

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-70701

October 17, 2013

Order Providing Broker-Dealers a Temporary Exemption from the Requirements of Certain New Amendments to the Financial Responsibility Rules for Broker-Dealers under the Securities Exchange Act of 1934

I. BACKGROUND

On July 30, 2013, the Securities and Exchange Commission (“Commission”) voted to adopt amendments to the broker-dealer net capital rule (Rule 15c3-1),¹ customer protection rule (Rule 15c3-3),² books and records rules (Rules 17a-3 and 17a-4),³ and notification rule (Rule 17a-11)⁴ promulgated under the Securities Exchange Act of 1934 (“Exchange Act”). The amendments are designed to address several areas of concern regarding the financial responsibility requirements for broker-dealers. The adopting release provided that the amendments are effective on October 21, 2013.⁵

Industry representatives have indicated through physical and telephonic meetings with Commission staff that, as broker-dealers have worked to meet the October 21, 2013 effective date, some have determined that they will be unable to complete by that date the significant operational and systems changes necessary to comply with certain of the final rule amendments. For example, broker-dealers that maintain custody of customer securities and cash (a “carrying broker-dealer”) have said they are unable to comply with the requirements of paragraph (e)(5) of

¹ 17 CFR 240.15c3-1.

² 17 CFR 240.15c3-3.

³ 17 CFR 240.17a-3 and 17a-4.

⁴ 17 CFR 240.17a-11. Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824 (Aug. 21, 2013).

⁵ Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51824 (Aug. 21, 2013).

Rule 15c3-3 by the current effective date. This provision places restrictions on a carrying broker-dealer's ability to use cash bank deposits to meet customer or PAB reserve deposit requirements by excluding cash deposits held at an affiliated bank and limiting cash held at non-affiliated banks to an amount no greater than 15% of the bank's equity capital, as reported by the bank in its most recent Call Report.⁶ These carrying broker-dealers indicated that it would be a challenge to open new reserve accounts and make the appropriate systems changes by October 21, 2013 because, in part, negotiating new reserve account deposit agreements and obtaining acknowledgement letters required by paragraph (f) of Rule 15c3-3 from new banks generally take significantly more time than the 60 days afforded under the final rule amendments.

Further, broker-dealers have indicated that 60 days is insufficient for implementing the system changes necessary for the customer account opening documentation and processes, as well as account notices and disclosures, required in connection with new requirements under paragraph (j)(2) to Rule 15c3-3 regarding the treatment of customers' free credit balances. Additionally, broker-dealer representatives have indicated that some broker-dealers may need additional time to completely and accurately document their market, credit, and liquidity risk management controls under new paragraph (a)(23) to Rule 17a-3.⁷

Therefore, the Commission has determined to provide a temporary exemption to broker-dealers from the requirements of the following new amendments to the broker-dealer financial

⁶ See paragraph (e)(5) of Rule 15c3-3, as adopted. See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51904. The final rules define the term PAB account to mean a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer) other than a delivery-versus-payment account or a receipt-versus-payment account. The term does not include an account that has been subordinated to the claims of creditors of the carrying broker or dealer. See paragraph (a)(16) of Rule 15c3-3, as adopted. See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51903.

⁷ See paragraph (a)(23) of Rule 17a-3, as adopted and paragraph (e)(9) of Rule 17a-4, as adopted. See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51907.

responsibility rules adopted in Exchange Act Release No. 70072: (1) Rule 15c3-3, except paragraph (j)(1);⁸ (2) Rule 15c3-3a; (3) Rule 17a-3; (4) Rule 17a-4; and (5) paragraph (c)(2)(iv)(E)(2) of Rule 15c3-1.⁹ The temporary exemption will sunset on March 3, 2014. This will facilitate an orderly transition to the new requirements by providing broker-dealers with more time to make any necessary operational or systems changes. For example, industry representatives have indicated that many firms initiate freezes around the year end with respect to changing systems and codes. As a result of this temporary exemption, the Commission is directing the staff to delay from October 21, 2013 to March 3, 2014 the date for the withdrawal of the November 8, 1998 staff no-action letter that addresses the net capital treatment of proprietary accounts of introducing broker-dealers.¹⁰

The Commission is not granting a temporary exemption from the remaining new requirements adopted in Exchange Act Release No. 70072: (1) the requirement in paragraph (j)(1) of Rule 15c3-3; (2) the new requirements in Rule 15c3-1 (other than the requirement in paragraph (c)(2)(iv)(E)(2) of Rule 15c3-1); (3) and the new requirements in Rule 17a-11. Broker-dealers have not identified these requirements as presenting a challenge in terms of achieving compliance by October 21, 2013. In addition, this temporary exemption does not

⁸ As adopted paragraph (j)(1) of Rule 15c3-3 incorporates certain requirements from Rule 15c3-2 (customers' free credit balances), including the requirement that broker-dealers inform customers of the amounts due to them and that such amounts are payable on demand. Rule 15c3-2 is being eliminated as a separate rule because it is largely irrelevant in light of the requirements in Rule 15c3-3. See paragraph (j)(1) of Rule 15c3-3, as adopted. See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51836-51837.

⁹ As adopted paragraph (c)(2)(iv)(E)(2) of Rule 15c3-1 provides that a broker-dealer need not deduct cash and securities held in a securities account at a carrying broker-dealer except where the account has been subordinated to the claims of creditors of the carrying broker-dealer. See paragraph (c)(2)(iv)(E)(2) of Rule 15c3-1, as adopted. See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51831-51832.

¹⁰ See Letter of Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD Regulation, Inc. (Nov. 3, 1998). See also Financial Responsibility Rules for Broker-Dealers, 78 FR at 51828 (directing the staff to withdraw the no-action letter as of the effective date of the amendments).

apply to any other requirements in Rule 15c3-3, Rule 15c3-3a, Rule 17a-3, Rule 17a-4, or Rule 15c3-1.

The effective date is quickly approaching, and granting a limited exemption until March 3, 2014 to broker-dealers from certain new requirements will help to facilitate an orderly implementation of the final rule amendments.

For the foregoing reasons, the Commission finds that this temporary exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.¹¹

II. CONCLUSION

Accordingly, pursuant to Section 36 of the Exchange Act,

IT IS HEREBY ORDERED that broker-dealers are temporarily exempt until March 3, 2014 from the requirements of the following new amendments to the broker-dealer financial responsibility rules adopted in Exchange Act Release No. 70072: (1) Rule 15c3-3, except paragraph (j)(1); (2) Rule 15c3-3a; (3) Rule 17a-3; (4) Rule 17a-4; and (5) paragraph (c)(2)(iv)(E)(2) of Rule 15c3-1.

By the Commission.

Elizabeth M. Murphy
Secretary

¹¹ Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person from any rule under the Exchange Act, to the extent that the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 15 U.S.C. 78mm.