

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.

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²⁴ 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78w(a)(2).