

B. Costs

There should not be any direct costs associated with the amendment. It will have no impact on broker-dealers that do not borrow customer securities or customers that do not lend securities. For those who participate in such transactions, the amendment is not imposing any changes as to how they must be structured. As described above, it will provide greater opportunities; however, it also maintains the status quo, and therefore, broker-dealers and customers do not have to avail themselves of these new opportunities. Broker-dealers can continue to pledge the types of collateral currently allowed under the rule and, while new categories of collateral may have risk characteristics that differ from those applicable to currently permitted collateral, customers could choose not to accept new categories of collateral.

IV. Effects on Competition, Efficiency, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaged in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action would promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission to consider the impact on competition of any rule proposed under that Act. In addition, the law requires that the Commission not adopt any rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.

The Commission stated in the proposing release, and continues to believe, that the proposed amendment should improve efficiency, competition, and capital formation by adding liquidity to the securities lending markets, lowering the costs of borrowing securities, and providing investors with the opportunity to realize greater returns on their securities portfolios. All commenters agreed that the amendment would increase liquidity and lower borrowing costs.²³ In addition, the Commission stated that the amendment should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act because it will apply equally to all broker-dealers. The Commission did not receive any comments on this assessment of the possibility of anticompetitive effects. Therefore, the Commission believes that the

amendment should have no anticompetitive effects not necessary or appropriate in furtherance of the purposes of the Act.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act²⁴ requires an agency to undertake an initial regulatory flexibility analysis of the effects of proposed rules and rule amendments on small entities, unless the agency certifies that the rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities.²⁵ The Chairman of the Commission has certified that the amendment to rule 15c3-3 would not have a significant economic impact on a substantial number of small entities.²⁶ The final amendment is identical to the proposed amendment. Accordingly, there have been no changes to the proposal that would alter the basis upon which the certification was made.

VI. Amendment to Rule 30-3

The Commission has adopted an amendment to rule 30-3 of its rules of Organization and Program Management governing delegations of authority to the Director of the Division of Market Regulation ("Director").²⁷ The amendment divides paragraph (a)(10) of rule 30-3 into two paragraphs, (a)(10)(i) and (ii). Paragraph (a)(10)(i) now contains the previously existing delegation of authority in paragraph (a)(10), which authorizes the Director to find and designate certain broker-dealer accounts as control locations for the purposes of paragraph (c)(7) of rule 15c3-3.²⁸ Paragraph (a)(10)(ii) contains a new delegation authorizing the Director, under section 36(a) of the Exchange Act, to exempt types of collateral from certain requirements in paragraph (b)(3) of rule 15c3-3, provided the collateral exempted by the Division has similar characteristics to collateral previously exempted by the Commission.

Section 36(a) provides, in pertinent part, that the Commission may by rule, regulation or order exempt any classes of persons, securities or transactions from any rule or regulation under the Exchange Act, provided the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. The Commission

is delegating to the Director its exemptive authority pursuant to section 36(a) for the limited purpose of exempting collateral types from certain requirements set forth in paragraph (b)(3) of rule 15c3-3.

The delegation of authority to the Director is intended to conserve Commission resources by permitting the staff to review and act on exemptive applications under section 36(a) when appropriate. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate. In addition, under section 4A(b) of the Exchange Act, the Commission retains discretionary authority to review, upon its own initiative or upon application by a party adversely affected, any exemption granted or denied by the Division pursuant to delegated authority. Information concerning the filing of exemptive relief applications can be found in Release No. 34-39624; rule 240.0-12, 17 CFR 240.0-12.

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this amendment to rule 30-3 relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.

The amendment to rule 30-3 does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. In addition, it will not impose any costs on the public.

VII. Statutory Authority

The amendments are made pursuant to authority conferred on the Commission by the Exchange Act, including sections 15(c)(3), 23(a) and 36.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions (government agencies).

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the *Code of Federal Regulations* as follows:

²⁴ 5 U.S.C. 603(a).

²⁵ 5 U.S.C. 605(b).

²⁶ See Proposing Release, 67 FR 39643, Appendix A.

²⁷ 17 CFR 200.30-3.

²⁸ 17 CFR 240.15c3-3.

²³ *Id.*