily basis. Rule 15c3-3(d). However, Rule 15c3-3(b)(3) provides that a broker-dealer may borrow a customer's fully-paid or excess margin securities if it follows specified requirements, including posting collateral. See also Exchange Act Release No. 47683 (Apr. 16, 2003). *See also* discussion of H.R. 1171, *infra.*

to include credit and debit items associated with those accounts in the customer reserve formula.

Under the Securities Investor Protection Act ("SIPA"), however, broker-dealers *are* considered "customers," and consequently are entitled to certain protections. Customers of a failed broker-dealer, including customers that are broker-dealers, are entitled to a *pro rata* share of the pool of "customer property" established using assets recovered from the failed broker-dealer. Because broker-dealer assets are not included in calculating the amount of reserve but those broker-dealers may make a claim against the pool of customer assets, customer claims against a failed broker dealer may exceed the amount of customer property.

To correct this situation, proposed rule amendments would require carrying broker-dealers to perform a separate reserve computation for accounts of domestic and foreign broker-dealers in addition to the reserve computation for "customer" accounts, and establish and fund a separate reserve account for the benefit of these domestic and foreign broker-dealers.

PAB Account

Paragraph (e) of Rule 15c3-3 would be amended to require a carrying broker to perform a reserve computation for a proprietary account of another broker-dealer (a "PAB account") and to establish and maintain a reserve account at a bank for these PAB accounts.[4] As with the customer reserve account, a carrying broker-dealer would be required to maintain cash or qualified securities in the PAB account in an amount equal to the PAB reserve requirement, to notify the bank about the status of the PAB reserve account, and to obtain an agreement and notification from the bank that the PAB reserve account will be maintained for the benefit of the PAB accountholders.[5]

Offset

If the PAB reserve computation results in a deposit requirement, the proposed amendment would allow the requirement to be offset to the extent there are excess debits in the customer reserve computation of the same date. However, in order to provide greater protection to customers that are not broker-dealers, a deposit requirement resulting from the customer reserve computation would not be able to be offset by excess debits in the PAB reserve computation.

Deduction from Net Worth

When calculating net capital, a broker-dealer would be required to deduct from its net worth the amount of its cash in a proprietary account at another broker-dealer where the other broker-dealer is not treating the cash in compliance with the proposed requirements.[6]

Banks Where Special Reserve Deposits May Be Held

Broker-dealers must deposit cash or qualified securities into a customer reserve account maintained at a "bank" under Rule 15c3-3(e). The broker-dealer must obtain a written contract from the bank in which the bank agrees not to re-lend or hypothecate securities deposited into the reserve account.[7] Cash deposits, however, may be freely used in the course of the bank's commercial lending activities. The Commission expressed concern that, where cash is deposited in a customer reserve account maintained at a bank affiliated with the depositing broker-dealer, customers may be exposed to greater risk related to that bank's insolvency.[8]

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4 A "PAB account" is "a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer), but shall not include an account where the account owner is a guaranteed subsidiary of the carrying broker or dealer, the account owner guarantees all liabilities and obligations of the carrying broker or dealer, or the account is a delivery-versus-payment account or a receipt-versus-payment account." Proposed paragraph 15c3-3(a)(16).

5 Under the proposed amendments, a broker-dealer carrying PAB accounts would not be required to maintain physical possession or control of securities carried for PAB accounts if it obtains the permission of the PAB accountholder.

6 The Commission notes that it would not expect broker-dealers to audit or examine carrying broker-dealers to determine whether the carrying broker-dealer is in compliance with the proposed rules. Release, at 12864.

7 Rule 15c3-3(f).

8 In particular, the Commission is concerned that broker-dealers may not exercise due diligence with the same degree of impartiality when assessing the financial soundness of an affiliate bank as it would with a non-affiliated bank. More pertinently, the broker-dealer's customers may not derive any significant protection from the reserve requirement in the event of the insolvency of the parent company. These concerns are not implicated in regard to a deposit of securities, because securities must be segregated.

The Commission proposes to address this concern by requiring broker-dealers to exclude cash deposits at affiliated banks for purposes of meeting customer or PAB reserve requirements. To limit liability to customers from insolvency at even unaffiliated banks, limitations would also be placed on the amount of cash a broker-dealer could maintain in a customer or PAB special reserve bank account at one unaffiliated bank. To limit cash reserve account deposits to reasonably safe amounts as measured against the capitalization of the broker-dealer and the bank, a broker-dealer would be required to exclude a cash deposit at an unaffiliated bank to the extent that it exceeded (i) 50% of the broker-dealer's excess net capital, or (ii) 10% of the bank's equity capital.

Expansion of Definition of Qualified Securities to Include Certain Money Market Funds

As noted above, a broker-dealer is limited to depositing cash or "qualified securities" into the bank account it maintains to meet the customer reserve deposit requirements. "Qualified securities" are securities issued by the United States or guaranteed by the United States with respect to principal and interest ("U.S. Treasury securities").[9] The Commission believes that expanding this definition to include money market funds that invest only in securities meeting the definition of "qualified security" in Rule 15c3-3 would be appropriate, under the following conditions:

- the money market fund invests solely in securities issued by the United States, or guaranteed by the United States as to interest and principal;
- the money market fund is not affiliated with the broker-dealer;
- the money market fund agrees to redeem fund shares in cash on the next business day; and
- the money market fund has net assets totaling at least ten times the value of the fund's shares held by the broker-dealer in its customer reserve account.[10]

Allocation of Customers' Fully Paid and Excess Margin Securities to Short Positions

A broker-dealer must take steps to retrieve securities from non-control locations if there is a shortfall in the fully paid or excess margin securities it is required to hold.[11] The rule does not require the broker-dealer to act when a short position on the broker-dealer's stock record allocates to a customer long position (e.g., if the broker-dealer sells short a security to its customer). Instead, the broker-dealer may put the mark-to-market value of the security as a credit item in the reserve formula. If the value of the security decreases, the broker-dealer could withdraw funds out of the reserve account and use them in its business. Under the proposal, the broker-dealer would be required to take prompt steps to obtain physical possession or control over securities of the same issue and class as those included on the broker-dealer's books as a proprietary short position or as a short position for another person.[12]

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9 Rule 15c3-3(a)(6).

10 The Release notes that Federated Investors, Inc. ("Federated") has filed an amended petition for rulemaking, recommending that the Commission amend Rule 15c3-3 to include "certain types of money funds in the definition of qualified securities." Release, at 12865 (petition available at http://www.sec.gov/rules/petitions/petn4-478a.pdf). Federated's amended petition urges the Commission, among other things, to define "qualified securities" to include the shares of a money market fund that meets the following criteria:

- the fund has received the highest rating for a money market from at least one Nationally Recognized Statistical Rating Organization;
- the fund has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the New York Stock Exchange ("NYSE"); and
- the fund has adopted a policy that it will notify its shareholders (i) of any change in its rating, or (ii) 60 days prior to any change in its policy to redeem shares in cash no later than the business day following a redemption request by a shareholder, with limited exceptions for unscheduled closings of Federal Reserve Banks or the NYSE.

Dechert LLP is special counsel to Federated regarding these and related issues.

11 Rule 15c3-3(d).

12 This action would not be required until the short position had aged more than 10 business days, or more than 30 calendar days if the broker-dealer is a market maker in that security.

Treatment of Free Credit Balances

"Free credit balances" are funds payable by a broker-dealer to its customers on demand.[13] They may result from cash deposited by the customer to purchase securities, proceeds from the sale of securities or other assets held in the customer's account, or earnings from dividends and interest on securities and other assets held in the customer's account. Broker-dealers commonly offer to sweep free credit balances into a specific money market fund or interest bearing bank account.

Because of the difference in risk profiles of money market funds and interest bearing bank accounts,[14] new paragraph (j) to Rule 15c3-3 would make it unlawful for a broker-dealer to transfer free credit balances between the two types of account except under three circumstances:

- upon a specific order, authorization, or draft from the customer;
- for new customers,
  - if the customer agrees prior to the change, for example in the account opening agreement, that the broker-dealer may make such a change;
  - the broker-dealer provides the customer with all notices and disclosures regarding the investment and deposit of free credit balances required by the self-regulatory organizations ("SROs") for which the broker-dealer is a member;
  - the customer is given notice in the quarterly statement that the money market fund or bank deposit account can be liquidated on the customer's demand and converted back into free credit balances held in the customer's securities account;
  - the broker-dealer provides the customer with 30 days' notice (and explanation for how to opt out) before changing the product, the product type, or the terms and conditions under which the free credit balances are swept; and
- for existing customers, the same requirements are met as for new customers, except that the broker-dealer would not need to obtain the customer's previous agreement.[15]

Elimination of Rule 15c3-2

Rule 15c3-2 requires a broker-dealer holding free credit balances to provide its customers at least once every three months with a statement of the amount due the customer and a notice that (i) the funds are not being segregated, but rather are being used in the broker-dealer's business, and (ii) the funds are payable on demand. Rule 15c3-2 predates Rule 15c3-3.[16] The Commission proposes to eliminate Rule 15c3-2 and to incorporate into Rule 15c3-3 the requirements that broker-dealers inform customers of the amounts due to them and that such amounts are payable on demand.

Aggregate Debit Items Charge

Note E(3) to the customer reserve formula (Rule 15c3-3a) requires a broker-dealer using the "basic method"

13 *See* Rule 15c3-3(a)(8).

14 The Release notes that money market funds, as securities, receive up to $500,000 in protection under SIPA. Bank deposits, which are cash, receive up to $100,000 in protection from the Federal Deposit Insurance Corporation ("FDIC"). However, a "money market fund theoretically could lose its principal; whereas [a] bank deposit would be guaranteed up to the FDIC's $100,000 limit." Release at 12866. It is extremely rare for a money market fund to suffer a loss in principal so that it has a net asset value of less than $1.00 per share. *See* Jack M. Phelps, Regional Manager of FDIC Atlanta Region Division of Insurance and Research, Kim E. Lowry, Senior Technical Writer, FDIC Division of Insurance and Research, and Rae-Ann Miller, Associate Director, FDIC Division of Insurance and Research, *Effects of Interest Rates on Money Market Mutual Funds* (May 19, 2004) (noting that it is "extremely rare" for investors to lose money in a money market fund).

15 This exception was suggested to avoid the necessity of amending existing customer agreements. Release, at 12867.

16 *See* Exchange Act Release No. 7266 (March 12, 1964) (adopting rule 15c3-3).

of computing net capital under Rule 15c3-1 to reduce by 1% the total debit balances in customer cash and margin accounts. Because such debit balances would offset customer credits, the reduction in debits increases net customer credits balances, and, in turn, the broker-dealer's required customer reserve account balance. However, broker-dealers using the "alternative standard" to compute their minimum net capital requirement must reduce aggregate debit items by 3% in lieu of the 1% reduction required by Note E(3).[17] As a result, they may be required to deposit more than they otherwise would in the customer reserve account.

Because of operational and industry changes that should decrease risks originally theorized to arise for broker-dealers using the alternative standard, the Commission believes it is now appropriate to treat broker-dealers using the alternative standard on a par with firms using the basic method. The amendments would therefore apply a 1% reduction, rather than a 3% reduction, for alternative standard firms.

"Proprietary Accounts" Under the Commodity Exchange Act

Certain broker-dealers also are registered as futures commission merchants under the Commodity Exchange Act ("CEA"), and therefore may carry both securities and commodities accounts for customers. An amendment to paragraph (a)(8) of Rule 15c3-3 would clarify that funds held in a commodity account meeting the definition of a "proprietary account" under CEA regulations[18] need not be included as "free credit balances" in the customer reserve formula.

Holding Futures Positions in a Securities Portfolio Margin Account

Recent changes to the margin rules of the Chicago Board of Options Exchange ("CBOE") and New York Stock Exchange ("NYSE") allow broker-dealer members to compute customer margin requirements based on the net market risk of all positions in an account, including both securities and futures positions in a portfolio margin account. SIPA protects only customer claims for securities and cash and specifically excludes from protection futures contracts that are not also securities.

To address uncertainty as to how futures positions in a portfolio margin account would be treated in a SIPA liquidation, the Release proposes to amend the definition of "free credit balances"[19] to include funds resulting from margin deposits and daily marks to market related to, and proceeds from the liquidation of, futures on stock indices and options thereon carried in a securities account pursuant to a portfolio margining rule of an SRO. Futures-related funds in a portfolio margin account would need to be included with all other credit items when a broker-dealer computes its customer reserve requirement under Rule 15c3-3.

On the debit side of the customer reserve formula, the Commission proposes an amendment to Rule 15c3-3a Item 14 that would permit the broker-dealer to include as a debit item the amount of customer margin on deposit at a futures clearing organization related to futures positions carried in a securities account pursuant to an SRO portfolio margin rule.

Amendments with Respect to Securities Lending and Borrowing and Repurchase/Reverse Repurchase Transactions

In light of problems involving broker-dealers engaged in securities lending and repurchase agreements,[20] and to improve regulatory oversight of securities lending and repo transactions, the Commission proposes to:

- clarify that broker-dealers providing securities lending and borrowing settlement services are assumed, for purposes of the rule, to be acting as principals and are subject to applicable capital deductions.[21] These deductions could be avoided if the broker-dealer discloses the identities of the borrower and lender to each other and obtains written agreements from the borrower and lender stating that the broker-dealer is act-

17 Rule 15c3-1(a)(1)(ii)(A).

18 Commodities Exchange Act Rule 1.20 requires a futures commission merchant to segregate "customer" funds.

19 Rule 15c3-3(a)(8).

20 In particular, the Release identifies the failure of MJK Clearing, Inc. Release, at 12890 (*citing In re MJK Clearing, Inc.*, 2003 U.S. Dist. LEXIS 5954 (D. Minn. 2003)).

21 Proposed Rule 15c3-1(c)(2)(iv)(B).

ing exclusively as agent and assumes no principal liability in connection with the transaction.

- require broker-dealers to notify the Commission whenever the total amount of money payable against all securities loaned or subject to a repurchase agreement, or the total contract value of all securities borrowed or subject to a reverse repurchase agreement exceeds 2,500 percent of tentative net capital.[22]

Documentation of Risk Management Procedures

The Release proposes amendments to the books and records rules that would require certain broker-dealers to make and keep current records documenting their implemented systems of internal risk management control.

Certain large broker-dealers would be required to document any implemented internal risk management control designed to assist in analyzing and managing the risks (e.g., market, credit, liquidity, operational) arising from the business activities engaged in, including, for example, securities lending and repo transactions, OTC derivative transactions, proprietary trading, and margin lending.[23] The requirement would apply to only certain large, relatively complex broker-dealers. Such a broker-dealer would also be required to maintain these records for three years after the broker-dealer ceases to use that system of controls.[24]

Amendments to Net Capital Rule

Requirement to Subtract from Net Worth Certain Liabilities or Expenses Assumed By Third Parties and Non-Permanent Capital Contributions

"Net capital" generally means a broker-dealer's net worth (assets minus liabilities), plus certain subordinated liabilities, less certain assets that are not readily convertible into cash (e.g., fixed assets), and less a percentage (haircut) of certain other liquid assets (e.g., securities).[25] To avoid certain shared liabilities from being improperly moved off the books of the broker-dealer (e.g., to a financially weak parent or affiliate), the Release would require a broker-dealer to adjust its net worth when calculating net capital by including any liabilities that are assumed by a third-party if the broker-dealer cannot demonstrate that the third-party has the resources independent of the broker-dealer's income and assets to pay the liabilities.[26]

In addition, to avoid broker-dealers including in net capital certain temporary investor capital contributions, a broker-dealer would generally be required to treat as a liability any capital that is contributed under an agreement giving the investor the option to withdraw it or that is intended to be withdrawn within a year.[27]

Requirement to Deduct the Amount a Fidelity Bond Deductible Exceeds SRO Limits

Under SRO rules, certain broker-dealers that do business with the public or are required to become members of the Securities Investor Protection Corporation ("SIPC") must comply with mandatory fidelity bonding requirements.[28] The rules provide that the deductible may not exceed certain amounts.[29] The Release would require a broker-dealer to deduct, with regard to fidelity bonding requirements prescribed by a broker-dealer's examining authority, the excess of any deductible amount over the maximum deductible amount permitted.[30]

Broker-Dealer Solvency Requirement

An amendment to Rule 15c3-1 would require a broker-dealer to cease its securities business activities if certain insolvency events occur. Rule 15c3-1(a) would provide that a broker-dealer shall not be in compli-

22 Proposed Rule 17a-11(c)(5). Government securities would be excluded from this calculation.

23 Proposed Rule 17a-3(a)(23).

24 Proposed Rule 17a-4(e)(9). Cf. Requirements under NASD Rules 3010, 3012, and 3013 and NYSE Rule 342.

25 Rule 15c3-1(c)(2).

26 Proposed Rule 15c3-1(c)(2)(i)(F).

27 Proposed Rule 15c3-1(c)(2)(i)(G).

28 *See*, e.g., NYSE Rule 319, NASD Rule 3020, CBOE Rule 9.22, and American Stock Exchange Rule 330.

29 *See*, e.g., NYSE Rule 319(b) (permitting NYSE members to self-insure to the extent of $10,000 or 10% of the minimum insurance requirement as prescribed by the NYSE).

30 Proposed Rule 15c3-1(c)(2)(xiv).

ance with the rule if the firm is "insolvent," which term would mean, among other things, a broker-dealer's placement in a voluntary or involuntary bankruptcy or similar proceeding; the appointment of a trustee, receiver, or similar official; a general assignment by the broker-dealer for the benefit of its creditors; an admission of insolvency; or the inability to make computations necessary to establish compliance with Rule 15c3-1.[31]

This would effectively prohibit an insolvent broker-dealer from effecting securities transactions because Section 15(c)(3) of the Exchange Act generally prohibits a broker-dealer from effecting such a transaction in contravention of the Commission's financial responsibility rules, which include Rule 15c3-1.[32]

Amendment to Rule Governing Orders Restricting Withdrawal of Capital from a Broker-Dealer

The Commission may issue an order temporarily restricting a broker-dealer from withdrawing capital or making loans or advances to stockholders, insiders, and affiliates under certain circumstances.[33] Such orders are limited to withdrawals, advances, or loans that, when aggregated with all other withdrawals, advances, or loans that on a net basis during a thirty calendar day period exceed 30% of the firm's excess net capital. Before issuing such an order, the Commission must conclude that a withdrawal, advance, or loan in excess of 30% of the broker-dealer's excess net capital may be detrimental to the financial integrity of the firm, or may unduly jeopardize the firm's ability to repay its customer claims or other liabilities, which may cause a significant impact on the markets or expose the customers or creditors of the firm to loss without taking into account the application of the SIPA.

The Commission proposes to broaden this power to allow the Commission to restrict all withdrawals, advances, and loans, without referring to, or having the burden of ascertaining, what portion of the broker-dealer's capital is being withdrawn.

Adjusted Net Capital Requirements

Amendment to Appendix A of Rule 15c3-1

The Commission proposes to make permanent previously granted no-action relief reducing the range of pricing inputs broker-dealers use when they employ theoretical option pricing models to calculate haircuts for listed options and related positions that hedge those options.[34] The decrease in inputs effectively reduced the haircuts applied by the carrying firm with respect to non-clearing option specialist and market maker accounts.[35]

Money Market Funds

The Commission proposes to reduce the "haircut" broker-dealers apply under Rule 15c3-1 for money market funds from 2% to 1% when computing net capital. The Commission also requested comment on "whether the haircut for certain types of money market funds should be reduced to 0%, as suggested by Federated in its petition to the Commission."[36]

Proposed Congressional Action

Congress also has expressed interest in the Commission's financial responsibility rules. On February 16, 2007, Congressman Gregory Meeks (D-NY) introduced the "Money Market Fund Parity Act of 2007."[37] H.R. 1171 would direct the Commission to revise the requirements under:

- Rule 15c3-1 to reduce the haircut for a "qualified money market fund" to 0%;
- Rule 15c3-3 to permit:
  - a broker-dealer to deposit shares in a qualified money market fund in the special reserve account; and

31 Proposed Rule 15c3-1(c)(16).

32 The Commission also proposes to amend Rule 17a-11(b)(1) to require a broker-dealer meeting the definition of "insolvent" to provide immediate notice to the Commission, the firm's designated examining authority, and if applicable, the CFTC. Release, at 12873.

33 15c3-1(e)(3).

34 Proposed paragraph (b)(1)(iv) of Appendix A to Rule 15c3-1.

35 Release, at 12873.

36 Federated petitioned the Commission to reduce the haircut to 0% for money market funds that meet the criteria listed in note 10, *supra*.

37 Congressman Patrick J. Tiberi (R-OH) is an original co-sponsor of H.R. 1171. Federated supports H.R. 1171.

  - a broker-dealer to use shares in a qualified money market fund as collateral under Rule 15c3–3(b)(3)(iii)(A) for fully-paid or excess margin securities.

- Rule 15c2-4 to permit a broker-dealer to use shares in a qualified money market fund in a separate bank or escrow account, in conjunction with certain conditional underwritings.[38]

The bill defines "qualified money market fund" as any open-end management company registered under Section 8 of the Investment Company Act of 1940 and that:

- is generally known as a "money market fund;"
- has received the highest money market fund rating from a nationally recognized statistical rating organization;
- has agreed to redeem fund shares in cash, with payment being made no later than the business day following a redemption request by a shareholder (except in the event of an unscheduled closing of Federal Reserve Banks or the unscheduled closing of one or more national securities exchanges); and
- has adopted a policy to notify its shareholders of any change in its rating not later than 30 days after the effective date of such change; and of any change in its policy to redeem fund shares in cash no later than the business day following a redemption request by a shareholder as required by the previous bulleted item, not less than 60 days prior to such change taking effect (except in the event of an unscheduled closing of Federal Reserve Banks or the unscheduled closing of one or more national securities exchanges).

Both of these initiatives indicate that policymakers may change the financial responsibility rules in the coming months.

[38] This provision would overturn a Commission Staff position articulated in *NASD Notice to Members 84-7*.

Conclusion

The much anticipated Release includes a number changes to the financial responsibility and related rules. The changes also codify a number of matters that have been the subject of interpretations by the Commission staff. In addition, the Commission has proposed changes that would affect broker-dealers' use of money market funds. Although these changes demonstrate the Commission's willingness to reconsider some longstanding positions, it is unclear whether the marketplace or Congress will consider such changes to be sufficient. The comment period expires on May 18, 2007.

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