

example, the broker-dealer would be required to provide notice if its tentative net capital falls below the minimum amount required pursuant to proposed Rule 15c3-1(a)(7)<sup>65</sup> or if its total tentative net capital is less than 120% of its required minimum tentative net capital.<sup>66</sup>

In addition, the proposed amendments would impose additional reporting requirements on a broker-dealer that uses Appendix E to calculate certain of its capital charges. Such a broker-dealer would have to provide notice upon the occurrence of any backtesting exception of its mathematical models that requires the broker-dealer to use a higher multiplication factor in the calculation of its market or credit risk capital charges. The amendments would also require that the broker-dealer provide notice if it becomes aware that an NRSRO has determined to reduce the credit rating of the broker-dealer, one of its affiliates, or an outstanding obligation of the broker-dealer or an affiliate, if the broker-dealer or one of its affiliates receives a notice of noncompliance from a regulatory agency or SRO, or if the broker-dealer becomes aware of a situation that may have a material adverse effect on the financial or operational condition of the holding company or an affiliate of the holding company. These notices would not be required when the holding company has provided notice to the Commission pursuant to its undertakings. We request comment on all aspects of these notification provisions.

#### *F. Proposed Amendments to Rules 17h-1T and 17h-2T*

Rule 17h-1T requires that a broker-dealer maintain and preserve records and other information concerning its holding company and affiliates, if the affiliates are likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h-2T requires broker-dealers to report to the Commission on the information required to be maintained and preserved under Rule 17h-1T. We propose to amend these rules to exempt broker-dealers that use Appendix E to calculate certain of their capital charges. We believe that this exemption is appropriate because the holding company of the broker-dealer would be required to make and retain documents substantially similar to the documents

required by Rule 17h-1T and to make reports to the Commission that are substantially similar to those required by Rule 17h-2T. We request comment on these proposed amendments.

### **III. General Request for Comment**

The Commission solicits comment on its proposal to permit certain broker-dealers to apply for approval to compute capital charges using proposed Appendix E to Exchange Act Rule 15c3-1. First, we solicit comment on whether this proposed supervisory structure would result in adequate Commission oversight on a group-wide basis of eligible broker-dealers that opt for this voluntary capital computation alternative. Second, we solicit comment on whether proposed Appendix E to the net capital rule would provide appropriate capital levels for qualifying broker-dealers and whether the Commission should modify proposed Appendix E in any way. Third, we solicit comment on whether the proposal would address any perceived competitive disadvantages that impact broker-dealers that intend to conduct a global securities business. Fourth, we solicit comment on whether the Commission should consider a different approach to setting capital requirements for the broker-dealer or to the calculation of allowances for market and credit risk for CSEs, and, if so, what that approach should be. Fifth, we solicit comment on the effects on competition from making these proposals available to only certain broker-dealers. Are there firms below the proposed capital thresholds that would benefit from computing capital charges using proposed Appendix E? Would permitting such firms to use proposed Appendix E provide sufficient net capital reserves for these firms?

In addition, we solicit comment on whether we have adequately stated our approach to making this exemption available to firms that are subject to holding company supervision by another financial regulator. We request comment on whether there are any other approaches or issues that we should consider with respect to firms affiliated with holding companies supervised by another financial regulator.

For holding companies that own more than one broker-dealer, the alternative net capital computation under this proposal would be available only to a broker-dealer that meets the minimum capital requirements. We request comment on whether this proposal would create an incentive for such a holding company to change its business structure, such as combining its securities business into a single broker-

dealer and, if so, whether there would be any resulting costs or benefits.

We note that on September 12, 2003, the Federal Reserve, OCC, OTS, and FDIC requested public comment on an interim final rule and a notice of proposed rulemaking to amend their risk-based capital standards for the treatment of assets in asset-backed commercial paper programs consolidated under the recently issued Financial Accounting Standards Board Interpretation No. 46, Consolidation of Variable Interest Entities.<sup>67</sup> The rule would also modify the risk-based capital treatment of certain securitizations with early amortization provisions. In addition, the treatment of securitization exposures is discussed in the banking agencies' Advanced Notice of Proposed Rulemaking on the New Basel Capital Accord.<sup>68</sup> Should the Commission consider any modifications to the proposed method for the group-wide calculation of allowances for market or credit risk with respect to asset-backed securitization programs? If so, how and why should the Commission modify the calculations for asset-backed securitization programs? Should the Commission consider any other issues related to the capital treatment of securitization exposures?

Finally, we invite commenters to provide views and data as to the costs and benefits associated with the proposed changes discussed above in comparison to the costs and benefits of the current regulatory framework. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the potential impact of the proposed amendments and rules on the economy on an annual basis. Commenters should provide empirical data to support their views. Comments should be submitted by February 4, 2004.

### **IV. Paperwork Reduction Act**

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995.<sup>69</sup> The Commission has submitted them to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C.

<sup>67</sup> Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets, 68 FR 56568 (proposed rule), 68 FR 56530 (interim final rule) (Oct. 1, 2003).

<sup>68</sup> See Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord, 68 FR 45900 beginning at 45932 (August 4, 2003).

<sup>69</sup> 44 U.S.C. 3501 *et seq.*

<sup>65</sup> Pursuant to proposed Rule 15c3-1(a)(7), this minimum tentative net capital amount is \$1 billion.

<sup>66</sup> In that case, under current rules, the broker-dealer must immediately cease doing business.