

# SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52909]

December 7, 2005

## Extension of Order Regarding Broker-Dealer Financial Statement Requirements under Section 17 of the Exchange Act

The Securities and Exchange Commission (“Commission”) is extending its Order, originally issued on August 4, 2003,<sup>1</sup> and extended on July 14, 2004 (the “2004 Order”),<sup>2</sup> under Section 17(e) of the Securities Exchange Act of 1934 (“Exchange Act”), regarding audits of financial statements of broker-dealers that are not issuers (“non-public broker-dealers”). The 2004 Order provided that non-public broker-dealers may file with the Commission and may send to their customers documents and information required by Section 17(e) certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2006.

Section 17(e)(1)(A) of the Exchange Act requires that every registered broker-dealer annually file with the Commission a certified balance sheet and income statement, and Section 17(e)(1)(B) requires that the broker-dealer annually send to its customers its “certified balance sheet.”<sup>3</sup> The Sarbanes-Oxley Act of 2002 (“Act”)<sup>4</sup> established the Public Company Accounting Oversight Board (“Board”)<sup>5</sup> and amended Section 17(e) to replace the words “an independent public accountant” with “a registered public accounting firm.”<sup>6</sup>

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<sup>1</sup> Exchange Act Release No. 48281, 68 FR 47375 (August 8, 2003).

<sup>2</sup> Exchange Act Release No. 50020, 69 FR 43482 (July 20, 2004).

<sup>3</sup> Exchange Act Rule 17a-5 requires registered broker-dealers to provide to the Commission and to customers of the broker-dealer other specified financial information.

<sup>4</sup> Public Law 107-204.

<sup>5</sup> Section 101 of the Act.

<sup>6</sup> Section 205(c)(2) of the Act.

The Act establishes a deadline for registration with the Board of auditors of financial statements of “issuers,” as that term is defined in the Act.<sup>7</sup> The Act does not provide a deadline for registration of auditors of non-public broker-dealers.

The 2004 Order expires January 1, 2006. Application of registration requirements and procedures to auditors of non-public broker-dealers is still being considered. The Commission is also considering whether to issue a concept release on the subject. The Commission has therefore determined that extending the Order is consistent with the public interest and the protection of investors.

Accordingly,

IT IS ORDERED, pursuant to Section 17(e) of the Exchange Act, that non-public broker-dealers may file with the Commission a balance sheet and income statement and may send to their customers a balance sheet certified by an independent public accountant, instead of by a registered public accounting firm, for fiscal years ending before January 1, 2007.

By the Commission.

Jonathan G. Katz  
Secretary

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<sup>7</sup> Section 2 of the Act defines “issuer.” Section 102 of the Act establishes a specific deadline by which auditors of issuers must register with the Board. Based on the statutory deadline of 180 days after the Commission determined the Board was ready to carry out the requirements of the Act, that date was October 22, 2003. See Exchange Act Release No. 48180 (July 16, 2003).