Regulation of Securities Markets

The Division of Market Regulation oversees the operations of the nation's securities markets and market participants. In 2002, the SEC supervised over 8,000 registered broker-dealers with approximately 92,200 branch offices and 675,500 registered representatives. Broker-dealers filing FOCUS reports with the SEC had approximately $3.4 trillion in total assets and $204.6 billion in total capital for fiscal 2002. In addition, the average daily trading volume reached 1.4 billion shares on the New York Stock Exchange and over 1.7 billion shares on the Nasdaq Stock Market as of September 30, 2002.

What We Did

- Implemented the Commodity Futures Modernization Act of 2000 (CFMA).

- Approved an amended Options Intermarket Linkage Plan that enhances price protection on customer orders by limiting intermarket trade-throughs across all five national options exchanges.

- Approved Nasdaq Stock Market's SuperMontage trading facility and the National Association of Securities Dealers' (NASD) Alternative Display Facility (ADF).

- Adopted a six-month pilot program that creates a *de minimis* exemption from the trade-through restrictions of the Intermarket Trading System (ITS) Plan for all

market participants trading the three most popular exchange-traded funds (ETFs).

- Began implementing the Sarbanes-Oxley Act of 2002.

Securities Markets, Trading, and Significant Regulatory Issues

Analysts

On May 10, 2002, the Commission approved rule changes filed by the New York Stock Exchange (NYSE) and NASD governing analyst conflicts. On August 2, 2002, the Commission proposed Regulation Analyst Certification, which would, among other things, require brokers or dealers issuing research reports to include clear and prominent certifications by the research analysts that the report accurately reflects the analyst's personal views about the subject securities and issuers, and to disclose whether the analyst received compensation for views or specific recommendations in the research report.

On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act. Section 501 of the Act amends the Securities Exchange Act of 1934 (Exchange Act) to require the Commission (or, upon the authorization and direction of the Commission, an SRO) to adopt rules, within a year of enactment, governing analyst conflicts. The Commission currently is working to meet this and other mandates of the Sarbanes-Oxley Act.

Strengthening Financial Sector Resilience

Late last year, Commission staff began working with other U.S. financial regulators--the Federal Reserve Board, the Office of the Comptroller of the Currency, and the New York State Banking Department--on a project to strengthen the operational resilience

of the financial sector. Specifically, we have been exploring with the private sector the possibility of developing common sound practices that would provide a consistent level of business continuity planning for financial market participants. Ultimately, this project will result in the financial regulators jointly issuing a set of sound practices or other guidance on appropriate levels of business continuity planning. We and the other agencies published for public comment a White Paper on sound practices in September 2002.

Options Intermarket Linkage Plan

All five national options markets participate in the Options Intermarket Linkage Plan, which the Commission approved in July 2000. In May 2002, the Commission approved amendments to the Linkage Plan requiring any exchange that wishes to withdraw from the Plan to satisfy the Commission that it can achieve, by alternative means, the Linkage Plan's stated goal of limiting intermarket trade-throughs.[32] The exchanges expect to start intermarket testing of the linkage by December 1, 2002, and begin final roll out of the linkage by April 30, 2003.

Repeal of the Trade-Through Disclosure Rule

In May 2002, the Commission proposed repealing rule 11Ac1-7 under the Exchange Act, the Trade-Through Disclosure Rule.[33] The Trade-Through Disclosure Rule requires a broker-dealer to disclose to its customer when the customer's order for listed options has been executed at a price inferior to a better-published quote (an "intermarket trade-through"), unless the transaction was effected on a market that participates in an intermarket options linkage plan that contains adequate trade-through protections. Under the amended Linkage Plan, discussed above, an options exchange may not withdraw from the Plan unless it can accomplish, by alternative means, the Plan's goal of limiting intermarket trade-throughs. The Commission repealed the Trade-Through Disclosure Rule after fiscal year-end because it believed that it was unnecessary.[34]

De Minimis Exemption to the ITS Plan's Trade-Through Restrictions

In August 2002, the Commission adopted a six-month pilot program that creates a de minimis exemption from the trade-through restrictions of the Intermarket Trading System Plan for all market participants trading QQQ, DIA, and SPDR, the three most popular ETFs.[35] The exemption permits market participants to trade the three ETFs at prices that are no more than $0.03 away from the national best bid or offer. In adopting the pilot program, the Commission sought to facilitate the participation of electronic communications networks (ECNs) and other alternative trading systems (ATSs) in the ITS Plan. The pilot program preserves the core price protection principles of ITS while the Plan's participants work to create a longer-term solution.

Nasdaq's SuperMontage and the NASD's Alternative Display Facility

In January 2001, the Commission conditionally approved Nasdaq's SuperMontage, a new order display and collection facility for Nasdaq-listed securities.[36] As a condition of the Commission's Nasdaq approval, the NASD developed an ADF. The Commission approved the ADF as a nine-month pilot program in July 2002.[37] The ADF pilot program permits registered market-makers and registered ECNs to display their best-priced quotes or customer limit orders in Nasdaq-listed securities through the NASD. Although market participants are not required to use the ADF or SuperMontage to quote or report trades, the ADF allows market participants to satisfy their order display and execution access obligations under the Order Handling Rules and Regulation ATS. To date, Instinet and NexTrade are actively participating in the ADF.

Oversight of Self-Regulatory Organizations

National Securities Exchanges

As of September 30, 2002, there were nine active securities exchanges registered with the SEC as national securities exchanges: American Stock Exchange (Amex), Boston Stock Exchange (BSE), Chicago Board Options Exchange (CBOE), Cincinnati Stock Exchange (CSE), Chicago Stock Exchange (Chx), International Securities Exchange (ISE), NYSE, Philadelphia Stock Exchange (Phlx), and Pacific Exchange, Inc. (PCX). During fiscal 2002, the Commission granted 244 exchange applications to delist equity issues and 54 applications by issuers seeking withdrawals of their registration and listing on exchanges. The exchanges submitted 508 proposed rule changes and withdrew 63 proposed rules during 2002. The Commission also approved 421 rule proposals.

National Association of Securities Dealers

The NASD is the only national securities association registered with the SEC and includes more than 5,500 member firms. The NASD submitted 164 proposed rule filings to the SEC during the year. The Commission approved 123 rule proposals and 19 were withdrawn.

Clearing Agencies

At the end of fiscal 2002, 13 clearing agencies were registered with the Commission, and five clearing agencies had been granted exemptions from clearing agency registration. Registered clearing agencies submitted 77 proposed rule changes, and the Commission approved 79 new and pending proposed rule changes.

Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board (MSRB) is the primary rulemaking authority for municipal securities dealers. In

fiscal 2002, the Commission received 16 new proposed rule changes from the MSRB and approved 12.

Total SRO Rules Processed

The Division received a total of 768 filings in fiscal 2002. Of these filings, 633 were approved, and 84 were withdrawn after discussions with staff, for a total of 717 closed SRO rule filings.

SRO Rule Proposals

In July 2002, the Commission approved the Amex's proposed rule change to permit side-by-side trading and integrated market-making of certain ETFs and their related options. Historically, the Commission has had concerns regarding side-by-side trading and integrated market-making, including, among other things, the potential that market participants in a side-by-side trading or integrated market-making environment could unfairly use non-public market information to their advantage and the potential for such market participants to engage in manipulative or other improper trading practices. The Commission believed that the Amex proposal was sufficiently limited to address regulatory concerns. Specifically, the Commission believed that, because the prices of ETFs are based on the prices of groups of stocks, a market participant's ability to manipulate the price of the ETF or its related option was limited. Further, the Amex proposal was limited only to side-by-side trading and integrated market making of certain broad-based ETFs that satisfied specific criteria. The Commission believed that limiting the proposal to broad-based ETFs would lessen concerns regarding information advantages about the individual securities. Finally, the proposal required that the limit order books for the ETFs and related options be disclosed to all market participants, which the Commission believed would prevent any market participant from having an unfair competitive advantage over other participants.

Proxy Fees

In March 2002, the Division of Market Regulation, pursuant to delegated authority, approved the NYSE's proposal to amend its proxy fee reimbursement guidelines, which were then under a pilot program, and to seek permanent approval of the pilot program. Division staff believed that the proposed amendments would help establish a more practical and organized proxy reimbursement structure.

Alternative Trading Systems

Regulation ATS establishes recordkeeping and reporting requirements for ATSs that choose to register as broker-dealers. [38] In fiscal 2002, the staff reviewed 7 initial operation reports, 38 amendments, 140 quarterly activity reports, and 4 reports of cessation of operations under Regulation ATS.

Order Handling Rules

In fiscal 2002, the Commission's staff renewed 11 no-action letters that had been issued to ECNs in light of the Commission's 1996 adoption of the Order Handling Rules. In addition, the staff issued a no-action letter to the Track ECN and withdrew a no-action letter from the Market XT ECN. The staff also issued a no-action letter to Instinet to cover Instinet's activities on NASD's ADF.

Corporate Bond Price Transparency

In July 2002, the NASD began implementing phase I of the TRACE system for reporting and disseminating corporate bond transaction prices.[39] TRACE requires NASD members to report transactions in most U.S. corporate bonds to the NASD, and establishes a facility to collect and redistribute that transaction information. Currently, TRACE disseminates transaction information on investment-grade corporate bonds with original issue size of $1 billion or more and approximately 50 high yield bonds. The NASD makes this information available to investors

on its website. Subsequent phases of TRACE will further enhance price transparency in the corporate bond market.

Execution Quality Disclosure Rules

In November 2000, the Commission adopted the execution quality disclosure rules, rules 11Ac1-5 and 11Ac1-6 under the Exchange Act.[40] Rule 11Ac1-5 requires market centers to make available monthly electronic reports that include uniform statistical measures of execution quality. Rule 11Ac1-6 requires broker-dealers to make publicly available quarterly reports describing their order routing practices. The first quarterly reports under the rules were required to be posted in November 2001. The Division of Market Regulation issued Staff Legal Bulletin No. 12R on rule 11Ac1-5 and Staff Legal Bulletin No. 13A on rule 11Ac1-6. In December 2001, the Commission issued a temporary exemption from rule 11Ac1-5 for the Primex Auction System. In June 2002, the Commission issued an exemption from rule 11Ac1-5 to the Nasdaq Stock Market, Inc. for orders received through Nasdaq's SelectNet system and for the initial display of orders in the Order Display System of Nasdaq's SuperMontage system. At the same time, the Division of Market Regulation gave Nasdaq interpretive guidance under rule 11Ac1-5 with respect to orders executed through SuperMontage.

Options Price Reporting Order--Settlement

In September 2000, the Commission instituted public administrative proceedings against the Amex, the CBOE, the PCX, and the Phlx, and simultaneously accepted settlement offers from each respondent.[41] The settlement order required the respondent exchanges to: (1) amend the Options Price Reporting Order Plan (OPRA) to establish a system for procuring and allocating capacity that eliminates joint action by OPRA participants; (2) adopt rules that substantially enhance incentives to quote competitively; (3) adopt sanctioning guidelines designed to enforce compliance with each respondent exchange's options order handling rules; and (4) adopt rules codifying any practices

whereby market-makers determine by agreement the spreads or prices at which they will trade an option class or the allocation of orders in that class. The respondent exchanges submitted proposed sanctioning guidelines. In March 2002, the Commission approved sanctioning guidelines that each of the respondent exchanges had proposed. The respondent exchanges also have submitted collective action filings to permit specialists or Lead Market Makers (LMMs) to consult with the trading crowd in setting auto-quote parameters, and to permit the specialists or LMMs and members of the crowd to provide collectively a single response to a request for a large order. The Commission approved these filings in March and April 2002.

Implementation of the Commodity Futures Modernization Act

The following is a sampling of the year's significant accomplishments with respect to the implementation of the CFMA. Implementation centered on extensive joint rulemakings with the Commodity Futures Trading Commission (CFTC) to create a regulatory framework for security futures products, including adopting:

- rules that govern trading halts and cash settlement procedures for security futures products,[42]

- rules regarding the collection of customer margin for security futures,[43] and

- rules regarding customer protection and recordkeeping requirements for intermediaries that trade security futures.[44]

Independently, the Commission also:

- Amended its rules to clarify how exchanges and associations should calculate section 31 fees for

security futures transactions and for sales of securities resulting from physical settlement of security futures.[45]

- Adopted amendments to rule 10b-10 under the Exchange Act to provide confirmation requirements for security futures transactions effected in futures accounts.[46]

- Issued to the Chicago Mercantile Exchange, Inc., Nasdaq-Liffe Markets LLC, and OneChicago, LLC acknowledgements of receipt of notice of their registration as national securities exchanges.

- Issued an interpretive release that provided guidance about how certain provisions of the Securities Act of 1933 and the Exchange Act, and certain rules under those Acts, would apply to the trading of security futures products. The release addressed a variety of potential issues that could arise from the trading of securities futures products, including issues related to broker-dealers, trading practices and market supervision. The release also addressed issues administered by the SEC's Division of Corporation Finance.[47]

- Amended rule 10b-10, and promulgated new Rule 11d2-1, to clarify the disclosures that broker-dealers that effect transactions in security futures products in futures accounts must make in the confirmations they send to customers regarding those transactions. Those actions streamlined the rule 10b-10 disclosure requirements applicable to those transactions to better correspond to the confirmation rules applicable to the futures markets.[48] Previously, the Commission had provided an exemption to those broker-dealers pending the adoption of the rule changes.[49]

- Granted interim no-action relief from some broker-dealer requirements to firms that are dually-registered as broker-dealers and futures commission merchants and that provide certain services with respect to non-U.S. security futures held in futures accounts for non-U.S. persons. The request for relief, which was submitted jointly by the Securities Industry Association and the Futures Industry Association, sought to ensure that the firms could clear and carry those foreign security future positions, and engage in related solicitation, order execution, and research activities. The temporary relief will terminate when the Commission and the CFTC issue final rules governing the offer and sale of foreign security futures. The no-action letter was limited in scope, and did not provide relief with respect to certain broker-dealer requirements such as net capital, customer protection, and records requirements.[50]

- Consulted with personnel at the CFTC regarding the CFTC's proposed rules restricting the dual trading of security futures products on contract markets and derivatives transaction execution facilities.

- Adopted rules outlining the applicability of CFTC and SEC customer protection, recordkeeping, reporting, and bankruptcy rules and the Securities Investor Protection Act of 1970 to accounts holding security future products.[51]

- Proposed amendments to the reserve requirement under Exchange Act rule 15c3-3 related to margin for securities futures products.[52]

Automation Review Policy Program

The Automation Review Policy (ARP) program continued its oversight of the capacity of the automation systems of the

securities markets. The ARP program staff performed 7 on-site inspections and issued 28 recommendations for improvement in information technology resources. In addition, staff attended 8 annual technology briefings presented by the exchanges and tracked systems problems. The ARP staff also monitored the successful re-opening of the securities markets following the September 11 terrorist attack.

"Soft Dollar" Interpretation

On December 27, 2001, the Commission modified its interpretation of the scope of the "soft dollar" safe harbor provided by section 28(e) of the Exchange Act. Section 28(e) states that money managers who receive research and brokerage services from broker-dealers who execute trades for their advised accounts will not be deemed to have breached a fiduciary duty if they meet certain conditions. The Commission's modified interpretation states that the safe harbor may apply to riskless principal transactions executed by market-makers in Nasdaq-traded securities. A prior Commission interpretation had excluded all "principal" transactions from the scope of the safe harbor. In modifying its earlier interpretation, the Commission recognized that the NASD had modified its trade reporting rules for certain riskless principal transactions, and concluded that a money manager buying or selling a Nasdaq-traded stock would now have the information necessary to determine whether the transaction fee paid was reasonable in relation to the value of the research and brokerage received.[53]

Broker-Dealer Issues

Implementation of Title II of Gramm-Leach-Bliley Act of 1999

Title II of the Gramm-Leach-Bliley Act (GLBA) redefined the terms broker and dealer. Under the old definitions, banks were excepted from the definitions for all of their securities activities. Under the new definitions, banks have particular exceptions for specific bank securities activities. In fiscal 2001, the Commission

adopted interim final rules clarifying key terms in the amended definitions of broker and dealer. The interim final rules also provide non-exclusive safe harbors for banks and thrifts from the definitions of broker and dealer.[54] Later in fiscal 2001, the Commission extended the time available for banks to comply with the new GLBA requirements. On May 8, 2002, the Commission further extended temporary exemptions from the definitions of broker and dealer for banks, savings associations, and savings banks. The temporary exemption from the definition of broker was extended until May 12, 2003, and the temporary exemption from the definition of dealer was extended until November 12, 2002. The Commission also gave notice of its intent to amend the interim final rules and, as appropriate, to extend further the temporary exemptions.[55] The Commission staff is carefully considering related comments from industry members and the public.

Credit Union Sweep Accounts

The Commission received an application from the Evangelical Christian Credit Union for exemptive relief under sections 15 and 36 of the Exchange Act to permit it to offer sweep account services to customers without registering as a broker-dealer. In June 2002, the Commission issued a notice regarding the application and requested comment on both the application and related issues, including whether all federally-insured credit unions should be permitted to sweep deposits into no-load money market funds on the same terms and conditions available to banks under the GLBA.[56] The staff is considering comments on the proposal.

Consumer Financial Privacy

The Commission was one of eight federal agencies that jointly sponsored a December 4, 2001 public workshop on improving the privacy notices that the GLBA requires financial institutions to provide to consumers. At the workshop, which was entitled "GETTING NOTICED: Writing Effective Financial Privacy Notices," government officials, financial institution and industry

association representatives, communications experts, and consumer and privacy advocates discussed how financial privacy notices might be made more effective. Commission staff also responded to inquiries from the public, financial institutions, and members of Congress regarding various interpretive issues relating to the privacy requirements of Regulation S-P. Among other activities, the staff coordinated with other agencies and the NASD to address issues including requirements for delivering privacy notices, transferring customer accounts, posting privacy notices on financial institution websites, and whether customer or consumer relationships exist in particular circumstances. For example, the staff prepared an interagency response to a congressional inquiry on behalf of a state agency that had expressed concern that financial institutions disclosing or agreeing to disclose certain information to the state agency might be subject to liability under the financial privacy provisions of the GLBA.

Net Capital Developments

The following highlights the agency's most significant net capital rule developments.

- The staff issued a letter clarifying when a firm is a dealer for net capital purposes.[57]

- The Commission adopted rule amendments that clarified and expanded recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the amendments expanded the types of records that broker-dealers must maintain and required broker-dealers to maintain or promptly produce certain records at each office to which those records relate.[58]

- The Commission issued an order extending the broker-dealer exemption from sending certain financial information to customers under specified circumstances.[59]

- The Commission proposed an amendment to rule 15c3-3(b)(3) that would increase the categories of collateral broker-dealers could pledge when borrowing fully paid for or excess margin securities from customers.[60]

Risk Assessment Program

As of September 30, 2002, Division staff reviewed filings for 164 broker-dealers and their material affiliates under the Commission's Risk Assessment Program. In addition, the staff reviewed risk management information filed by five firms who voluntarily report their over-the-counter derivatives activities under the Derivatives Policy Group framework.

Arbitration and Mediation

The Commission approved an amendment to NASD rules to simplify and clarify the procedures for parties to obtain injunctive relief in securities industry disputes involving a registered representative's change in employment from one member firm to another.[61] At the same time, the Commission approved an NASD rule prohibiting members from interfering with a customer's request to transfer his or her account in connection with those changes in employment.[62] The Commission also approved an amendment to NASD rules designed to allow claimants in arbitration to more easily obtain awards against defunct parties, which in turn can be enforced in court.[63]

National Money Laundering Strategy for 2002

The staff worked with the U.S. Department of the Treasury on anti-money laundering and anti-terrorist financing regulations called for by the USA PATRIOT Act. Those Treasury Department regulations proposed customer identification requirements, banned financial institutions from maintaining correspondent accounts with foreign shell banks, expanded suspicious activity rules to cover all broker-dealers, and authorized the sharing of information by broker-dealers, other financial institutions, and the government. The staff also worked with the NYSE and the NASD to develop rule changes to help implement the USA PATRIOT Act requirement that broker-dealers establish anti-money laundering compliance programs.[64] Moreover, Division of Market Regulation Director Annette Nazareth testified on January 29, 2002 before the Senate Committee on Banking, Housing and Urban Affairs about the Commission's activities in implementing the USA PATRIOT Act.

On July 23, 2002, the Commission proposed a customer identification rule as required by section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act, Pub. L. 107-56). The Commission and the U.S. Treasury Department jointly issued the proposing release.[65]

Letters Related to Broker-Dealer Activities

Equity Lines of Credit

In October 2001, the staff released a July 2001 letter granting no-action relief to a fund that sought to invest in equity lines of credit without registering as a broker-dealer. This particular type of line of credit requires an investor to purchase stock from a company at a discount to the market price, and gives the company the

flexibility to choose the timing of those sales. The staff's position was conditioned on a number of representations, including that:

- the fund would not solicit any company to enter into an equity line of credit,
- a broker-dealer that is unaffiliated with the fund would act as placement agent on behalf of any company entering into an equity line of credit,
- the fund effect sales of securities through an unaffiliated broker-dealer other than the placement agent,
- the fund would be restricted in its ability to short sell the company's stock, the fund would not pay finder's fees, the fund would not hire persons who are statutorily disqualified from association with a broker-dealer, and
- that purchases of company stock would not be made contingent upon any measure of market volume.[66]

Employee Benefit Plan Staffing Provider

The staff issued a letter granting no-action relief to a firm that, without registering as a broker-dealer, sought to provide employers with short-term staffing to assist the employers in explaining benefit plan details to their employees. The staff noted, among other factors, that:

- the firm would not hold itself out as a broker-dealer;
- the firm would not receive compensation linked to employee contributions, investment selections or compensation earned by plan providers;

- the benefits professionals would not solicit the sale of securities or solicit broker-dealer business; and

- neither the firm nor the benefits professionals would process investment instructions, handle funds and securities, or have any responsibility or control over investment alternatives.[67]

Website Service and Communications Contractor

The staff issued a letter granting no-action relief to permit a registered broker-dealer to retain an unregistered affiliate to provide website and communications services on behalf of the broker-dealer. As compensation, the broker-dealer would pay per-order communications fees, as well as other fees not based on transactions, to the unregistered affiliate. The relief was predicated on several conditions to prevent the unregistered affiliate from soliciting securities transactions, and to require the broker-dealer to be responsible for the activities performed by the unregistered affiliate. Among other factors, the unregistered affiliate would be precluded from marketing the broker-dealer's services, negotiating agreements involving the broker-dealer, or becoming a party to the broker-dealer's agreements with its customers. Other conditions further precluded the unregistered affiliate's ability to engage in broker-dealer activities through the technical services that it would provide to the broker-dealer.[68]

Employee Leasing Service Provider

The staff issued a letter granting no-action relief to an unregistered entity that proposed offering employee leasing services, including payroll processing, to registered broker-dealers and their employees without registering as a broker-dealer. The unregistered entity would receive payment from the broker-dealers for salaries, wages, and commissions, which the firm would then pay to the broker-dealers' personnel. The staff noted that although the employees would be placed on the firm's payroll, they would remain employees of its broker-dealer clients for purposes of the securities laws, and the broker-dealer clients

would maintain direction and control over the employees. The unregistered firm also would not engage in any securities-related activities or be associated with a broker-dealer.[69]

Request to Handle Securities Commissions for Benefits Purposes

The staff issued a letter denying no-action relief to an unregistered firm that sought, without registering as a broker-dealer, to receive securities commissions earned by employees who also were registered representatives of a broker-dealer. The unregistered firm proposed to receive commissions, deduct the cost of overhead, taxes and benefits, and pay the remainder back to the representative who earned the commission. In denying the request, the staff noted that the unregistered firm appeared to have a professional interest in the securities transactions of those employees, and that the proposed arrangements would be inconsistent with the primacy of the employment relationship between the broker-dealer and its registered representatives.[70]

Request to Permit Unregistered Entities to Handle Securities Commissions for Payroll Purposes

The staff issued a letter denying no-action relief to a registered broker-dealer and its unregistered parent related to the handling of securities commissions and profits. The entities proposed to permit affiliated unregistered firms to act as payroll agents that would pay securities commissions to individuals who were dually employed by the unregistered affiliates and by a third-party broker-dealer. They also proposed to permit the parent to receive the broker-dealer subsidiary's profits and distribute them as compensation to employees of the unregistered affiliates. In denying the request, the staff noted that the unregistered parent was supplying the third-party broker-dealer with a sales force as well as a customer base. Moreover, the parties were already engaged in the activities, and as a matter of policy, the staff grants no-action relief only prospectively.[71]