

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.