



August 26, 2011

U.S. Securities and Exchange Commission  
Attention: Ms. Elizabeth M. Murphy, Secretary  
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Washington, DC 20549-1090

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Re: File No. S7-23-11, Broker-Dealer Reports

Dear Commissioners and Staff:

We appreciate the opportunity to comment on the U.S. Securities and Exchange Commission's (SEC or Commission) proposed amendments to the broker-dealer financial reporting rule under the Securities Exchange Act of 1934 (Annual Reporting Amendments), and we respectfully submit our comments and recommendations thereon. Any capitalized terms herein that are undefined have the same meaning assigned to them in the proposed rule.

Overall, we support the proposed rule amendments and the Commission's initiative to implement the related provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to enhance and strengthen broker-dealer reporting and oversight. We also commend the Commission and the Public Company Accounting Oversight Board (PCAOB) for concurrently releasing proposed rules and standards that are intended to work together. We believe that this approach will facilitate a better understanding of what is expected by the SEC and PCAOB and will also result in more constructive and valuable feedback from respondents. We strongly encourage adopting such an approach for all future joint proposals.

The following provides our specific comments pertaining to the proposed Annual Reporting Amendments. We generally support these amendments but have some observations and recommendations for the Commission's consideration.

#### **Compliance report and related examination**

Principally, we agree with the nature of the assertions to be covered by the compliance report and the related auditor examination. However, we believe that there will be some overlap, which could cause potential confusion. For instance, under the PCAOB's proposal, the supplemental schedules that broker-dealers are required to file pursuant to Exchange Act Rule 17a-5 are expected to be audited *in relation to* the financial statements using financial statement materiality. An opinion will be expressed thereon, which would include compliance with form and content in accordance with such rule. Simultaneously, under the SEC's proposal, a separate

examination report will be issued also expressing an opinion on compliance with certain of the same rules; for this engagement, however, material non-compliance is determined at the compliance requirement level. The overlap related to the opinions on compliance within these two separate reports could be misunderstood as to the nature of the work performed by the auditor. As such, we suggest that the SEC discuss this matter with the PCAOB, in the context of the proposed PCAOB's standards, to consider a form of reporting that could potentially eliminate any overlap and misunderstanding, particularly the form of opinion on the supplementary schedules.

Also, we understand that broker-dealers must maintain and be able to produce certain records. It is not quite clear, however, what is expected of the auditor in regards to the broker-dealer's assertion that the information used to assert compliance with the Financial Responsibility Rules was derived from the books and records. We can certainly understand how an auditor can evaluate the appropriateness of the broker-dealer's books and records during the course of the engagement, including whether the broker-dealer can support its assertion with sufficient documentation. A separate opinion on this specific assertion, however, may entail more detailed procedures as to the source of the information used by the broker-dealer at the time of its assessment. We question whether this is what is actually intended by the auditor's opinion and therefore, request the Commission, in finalizing the proposed rule amendments, to provide more context or interpretive guidance as to management's assertion and the auditor's opinion thereon, as well as the procedures necessary to achieve reasonable assurance with respect thereto in the related proposed PCAOB standard.

In consideration of the other proposed rule amendments, we suggest that the Commission consider the necessity of an assertion and related opinion on internal control over compliance during the entire fiscal period. In our view, the examination of compliance and the examination of internal control over compliance should be integrated, similar to a financial statement and internal control audit, and cover the same *as of* date. Although we recognize that some control testing throughout the period would need to be performed to currently report in accordance with extant Rule 17a-5, we believe that this approach would result in a more effective and efficient examination. The Commission could, through the proposed PCAOB's standards, require the performance of certain tests of controls on a quarterly basis in support of the annual examination.

#### Material non-compliance

In the majority of compliance examination engagements, the evaluation of what constitutes material non-compliance with a specific compliance requirement is both subjective and difficult. We agree with the proposed definition of material non-compliance in the Commission's proposed rule amendments and with the examples provided therein. Although we do not expect the SEC to include additional examples within the text of the final rule, to achieve more consistency in practice, we encourage the SEC and PCAOB to collaborate and provide complementary staff guidance in this area. This would be particularly important for requirements that are more subjective and those that are not quantifiable in monetary terms.

Commodity Futures Trading Commission Rule 1.16

For broker-dealers that are also registered as a Futures Commission Merchant with the Commodity Futures Trading Commission (CFTC), we believe that it will be important for the SEC's final rule to recognize CFTC Rule 1.16 and to allow the broker-dealer to also assert, and the auditor to report, on compliance therewith. We encourage the SEC and CFTC to work together to align the reporting requirements related to material non-compliance with their respective rules. It will also be necessary for the PCAOB to recognize and address the requirements related to CFTC Rule 1.16.

#### Notification requirements

We acknowledge the importance of timely communication of material non-compliance to the SEC and the broker-dealer's designated examining authority (DEA). Accordingly, we support a one-day communication requirement, as well as the proposed form of communication. However, we believe that the communication of material non-compliance is management's primary responsibility. Although we understand that the proposed rule amendments align with the current notification requirements under the IA Custody Rule, we suggest that the Commission continue to require the broker-dealer to provide the necessary notice. Should the broker-dealer fail to provide proper notice, the auditor would then be required to do so, consistent with existing notification requirements. We believe that such approach also would allow the SEC to quickly react to protect customers and others, while maintaining the appropriate lines of accountability.

#### Exemption report

The Commission's proposal would require a review of a non-carrying broker-dealer's assertion that it is exempt from the provisions of Exchange Act Rule 15c3-3. Although we assume, based on these requirements, that the assertion will cover the entire fiscal period, the proposal is unclear in this regard. Also, because performing a review, thereby obtaining only a moderate level of assurance of compliance with specified requirements, is a fairly new concept, it will be important for the PCAOB's related standard to clearly describe the auditor's responsibilities and for the review report to clearly describe the nature of the review engagement and its inherent limitations. We will separately comment on the PCAOB's proposed standard.

#### Change in applicable audit standards and compliance date

Under the authority provided to the PCAOB by the Dodd-Frank Act, we support the use of PCAOB standards. However, we believe that the proposed effective date of fiscal years ending on or after December 15, 2011 may not provide sufficient implementation time to properly comply with all applicable PCAOB standards for non-public broker-dealers.

Although some firms, such as ours, adopt a consistent audit methodology, there are certain PCAOB performance and reporting requirements that differ from the standards adopted by the Auditing Standards Board of the American Institute of Certified Public Accountants. In addition, the PCAOB has not formally adopted any rule changes to clarify their applicability to audit and other attest engagements performed by registered public accounting firms for non-public broker-dealers. For example, the PCAOB's proposed *Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and*

*Exchange Commission and Related Amendments to PCAOB Standards* provides certain informal clarifications related to the applicability of the PCAOB's independence rules.

In addition, the PCAOB's related broker-dealer examination and review standards will not be effective until September of 2012, which would cause diversity, albeit temporary, in the application of their interim standards. However, with respect to the requirement to review the broker-dealer's assertion in the Exemption Report, the PCAOB's interim standards do not technically support providing a moderate level of assurance related to compliance.

To allow for a smooth and appropriate transition to PCAOB standards, we suggest that the Commission align all effective dates for fiscal years ending on or after September 15, 2012. This would be consistent with the expected effective date of the related PCAOB standards.

#### Filing of SIPC reports

We do not agree with the proposed rule amendment to require broker-dealers to file copies of their annual reports with the Securities Investor Protection Corporation (SIPC). The SEC and self-regulatory organizations (SROs) in charge of oversight of broker-dealers receive a copy of the broker-dealers' annual report and are required under section 5(a)(1) of the Securities Investor Protection Act to immediately notify SIPC upon discovery of facts that indicate that a broker-dealer subject to the SEC and SROs regulations is in or is approaching financial difficulty. Requiring broker-dealers to file their annual reports with SIPC, which is neither a governmental agency nor a regulator, would be redundant and would likely result in opening the door for SIPC to attempt to directly bring claims against audit firms in those situations. Further, the Dodd-Frank Act has given the PCAOB oversight authority over auditors of broker-dealers. Accordingly, the PCAOB is responsible for conducting informal inquiries and formal investigations of broker-dealers in accordance with their specific rules on investigations and adjudications.

We would be pleased to discuss our letter with you. If you have any questions, please contact Karin A. French, National Managing Partner of Professional Standards, at (312) 602-9160.

Sincerely,

