

offered or sold to a qualified purchaser would not be subject to state registration requirements but only to federal requirements. The public comment period on the proposal closed on February 25, 2002. The Commission staff is in the process of reviewing all the comments. The agenda for the meeting will include a discussion of the proposal by the participants.

#### C. Regulation A

The agenda for the meeting will include consideration of possible revisions to the Commission's Regulation A exemption from the registration requirements of the Securities Act.<sup>14</sup> As presently constituted, Regulation A permits the offer and sale of up to \$5 million worth of securities in a 12-month period. An offering circular must be prepared for delivery before sale. Offering materials are subject to Commission staff review. Regulation A permits the use of unaudited financial statements. However, because the offering must be registered in most cases under state laws, issuers may be required to provide audited financial statements. Further, the current limit on the amount of securities that may be offered may be too low to provide professional underwriting assistance in these offerings. The conferees will consider possible changes to make the Regulation A exemption more useful to small businesses, consistent with investor protection.

Regulation A also permits the offering of securities in the manner of "testing the waters" to see whether or not any potential offering of an issuer's securities would be favorably received by the investing public. The provision has not been widely used. The conferees will discuss the provision with a view to determining whether greater federal/state uniformity is an issue and can be achieved or whether other matters have caused the apparent lack of attractiveness in this provision.

#### D. Form D

We adopted Regulation D in 1982 as the result of a cooperative effort between NASAA and the Commission. Regulation D was intended to facilitate uniformity for limited offering exemptions at the state and federal level. Form D was adopted in conjunction with Regulation D. Form D serves as a notice of sales for use in exempt offerings under Regulation D and section 4(6) of the Securities Act at the federal level. Rule 503 requires issuers seeking an exemption under

Regulation D to file Form D with the Commission within 15 days after the first sale.<sup>15</sup> Issuers must also file a Form D for sales of securities in states that have adopted the Uniform Limited Offering Exemption ("ULOEE")<sup>16</sup> and Form D. Currently, the Commission and some states receive paper filings. With the advent of electronic filing and advances in technology, it may be more timely and cost-effective to file the Form D, at least at the federal level, using the Commission's EDGAR system. The conferees will discuss simplifying Form D and filing the form electronically.

#### E. Securities of Blank Check Companies

A blank check company is a company in the development stage with no specific business plan or purpose, or a company that indicates that its plan is to engage in a merger or acquisition with an unidentified company or companies.<sup>17</sup> In 1990, the U.S. Congress found that offerings by these kinds of companies were common vehicles for fraud and manipulation. We have adopted several rules, as Congress directed, to deter fraud in connection with these offerings.<sup>18</sup> The group will discuss matters of mutual concern relating to the offerings of securities by blank check companies, including recent developments and possible new rules and revisions of existing rules.

#### (2) Market Regulation Issues

##### A. Description of Bank Dealer Exceptions After the Gramm-Leach-Bliley Act<sup>19</sup>

The participants will discuss the Commission's rules pertaining to banks' dealer activities. We adopted amendments to the bank dealer rules on February 6, 2003.<sup>20</sup> These rules provide banks with a new exemption for their securities lending transactions. They also implement the specific exceptions for banks from the definition of "dealer" that were enacted as a part of the Gramm-Leach-Bliley Act ("GLBA") in late 1999. Among other things, the GLBA provided for functional regulation of securities activities by eliminating the complete exception for banks from the definitions of "broker" and "dealer" and replacing them with

specific transaction and activity-based exceptions.

##### B. Possible Revisions to Form BD

Under the regulatory scheme of the Securities Exchange Act of 1934<sup>21</sup> (the "Exchange Act"), broker-dealers must register with the Commission, as well as with at least one statutory SRO. Broker-dealers apply for registration by filing Form BD (17 CFR 249.501), the uniform application for broker-dealer registration. The state securities regulators also use this form. Form BD requires the applicant filing the form to provide certain information concerning the nature of its business and the background of its principals, controlling persons, and employees. Form BD<sup>22</sup> is designed to permit regulators to determine whether the applicant meets the statutory requirements to engage in the securities business.

We amended Form BD on July 2, 1999 to support electronic filing in the Internet-based Central Registration Depository system.<sup>23</sup> Since the July 1999 amendments, the GLBA, the Commodity Futures Modernization Act of 2000, and, more recently, the Sarbanes-Oxley Act have all been enacted. Among other things, the Sarbanes-Oxley Act expands the definition of "statutory disqualification" under the Exchange Act.<sup>24</sup> These and other developments may indicate the need for possible further amendments to Form BD.

##### C. Research Analyst Conflicts of Interest

We have taken a number of actions in the past year to address analyst conflicts of interest. On February 6, 2003, we adopted Regulation Analyst Certification, which requires that analysts certify that the views expressed in research reports accurately reflect their personal views and that research reports disclose whether analysts received compensation for their recommendations or views.<sup>25</sup> On May 10, 2002, we approved rule changes by the National Association of Securities Dealers ("NASD") and the New York Stock Exchange ("NYSE") that establish standards governing broker-dealer communications with the public to address analyst conflicts of interest.<sup>26</sup> Late last year, we released for comment additional rule amendments filed by the

<sup>14</sup> 17 CFR 230.251 through 263.

<sup>15</sup> 17 CFR 230.503.

<sup>16</sup> The ULOEE provides a uniform exemption from state registration for offerings complying with Regulation D.

<sup>17</sup> Securities Act section 7(b)(3), 15 U.S.C. 77g(b)(3).

<sup>18</sup> 17 CFR 230.419 and 17 CFR 240.15g-8.

<sup>19</sup> Pub. L. 106-102, 113 Stat. 1338 (1999).

<sup>20</sup> Release No. 34-47364 (Feb. 13, 2003) [68 FR 8685].

<sup>21</sup> 15 U.S.C. 78a *et seq.*

<sup>22</sup> 17 CFR 249.501.

<sup>23</sup> Release No. 34-41594 (July 2, 1999) [64 FR 37586].

<sup>24</sup> 15 U.S.C. 78c(39).

<sup>25</sup> Release No. 33-8193 (Feb. 20, 2003) [68 FR 9482].

<sup>26</sup> Release No. 34-45908 (May 10, 2002) [67 FR 34968].