



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 26, 2001

Ms. Cheryl M. Kallem
Chairperson
Capital Committee
Securities Industry Association
1401 Eye Street N.W.
Washington, D.C. 20005-2225

Re: Permissibility of sending financial statements with quarterly customer statements

Dear Ms. Kallem:

This is in response to your letter dated February 13, 2001, to the Division of Market Regulation ("Division"), on behalf of members of the Securities Industry Association and similarly situated broker-dealers regarding the permissibility of a broker-dealer sending its audited or unaudited financial statements to customers with the broker-dealer's next mailing of its quarterly customer statements even if such statements are not sent within the time periods required under Rule 17a-5(c) under the Securities Exchange Act of 1934¹ (the "Rule").

Generally, paragraph (c)(2) of the Rule requires a clearing broker-dealer to send to each customer certain statements including its audited financial statement within 105 days after the as of date of its audited statement. Paragraph (c)(3) of the Rule requires that it send to each customer certain statements including its unaudited financial statement (together, the "17a-5(c) statements") within 65 days after the as of date of its unaudited statement. You have stated that these broker-dealers are required on a quarterly basis to send to each of their customers a statement of account showing securities, money positions, and account activity² and that, as a courtesy, most broker-dealers generally send monthly statements of account only to customers who had activity in their account during the preceding month. To reduce the expenses of mailing the 17a-5(c) statements, you have requested that a broker-dealer be allowed additional time to mail the 17a-5(c) statements to customers so that it might combine the mailing of the 17a-5(c) statements with the next mailing of the broker-dealer's quarterly statements of account.

Based on the foregoing, the Division will not recommend enforcement action to the Commission if a broker-dealer sends the 17a-5(c) statements to customers after the expiration of the time periods required by the Rule provided that the broker-dealer (1) includes the 17a-5(c)

¹ 17 CFR 240.17a-5.

² See, e.g., NYSE Rule 409 and NASD Rule 2340(a).

Ms. Cheryl M. Kallem

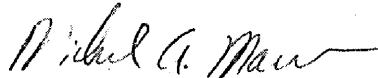
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statements with the next mailing of the quarterly customer account statements after the date the financial statements would otherwise have been required to be sent to customers under the Rule, and (2) includes a footnote in the 17a-5(c) statements disclosing the appropriate net capital information as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers.³

You should understand that this is a staff position with respect to enforcement only and does not purport to state any legal conclusion on this matter. Any material change in circumstances may warrant a different conclusion and should be brought immediately to the Division's attention. Furthermore, this position may be withdrawn or modified if the staff determines that such action is necessary in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the securities law.

Sincerely,



Michael Macchiaroli
Associate Director

³ This no-action position also extends to a broker-dealer that elects to send to its customers only the footnotes regarding its net capital and certain other financial information rather than its entire 17a-5(c) statement in compliance with Exchange Act Release No. 42222 (December 10, 1999).