length and not more than a 32-bit internal architecture are regarded as 16-bit systems for purposes of this restriction. 

(d) A maximum CPU to memory bandwidth of less than 100 Mbit/s; 

(e) A CPU bus architecture that does not support multiple bus masters; and 

(f) The systems do not include controlled "related equipment" other than input/output control unit/disk drive combinations having all of the following characteristics—

(1) A "total transfer rate" not exceeding 10.3 Mbit/s; 

(2) A total connected "net capacity" not exceeding 140 MIPS; and 

(3) A "total access rate" not exceeding 80 accesses per second with a maximum "access rate" of 40 accesses per second per drive.

Note: The decontrol does not affect microprocessor based personal computers that are:

(a) Manufactured above a commercial/office environment; 

(b) Highly portable computers (those that can be battery powered or other self-contained form of power); or 

(c) Stand-alone graphic workstations with characteristics equaling or exceeding the parameters in ECCN 1595A Advisory Note 9A(1) and (4).

Note: For the purposes of this decontrol, personal computers are defined as microprocessor based computers that are:

(a) Designed and advertised by the manufacturer for personal, home or business use; and 

(b) Normally sold through retail establishments.

* Dated: July 13, 1989.

James M. LaMayene.

Deputy Assistant Secretary for Import Administration.

[FR Doc. 89-16641 Filed 7-17-89; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-27317; International Series Release No. 105; File No. 57-11-88]

RH: 3225-AD27

Registration Requirements for Foreign Broker-Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting proposed Rule 15a-6, which provides exemptions from broker-dealer registration for foreign entities engaged in certain activities involving U.S. investors and securities markets. The final rule incorporates the proposed interpretive statement that the Commission issued for comment when proposing the rule. In another release also issued today, the Commission is soliciting further comment on the concept of recognition of foreign securities regulation as a substitute for U.S. registration of foreign broker-dealers.


FOR FURTHER INFORMATION CONTACT:

Robert L. Colby, Chief Counsel, (202) 272-2384, or John Polanica, Jr., Special Counsel, (202) 272-2968, Division of Market Regulation, or Thomas S. Harman, Chief Counsel, (202) 272-2002, Division of Investment Management (regarding investment adviser registration requirements discussed in Part IV), Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

The Commission is adopting proposed Rule 15a-6 to provide conditional exemptions from broker-dealer registration for foreign broker-dealers that engage in certain activities involving U.S. investors and securities markets. These activities include (i) "nondirect" contacts by foreign broker-dealers with U.S. investors and markets, through execution of unsolicited securities transactions, and provision of research to certain U.S. institutional investors; and (ii) "direct" contacts, involving the execution of transactions through a registered broker-dealer intermediary with or for certain U.S. institutional investors, and without this intermediary with or for registered broker-dealers, banks acting in a broker or dealer capacity, certain international organizations, and foreign persons temporarily present in the United States. U.S. citizens resident abroad, and foreign branches and agencies of U.S. persons. The Commission's goals in adopting Rule 15a-6 at this time are (i) to facilitate access to foreign markets by U.S. institutional investors through foreign broker-dealers and the research that they provide, consistent with maintaining the safeguards afforded by broker-dealer registration, and (ii) to provide clear guidance to foreign broker-dealers seeking to operate in compliance with U.S. broker-dealer registration requirements.

In addition, the Commission is including the interpretive statement that it proposed together with Rule 15a-6. The final rule ("Rule") includes exemptions incorporating many of the positions originally set forth in the proposed interpretive statement. The Commission has included in this release a discussion of the purposes and scope of broker-dealer regulation and the general principles of U.S. registration for international broker-dealers, in order to emphasize the importance that the Commission attaches to broker-dealer registration and regulation in the international context.

Finally, the Commission has issued a separate release discussing the concept of an exemption from broker-dealer registration based on recognition of foreign regulation. Many commenters addressing the proposed rule favored this approach, and the Commission believes that the numerous complex issues raised by this approach require further exploration before any action is taken on the concept. To clarify the application of U.S. broker-dealer registration requirements to the cross-border activities of foreign broker-dealers, the Commission is adopting the Rule now, while soliciting more detailed comments on the parameters of the concept of an exemption from broker-dealer registration based on recognition of foreign securities regulation.

II. Introduction

Rule 15a-6 is based on the Commission's recognition of the fact that the pace of internationalization in securities markets around the world continues to accelerate. As the Commission noted when it published Rule 15a-6 for comment, multinational offerings of securities have become frequent, and linkages are developing between secondary markets and primary markets.
clearing systems. The desire of investors to trade in financial markets around the world is increasing the number, and many major institutional investors, particularly investment companies, insurance companies, pension funds, and large commercial banks, are active on an international basis.

As interest in international securities has grown, the geographical reach of intermediaries based in national markets has expanded greatly. Many U.S. and foreign broker-dealers are developing an international securities business, establishing offices throughout the world. According to statistics compiled by the Commission's Office of Economic Analysis, in 1973 registered U.S. broker-dealers were affiliated with foreign broker-dealers or foreign banks as of 1987. In contrast, in 1973 there were approximately twenty-eight non-Canadian U.S. broker-dealers with foreign parents. As of 1988, there were approximately fifty members of the New York Stock Exchange in which foreign entities had an ownership interest.

Exchange/Boston Stock Exchange linkage is in operation. In addition, the Commission has approved a pilot program developed by the National Association of Securities Dealers, Inc. ("NASD") and the International Stock Exchange of the United Kingdom and the Republic of Ireland, Ltd. ("ISE"). Linking the NASD's existing quotation system ("NASDAQ") and the ISE's electronic operations system ("SEAD").


As stated in a letter from Assistant Director, Division of Market Regulation, SEC, to Karen L. Seperetich, Esq., Associate General Counsel, International Securities Clearing Corporation, International Securities Clearing Corporation,


The Commission responded to this international expansion in broker-dealer activities by publishing Release 34-25801. This release had two purposes. First, as discussed at greater length below, the Commission sought to make known the existing U.S. requirements for registration of foreign broker-dealers. Second, the Commission sought to facilitate investment by U.S.

institutional investors in foreign securities markets by proposing a rule that would increase access to foreign broker-dealers, consistent with the investor safeguards afforded by broker-dealer regulation. The Commission recognized that foreign broker-dealers can provide valuable market experience, trade execution, and research services to U.S. institutions interested in entering overseas markets.

Release 34-25801 comprised an interpretive statement and a proposed rule. The interpretive statement was a summary of the staff's current positions regarding broker-dealer registration by foreign entities. Proposed Rule 15a-6, developed from past interpretive, no-action, and exemptive positions, would have exempted from the broker-dealer registration requirements of section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") foreign broker-dealers that engaged in securities transactions with certain non-U.S. persons or with specified U.S.

institutional investors under limited conditions.

Subsequently, members of the Committee on Federal Regulation of Securities of the Section of Business Law of the American Bar Association ("ABA") submitted a comment letter suggesting an expanded version of proposed Rule 15a-6, which generally reflected the substance of the interpretive statement. The ABA suggested that an expanded rule, among other things, "spell out clearly in one place the ground rules to which foreign broker-dealers are subject" and be "more consistent with orderly development of the law in this area." 11

Believing that expansion of proposed Rule 15a-6 to include additional portions of the interpretive statement deserved "serious consideration," the Commission solicited comment on an expanded rule. The Commission received thirty-two comment letters in response to proposed Rule 15a-6 and the interpretive statement. The commenters generally supported the Commission's goal of facilitating access to foreign markets by U.S. institutional investors, consistent with the purposes underlying broker-dealer regulation. Commenters also generally supported expansion of the proposed rule to include the substance of the interpretive statement.

III. Broker-Dealer Regulation

A. Purposes and Scope of Broker-Dealer Regulation

In the context of adopting exemptions from the U.S. broker-dealer regulatory scheme, the Commission believes that it is important to reiterate the fundamental significance of broker-dealer registration within the structure of U.S. securities market regulation. Because of the broker-dealer's role as an intermediary in securities markets, broker-dealers have been required to register with the Commission since 1933, 12 and they were registered with numerous states before enactment of the Exchange Act in 1934. 13 The definitions in the Exchange Act of the


12 A detailed comment summary has been prepared and placed in the Commission's public files, together with all comment letters received. See File No. 91-151.

13 As originally enacted, the Exchange Act dealt primarily with exchange regulation, and section 15 of the Exchange Act authorized the Commission to provide, by rule, for registration of broker-dealers that were not already exchange members. After the Commission initially adopted rules requiring registration of over-the-counter broker-dealers, Congress in 1966 amended section 15 to require that the Commission make rules on broker-dealer registration. See 15 U.S.C. § 78dd-1. See generally L. Less, Fundamentals of Securities Regulation 458-459 (1986) and the counsel release also issued today, infra note 34.

terms "broker" and "dealer" and the registration requirements of section 15(a) of the Exchange Act.14 were drawn broadly by Congress to encompass a wide range of activities involving the purchase or sale of securities.

Section 15(a) of the Exchange Act generally requires that any broker-dealer dealing in the mails or any means or instrumentality of interstate commerce (referred to as the "jurisdictional means")15 to induce or effect transactions in securities16 must register as a "broker-dealer with the Commission.

Registered broker-dealers are subject to a panoply of U.S. regulations and supervisory structures intended to protect investors and the securities markets.17 Registered broker-dealers

must be members of a self-regulatory organization ("SRO")18 and the Securities Investor Protection Corporation ("SIPC").19 They are subject to statutory disqualification standards and the Commission's disciplinary authority.20 Which are designed to prevent practices that injure investors or promote an adverse disciplinary history from becoming, or becoming associated with, registered broker-dealers. They also are required by the Commission's net capital regulations to maintain sufficient capital to operate safely. In addition, they are required to maintain adequate competency levels, by satisfying SRO qualification requirements.21 Further, registered broker-dealers are under extensive recordkeeping and reporting obligations,22 fiduciary duties23 and special antifraud rules.24 and the Commission's broad enforcement authority over broker-dealers.25 That authority, in turn, helps assure that broker-dealers are complying with the statutory and regulatory provisions governing the U.S. securities industry.26 Moreover, the

14 Section 3(a)(4) of the Exchange Act defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank." 15 U.S.C. 78s(a)(4). The term "dealer", however, is similarly defined in section 3(a)(11) of the Exchange Act. 15 U.S.C. 78s(a)(11), to mean directly regulated by U.S. state or federal bank regulations, and thus foreign banks that act as brokers or dealers within the jurisdiction of the United States are subject to U.S. broker-dealer registration requirements. See Release 36-38060, 10 FR at 25606 n.1. To the extent, however, that a foreign bank establishes a branch or agency in the United States that engages in activities subject to federal or state banking authority and otherwise meets the requirements of section 15(a)(3), the Commission would consider this branch or agency to be a "broker" for purposes of sections 15(a)(1) and 15(a)(3) of the Exchange Act.

The Commission believes that the determination whether any particular financial arrangement meets the requirements of section 15(a)(3) is the responsibility of the financial institution and its counsel. Cf. Securities Act Release No. 9081 (Sept. 23, 1990), 10 FR 24480 ("Release 36-38060") (determination as to whether branch or agency of foreign bank falls within the definition of "bank" under section 3(a)(11) of the Securities Act of 1934 ("Securities Act"). 15 U.S.C. 78s(a)(11), is responsibility of issuers and their counsel). The Commission notes, however, that section 6(5) of the International Banking Act. 15 U.S.C. 731(d)(2). expressly prohibits agencies of foreign banks established under federal law from receiving deposits or exercising fiduciary powers, certain authority for examination as a bank under sections 3(a)(1) and 3(a)(2) of the Federal Deposit Insurance Corporation Act. 12 U.S.C. 1811 and 1812, is responsibility of issuers and their counsel. The Commission believes that it is generally desirable, where the activities of a foreign bank, as defined in section 15(a)(3) of the Securities Act, are considered to be predominantly "banking," to subject these activities to the regulatory authority of the Federal Reserve System and, if the foreign bank is "branching" into the United States, to the Supervision Act as well.

By the terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business. Although by its terms this definition is broad, it has been interpreted to exclude a wide range of activities not within the intent of the definition, such as buying and selling securities for their own account, through a broker or otherwise, but does not include a bank, or any person acting as he buys and sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.
Commission's financial supervision of entities participating in the interdependent network of securities markets constitute states reflecting the financial soundness of this nation's securities markets. 

Several considerations remain important regardless of whether a broker-dealer's activities involve contacts with individual or institutional investors. When Congress authorized and subsequently required the Commission to register broker-dealers, Congress did not condition the requirement for registration on the type of investor involved. In 1975, Congress amended section 15(a) to extend the broker-dealer registration requirement to all broker-dealers trading exclusively on a national securities exchange or in municipal securities. Moreover, as noted in the concept release issued today, Congress recently reaffirmed the importance of regulating securities professionals who operated in a largely institutional market by enacting the Government Securities Act of 1986. Congress enacted this legislation to remedy serious problems, including a number of situations that the legislation was designed to correct.

As discussed previously, however, the Commission is seeking comment in the concept release on a conceptual approach that might increase the ability of U.S. institutional investors to deal with foreign broker-dealers in a manner that is consistent with the protection of those investors and with the Exchange Act.

B. General Principles of U.S. Registration for International Broker- Dealers

Before discussing the exemptions in the Rule, it is useful to review the general principles governing U.S. registration of brokers and dealers engaging in international activities. The definitions of "broker" and "dealer" do not refer to nationality, and the scope of these definitions includes both domestic and foreign persons performing the activities described therein. Consequently, any use of the U.S. jurisdictional means to engage in these activities could trigger the broker-dealer registration requirements of section 15(a).

1. Broker-Dealer Operations

As a policy matter, the Commission now utilizes a territorial approach in applying the broker-dealer registration requirements to the international activities of the broker-dealers. Under this approach, all broker-dealers physically operating within the United States that effect, induce, or attempt to induce any securities transactions would be required to register as broker-dealers with the Commission, even if these activities were directed only to foreign investors outside the United States. Accordingly, we are asking for comments on the interpretive statement in Release 23-25801: U.S. entities would not be required to register if they conducted their sales activities entirely outside the United States.

In our comment letter, the College Retirement Equities Fund ("CREF"). Westpac Banking Corporation, and Bankers Trust Company argued that section 15(a) should exempt from Commission jurisdiction foreign broker-dealers operating exclusively outside this country and contacting U.S. institutional investors in the United States from outside this country. They asserted that reading section 15(a) to protect only foreign broker-dealers not using the U.S. jurisdictional means to effect, induce, or attempt to induce any securities transactions in securities with or for U.S. persons running the risk of registration under the section's operational requirements on the grounds that foreign broker-dealers avoiding use of the U.S. jurisdictional means would not be subject to the registration requirements of section 15(a).

The Commission's position on the application of section 15(a) has been, and continues to be, that the phrase "without the jurisdiction of the Commission" is directed only to the territorial limits of this country. See, e.g., Securities and Exchange Commission, Brief Amicus Curiae on Behalf of the Full Court, Schroeder v. Vermont, 42 F.3d 301 (2d Cir. 1994) (in banc). We believe that Congress did not condition the registration provisions of the Securities Act, when applicable, of the Securities Exchange Act of 1934, 15 U.S.C. 78a, or Section 19(b) of the Exchange Act, 15 U.S.C. 78t(b), upon registration of any entity operating outside the territorial limits of this country. Conversely, as discussed in the concept release, the Commission does not believe that section 15(a) was intended to apply to persons or entities operating on a territorial basis only. A broker-dealer operating outside the physical boundaries of the United States, but using the U.S. mails, wire, or telegraph lines to trade securities with U.S. persons located in this country, would be subject to the registration requirements of Section 15(a).

Proposed Regulation 3-F also follows a territorial approach, see Release 23-3477, 53 FR 25626-25627 (1988). It is our view that section 15(a) does not refer to rationality.

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Also, the Commission uses an entity approach with respect to registered broker-dealers. Under this approach, if a foreign broker-dealer physically operates a branch in the United States, and thus becomes subject to U.S. registration requirements, the registration requirements and the regulatory system governing U.S. broker-dealers would apply to the entire foreign broker-dealer entity. If the foreign broker-dealer establishes an affiliate in the United States, however, the affiliate must be registered as a broker-dealer; the foreign broker-dealer parent would not be required to register.12

Under this arrangement, absent exemptions, only the registered U.S. affiliate would be authorized to trade with any person in the United States or perform securities functions on behalf of those customers, such as effecting trades, extending credit, maintaining records and issuing confirmations, and receiving, delivering, and safeguarding funds and securities.13

Some commenters questioned whether, under these principles, a registered broker-dealer's personnel who are stationed outside the United States with a foreign broker-dealer may contact U.S. and foreign persons located in the United States on behalf of the registered broker-dealer, provided that these personnel are U.S.-registered and subject to U.S. regulatory supervision.14 Assuming these persons were subject to the registered broker-dealer's supervision and control 15 and satisfied all U.S. SRO qualification standards,16

Attorneys: Division of Market Regulation, SEC, in Kevin McMahon, Sea, Jones, Casey & Bailey P.S. (Arg. 1: 1988) (Barros Mortgage Association), Letter from SEC to the Municipal Officers, Office of Chief Counsel, Division of Market Regulation, SEC, to Chester J. Jackson, Esq., Waddell, McCown, Strickland & Mackey (Arg. 2: 1987) (States Piran, Inc.). Tony Plata (ft. 1: 1987) (General Counsel). It was discussed when the interpretive statement was proposed, but no comments were received. See Release 34-25803, 53 FR at 22950 n.46.

Similarly, only the affiliate's personnel must be located appropriately by the NASD or another SRO. See sections 9(a)(10) and 19(b)(6) of the Exchange Act; 15 U.S.C. 78d(b)(10) and 78s(b)(6).

See note 190 infra regarding whether a registered broker-dealer would be permitted to function as an introducing broker to an unregistered foreign broker-dealer.

The Securities Industry Association ("SIA") and Charles E. Lynch & Co., Inc. (the SIA at times contacting customers originating from outside the United States, while Merrill Lynch addressed customers originating outside the United States).

The SEC has proposed, by rule, adopting regulations similar to the proposed section 15(b)(2)(C)112(a) provisions, as described in note 190 supra.

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See proposed interpretive statement, Release 34-25803, 53 FR at 22950-51.

The Rule encompasses an exception for foreign broker-dealers engaging in securities activities with three persons. See Part 4B, supra.

See Release 34-26706 (public offering of securities specifically directed toward U.S. citizens abroad).

3. Solicitation

The proposed interpretive statement explained that if a transaction with a person in the United States is solicited, the broker-dealer effecting the transaction must be registered.12 Although the requirements of section 15(b)(2)(C) do not distinguish between solicited and unsolicited transactions, the Commission does not believe, as a policy matter, that registration is necessary if U.S. investors have sought out foreign broker-dealers outside the United States and initiated transactions in foreign securities markets entirely of their own accord. To the extent that U.S. investors would have taken the initiative to trade outside the United States and invited foreign broker-dealers from there to engage in these transactions, the Commission believes that it would be little reason to expect these foreign broker-dealers to be subject to U.S. broker-dealer registration requirements. Moreover, requiring a foreign broker-dealer to register as a broker-dealer with the Commission because of unsolicited trades with U.S. persons could cause that foreign broker-dealer to refuse to deal with U.S. persons under any circumstances.

As noted in the proposed interpretive statement,13 however, the Commission generally views a solicitation as the context of broker-dealer regulation,14 as including any affirmative effort by a broker-dealer intended to induce any foreign person to deal with a U.S. broker-dealer or its affiliates.15 Solicitation

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includes efforts to induce a single transaction or to develop an ongoing securities business relationship. Conduct deemed to be solicitation includes telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions, as well as advertising one’s function as a broker or a market maker in newspapers or periodicals of general circulation in the United States or on any radio or television station whose broadcasting is directed into the United States. Similarly, conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer, would constitute solicitation. A broker-dealer also would solicit customers by, among other things, recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.

Thirteen commentators argued that this definition of solicitation should be narrowed. In particular, Fidelity Investments did not think that visits to this country by an unregistered foreign broker-dealer “to introduce itself as being able to trade securities or “to explain regulatory changes occurring in its own jurisdiction” should be deemed solicitation, based on the assumption that these activities would not constitute inducements to effect trades through that broker-dealer. The other comments supported broader latitude with respect to the distribution of research by foreign broker-dealers to U.S. institutional investors and with respect to the distribution in this country by foreign exchanges of foreign market makers’ quotations, both of which the proposed interpretive statement treated as solicitation.

The Commission generally believes that a narrower construction of solicitation would be inconsistent with the express language of section 15(a)(1), which refers to both inducing or attempting to induce the purchase or sale of securities, and would be unwarranted in the context of the domestic application of U.S. broker-dealer registration requirements. As a matter of policy, however, the Commission has created a conditional exemption in the Rule to permit expanded third-party distribution of foreign broker-dealers’ quotations in this country without registration should be allowed on an interpretive basis. As the proposed interpretive statement explained, the discretion in the United States of a broker-dealer’s quotes for a security typically would be a form of solicitation. The staff nonetheless has given assurances that enforcement action would not be recommended for lack of broker-dealer registration with respect to the collective distribution by organized foreign exchanges of foreign market makers’ quotes, in the absence of other inducements to trade on the part of these market makers. Several commenters discussed an exemption in the Rule for the collective distribution of foreign broker-dealers’ quotations. The ABA suggested exempting from registration foreign broker-dealers that acted as market makers and provided their names, addresses, telephone numbers, and quotes as part of the collective distribution by a “recognized foreign securities market” of foreign market makers’ quotes. Members of the Securities Law Committee of the Chicago Bar Association (“CBA”) concurred. Sullivan & Cromwell maintained that the fact-specific nature of these arrangements required more suitable for resolution by the staff through no-action or interpretive procedures. The Public Securities Association (“PSA”) suggested that, if a foreign broker-dealer participated in a third-party quotation system “principally directed at foreign persons,” dissemination of quotations to U.S. institutional investors should not be considered solicitation of those investors, provided that the foreign broker-dealer did not engage in other activities in the United States requiring broker-dealer registration.

At the present time, the Commission generally would permit the U.S. distribution of foreign broker-dealers’ quotations by third-party systems, e.g., systems operated by foreign marketplaces or by private vendors, that distributed these quotations primarily in foreign countries. The Commission recognizes that access to foreign market makers’ quotations is of considerable interest to registered broker-dealers and institutional investors, with whom the staff of the Commission has created a conditional exemption in the Rule to permit third-party distribution of foreign broker-dealers’ quotations in this country without registration should be allowed on an interpretive basis, for lack of broker-dealer registration. As a matter of policy, however, the Commission generally believes that a narrower construction of solicitation would be inconsistent with the express language of section 15(a)(1), which refers to both inducing or attempting the purchase or sale of securities, and would be unwarranted in the context of the domestic application of U.S. broker-dealer registration requirements. As a matter of policy, however, the Commission believes questions regarding the future development of third-party quotation systems with internal execution capabilities designed, for example, to facilitate cross-border trading in securities while the domestic markets for those securities are closed, should be addressed under present state law. The Commission believes that questions regarding the future development of third-party quotation systems with internal execution capabilities designed, for example, to facilitate cross-border trading in securities while the domestic markets for those securities are closed, should be addressed under present state law.
circumstances by the staff on a case-by-case basis or by the Commission in further rulemaking proceedings. The Commission also believes that the direct dissemination of a foreign broker-dealer's quotations to U.S. investors, such as through a private quote system controlled by a foreign broker-dealer, would not be appropriate without registration, because the dissemination of these quotations would be a direct, exclusive inducement to trade with that foreign broker-dealer.

4. Registered Broker-Dealers

Some commenters asked the Commission to confirm that foreign broker-dealers would not become subject to the registration requirements of section 15(a) by using the U.S. jurisdictional means to deal only with registered broker-dealers and certain other persons. The staff has taken no-action positions on broker-dealer registration with respect to foreign broker-dealers engaging in securities transactions with registered broker-dealers and with banks acting in a broker or dealer capacity (including acting as municipal or governmental securities dealers). The Commission has taken no-action positions as an exemption in the Rule, so that transactions by foreign broker-dealers with registered broker-dealers acting as principal or agent, or with banks acting in a broker or dealer capacity, need not take place within the framework established by the proposed rule.

IV. Rule 15a-6 and Concept Release

A. Overview

The Commission's response to the issues raised by the comments on the interpretive statement and proposed Rule 15a-6 is threefold. First, the Commission is adopting exemptions allowing non-direct contacts between foreign broker-dealers and U.S. investors. Second, the Commission is adopting exemptions allowing direct contacts between foreign broker-dealers and certain U.S. persons directly. Third, the Commission is seeking comment in the Concept Release on a conceptual approach to recognition of foreign regulation as a substitute in part for U.S. broker-dealer registration.

1. Rule 15a-6

The first two prongs of this approach are incorporated in the Rule, which the Commission has decided to adopt in an expanded format substantially as published in Release 34-25136. The Rule thus incorporates much of the proposed interpretive statement to realize the benefits of codification by many commenters. As adopted, the Rule contains exemptions from broker-dealer registration for non-directed contacts through unsolicited transactions and the distribution of research reports, and it allows for direct contacts with certain U.S. institutional investors through intermediaries and with certain other defined classes of persons without intermediaries.

2. Recognition of Foreign Securities Regulation

The third prong of the Commission's approach is represented by the Concept Release on recognition of foreign securities regulation also issued today. In the proposed interpretive statement, the Commission noted that the development of comprehensive broker-dealer regulation in foreign nations suggested that agreements with foreign securities authorities as to some form of recognition of foreign broker-dealer regulation might be possible in the future. Under this conceptual approach, a country could recognize regulation of a foreign broker-dealer by the latter's home country as a substitute, to some extent, for its own domestic regulation. The Commission pointed out, however, that this approach "could raise the possibility of reduced U.S. investor protection, unless the foreign jurisdiction had a broker-dealer regulatory system that was compatible and compatible with that of the United States, this system was comprehensively enforced, and ready cooperation in surveillance and enforcement matters between the United States and the foreign jurisdiction was the norm." In light of these factors, the Commission stated that it was weighing whether some degree of mutual recognition of international broker-dealers might be possible in the future.

Seventeen commenters favored some form of mutual recognition. Several of these commenters advocated permitting a foreign broker-dealer to deal directly with the Commission after the Commission had made a formal determination that its home country's broker-dealer regulatory regime was adequate. Particularly if there were a satisfactory information-sharing and mutual cooperation agreement between U.S. and foreign regulators.

The comments indicate great interest by U.S. institutional investors and foreign market professionals and securities authorities in an exemption from broker-dealer registration based on recognition of foreign regulation. The many complex issues inherent in this area suggest the need for clarification of the application of the U.S. broker-dealer regulation requirements to these activities, while also soliciting specific comment on a conceptual approach based on recognition of foreign securities regulation.

3. Withdrawal of Proposed Interpretive Statement

In view of its other actions, the Commission considers it unnecessary to publish separately a final interpretive statement. The Rule as adopted includes exemptions for non-directed contacts and the positions originally set forth in the proposed interpretive statement, and this release specifically addresses

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[1] The National Association of International Banks, the ABA, the PSIA, the SIA, Security Pacific Corporation, and Sullivan & Crensley.


[7] The SIA advocated that the Commission require participating foreign regulators to accord U.S. broker-dealers "national treatment," i.e., exemption similar to that accorded to domestic broker-dealers in the foreign country.
others, especially in connection with the general principles stated above. To avoid confusion, the Commission is withdrawing the proposed interpretive statement, but the staff's interpretive and no-action letters and the Commission exclutions cited therein will remain valid until expressly modified or withdrawn. In addition, the Commission wishes to confirm that the staff's guidance will continue to remain available; regarding both the application of the Rule and the general application of the U.S. broker-dealer registration requirements to the activities of foreign broker-dealers.

8. Rule 15a-6

The Commission is adopting proposed Rule 15a-6 under section 15(a)(2) of the Exchange Act.13 To provide conditional exemptions from broker-dealer registration for foreign broker-dealers that do not initiate direct contacts with U.S. persons, that solicit or effect transactions by certain other persons, especially in connection with the staff's interpretive and no-action letters and the Commission exemptive practices articulated in the interpretive statement, although it differs in some respects from the expanded rule published in Release 34-20139. For ease of reference, the Rule has been organized into direct contacts, direct contacts, and trading with or for specified persons.

Rule 15a-6(a) exempts only foreign brokers or dealers, which are defined in paragraph (b)(3) to mean persons not resident in the United States that are not offices or branches of, or natural persons associated with, registered broker-dealers, and whose securities activities would fall within the definitions of "broker" or "dealer" in sections 3(a)(4) or 3(a)(5) of the Exchange Act, respectively.14 The definition in paragraph (b)(3) expressly includes any U.S. person engaged in business as a broker or dealer entirely outside the United States. This definition also includes foreign banks to the extent that they operate from outside the United States, but not their offices or branches or agencies in the United States.15 The proposed rule would have exempted foreign broker-dealers only from section 15(a). The expanded rule also would have exempted foreign broker-dealers required to register as municipal securities dealers by section 15B(a)(4) of the Exchange Act.16 and several commenters believed that foreign broker-dealers required to register as government securities brokers or dealers by section 15C(a)(2) of the Exchange Act should be included as well.17 Pursuant to section 15B(a)(4) of the Exchange Act, the Commission has made the exemptions in the Rule applicable to foreign broker-dealers engaging in government securities activities involving U.S. investors. As proposed, Rule 15a-6(a) was phrased as a conditional exemption from the broker-dealer registration requirements of section 15(a). The expanded rule stated instead that a qualifying broker-dealer "is not subject to" those registration requirements.18 Several commenters objected that an exemption implied that the exempted activities required registration absent the exemption.19 The Commission has determined to adopt Rule 15a-6 as an exemption, rather than as an exclusion from registration. In the Commission's view, many of the activities covered by provisions of the Rule plainly would require registration, absent an exemption. To keep the rule as simple as possible, the Commission is adopting all the provisions of the Rule as exemptions from registration, pursuant to sections 15(a)(2) and 15B(a)(4) of the Exchange Act.20 Several commenters argued that failure to comply with the proposed rule in one instance should not affect the availability of the exemptions under the proposed rule in other cases. The justifications proffered by these commenters avoided attaching "unduly severe consequences" to "isolated, inadvertent violations".

15 See supra note 10.
16 Release 34-28136, 32 FR at 30860.
17 The PSA, Sullivan & Cromwell, the FSA, and Continental Bank.
18 See supra notes 7 and 8. Section 15(a) exempts only "persons not resident in the United States" from the broker-dealer registration requirements stated in section 15(a). The proposed rule would have exempted foreign broker-dealers not registered as "government securities brokers or dealers by section 15C(a)(2) of the Exchange Act."21
21 Section 15C(a)(2) exempts only foreign brokers or dealers from the broker-dealer registration requirements of section 15(a). The expanded rule stated instead that a qualifying broker-dealer "is not subject to" those registration requirements. Certain commenters objected that an exemption implied that the exempted activities required registration absent the exemption. The Commission has determined to adopt Rule 15a-6 as an exemption, rather than as an exclusion from registration. In the Commission's view, many of the activities covered by provisions of the Rule plainly would require registration, absent an exemption. To keep the rule as simple as possible, the Commission is adopting all the provisions of the Rule as exemptions from registration, pursuant to sections 15(a)(2) and 15B(a)(4) of the Exchange Act. Several commenters argued that failure to comply with the proposed rule in one instance should not affect the availability of the exemptions under the proposed rule in other cases. The justifications proffered by these commenters avoided attaching "unduly severe consequences" to "isolated, inadvertent violations."
and the belief that enforcement cooperation did not prohibit a transactional approach, since remedies are available to both the Commission and private investors on a transactional basis.**

In the Commission's view, failure to comply with the conditions of one exemption in the Rule regarding certain securities activities would not prevent reliance on the same or other exemptions in the Rule with respect to other activities. And the Commission is modifying the position expressed in the proposed interpretive statement that a foreign broker-dealer's obligation to register, once incurred, "continues until the foreign broker-dealer completely ceases to do business with or for [U.S.] investors" whom it has solicited and with or for whom it has effecte

In the Commission's view, the proposed interpretive statement took the position that the foreign broker-dealer's obligations under the Rule would remain liable for its conduct with or for [U.S.] investors whom it has solicited and with or for whom it has effecte

The expanded rule did not define the concept of solicitation, and neither does the Rule as adopted. The Commission's general views on meaning of the term "solicitation" have been discussed previously. The Commission believes that registration should not be required when a foreign broker-dealer effects an unsolicited trade for a U.S. investor. Accordingly, paragraph (a)(1) of the Rule exempts from registration a foreign broker-dealer who, and with respect to the definition of "member" in paragraphs (a)(2) and (a)(3), U.S. broker-dealer is to generation

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These foreign broker-dealers believed that it would be difficult for other foreign broker-dealers to screen out transactions from U.S. institutional investors that have indicated an interest in foreign broker-dealers. They maintained that it would be too costly for smaller foreign broker-dealers to establish U.S. affiliates to be responsible for and distribute their research and affect any resulting trades, and that larger foreign broker-dealers thus would have a competitive advantage. The German Banks also objected to the requirement that the U.S. affiliate prominently state that it had accepted responsibility for a research report prepared by a foreign broker-dealer. The SIA, while not objecting to the proposed interpretive position on research itself, suggested that foreign broker-dealers should be allowed to send research directly to U.S. institutional investors, as long as U.S. affiliates accepted responsibility for the research and affected any resulting trades.

In publishing the proposed rule and interpretive statement, the Commission was motivated, in part, by the desire of U.S. institutional investors for access to foreign markets through foreign broker-dealers and the research that they provide. Accordingly, the Rule takes into account the comments on the important role of research in facilitating access to these markets. The Commission does not wish to restrict major U.S. institutions' ability to obtain research reports of foreign origin that are acceptable regulatory requirements.

The Association of German Banks argued that foreign broker-dealers believed that if the research report must not distinguish between research reports provided in English or electronic form, this could promote the use of research from foreign broker-dealers in this country directly by a foreign broker-dealer.

Paragraph (d)(4) of the Rule defines "major U.S. institutional investor" as a U.S. institutional investor with assets, or assets under management, in excess of $50 million, or a registered investment adviser with assets under management in excess of $1 billion.

The research report must not recommend the use of the foreign broker-dealer to effect trades in any security, and the foreign broker-dealer must not initiate follow-up contact with the major U.S. institutional investors receiving the research, or otherwise induce or attempt to induce the purchaser or sale of any security by those major U.S. institutional investors.

If these conditions are met, the foreign broker-dealer may effect trades in the securities discussed in the research or other securities at the request of major U.S. institutional investors receiving the report. Under these conditions, the Commission believes that any other arrangement that would impede the flow of information across national boundaries without raising substantial investor protection concerns.

If, however, the foreign broker-dealer already had a relationship with a registered broker-dealer that facilitated compliance with the direct contact exemption in the Rule, the Rule would require all trades resulting from the provision of research to be effected through that registered broker-dealer pursuant to the provisions of that exemption. If the foreign broker-dealer had entered into this prior relationship, the procedures for identifying trades from major U.S. institutional investors and routing them through the registered broker-dealer already would have been established. Thus, the benefits of a registered broker-dealer's intermediation in effecting trades would be $500 million.

Paragraph (h)(7) of the Rule defines "registered investment company, bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan" as defined in Rule 2a-11(b)(1) of Regulation D under the Securities Act, 17 CFR 230.2a-11(b)(1); or a private business development company defined in Rule 506(a)(1), 17 CFR 230.506(a)(1), an organization described in section 302(2)(c) of the Internal Revenue Code, as defined in Rule 506(a)(1), 17 CFR 230.506(a)(1), or a trust defined in Rule 506(a)(1), 17 CFR 230.506(a)(1). To determine the total assets of an investment company or trust, the registered investment company may include the assets of any family of investment companies of which it is a part, and the term "family of investment companies" is defined in paragraph (h)(3) of the Rule.

The Commission would not consider the presence of a communication between a registered broker-dealer and a U.S. investor to initiate direct contact with a U.S. person, if a U.S. registered broker-dealer could do so under the direct contact exemption in paragraph (a)(2) of the Rule, and the conditions imposed by that exemption, including the participation of a registered broker-dealer intermediary, would address the investor protection concerns raised by those contacts.
be provided without imposing significant additional costs.

Although this exemption is limited to major U.S. institutional investors, the rule's research exemption is broader than either the proposed interpretive statement or the expanded rule in that a registered broker-dealer would not be required to take responsibility for the content of the research report. In addressing the responsibilities of the U.S. affiliate under paragraph (a) of the proposed rule, some commenters maintained that the responsibilities of the U.S. affiliate would result in little additional protection, at least with respect to substantial institutional investors.

By its terms, the exemption in paragraph (a)(2) of the Rule is available only with respect to research provided to major U.S. institutional investors. Therefore, the Commission has decided to retain the narrower position regarding the distribution of research expressed in Release 34-35901 with respect to other investors. Under this position, the Commission would not require broker-dealer registration by a foreign broker-dealer whose research reports were distributed to U.S. persons by a registered broker-dealer.

The responsibilities of the U.S. affiliate of the foreign broker-dealer whose research reports were included in a beneficial distribution of the report would be limited to ensuring that the report was accepted responsibility for its content. If that occurred, there would be no need to determine whether any U.S. persons were beneficiaries of the research report.

The responsibility under the Rule (if it took reasonable steps to satisfy itself regarding the key statements in the research. In cases where there are no indications that the content of the research is "unseen," this responsibility can be fulfilled by reviewing the research in question and comparing it with other public information readily available regarding the issuer. To make certain that neither the facts nor the analysis appear inconsistent with outstanding information regarding the issuer.

The Commission has decided that the responsibilities of the U.S. affiliate of a foreign broker-dealer would not be limited to the research report that had been accepted responsibility for its content. If that happened, the research report would have to be provided to customers with the express or implied understanding that the customers would pay for it by directing trades to the broker-dealer that result in an agreed-upon level of commission dollars. These "soft-dollar" research arrangements are used widely by broker-dealers both in the United States and abroad.

If a foreign broker-dealer provided research to a U.S. investor pursuant to an express or implied understanding that the investor would direct a given amount of commission income to the foreign broker-dealer, the Commission would consider the foreign broker-dealer to have induced purchases and sales of securities irrespective of whether the trades received from the investor related to the particular research that had been provided. Accordingly, both the exemption for research in paragraph (a)(2) and the position retained from previous rule would be provided without imposing significant additional costs.

Finally, it is important to emphasize that foreign broker-dealers must consider separately other registration requirements contained in the U.S. securities laws. Specifically, in the proposed interpretive statement, the Commission noted that if a branch or affiliate of a foreign entity in the United States disseminated research information, registration as an investment adviser might be required under section 203 of the Investment Advisers Act of 1940 ("Advisers Act"). Several commenters requested clarification on this point, one expressing concern that a previous section 203(a) action taken by the Division of Investment Management might not apply in light of the direct communications between foreign broker-dealers and certain U.S. institutional investors that could take place under the proposed rule if adopted. A foreign broker-dealer providing research to U.S. persons generally would be an investment adviser within the meaning of the Advisers Act. The staff takes the position that the broker-dealer exclusion in section 203(a)(11)(C) of the Advisers Act is for broker-dealers who provide investment advice that is solely incidental to their brokerage business and who receive no special compensation for such advice—is available only to registered broker-dealers.

The Division of Investment Management, however, generally would expect to respond favorably to no-action requests regarding registration under the Advisers Act by foreign brokers and dealers who meet the conditions of paragraph (a)(2), (a)(3), or (a)(4) of the Rule if their activities are limited to those described in section 203(a)(11)(C) that is, if they provide investment advice solely incidental to their brokerage business and receive no special compensation for it. In the future, the Commission may consider whether to propose and adopt an exemptive rule under the Advisers Act for foreign broker-dealers providing the types of services covered by the Rule.
3 Direct Contacts

a. Transactions with U.S. Institutional Investors and Major U.S. Institutional Investors. Paragraph (a)(1) of the Rule provides an exemption from broker-dealer registration for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor.\footnote{111} Provided that any resulting transactions are effected through a registered broker-dealer and certain conditions are met by the foreign broker-dealer, foreign associated persons, and the registered broker-dealer. As described in the proposed interpretive statement,\footnote{112} many foreign broker-dealers have established registered broker-dealer affiliates in the United States that are fully qualified to deal with U.S. investors and trade in U.S. securities. Nonetheless, these foreign broker-dealers may prefer to deal with institutional investors in the United States from their overseas trading desks, where their dealer operations are based. In addition, because overseas trading desks often are principal sources of current information on foreign market conditions and foreign securities, many U.S. institutions want direct contact with overseas traders. Foreign broker-dealers in such situations often are not willing to register as broker-dealers directly with the Commission, however, because registration would require the entire firm to comply with U.S. broker-dealer requirements.\footnote{113}

The no-action request granted to Chase Capital Markets US\footnote{114} allowed foreign trading operations to receive call confirmation from U.S. institutional investors without the foreign broker-dealers registering with the Commission. Under the terms of that letter, foreign broker-dealers could be in touch with U.S. institutional investors by a registered broker-dealer affiliate, with a U.S.-qualified representative participating in telephone conversations, effecting any resulting transactions, and taking full responsibility for the trades. Like an earlier Commission exemption letter,\footnote{115} the letter to Chase Capital Markets US provided that the foreign broker-dealer would assist the Commission in the conduct of investigations by furnishing information concerning its contacts with U.S. investors and trading records relating to the execution of U.S. investors' orders by the firm. Both letters also indicated that the foreign broker-dealer would endeavor, directly or indirectly, to obtain the consent of foreign customers to the release of any information sought by the Commission.

In its view, the Commission believes that it is desirable to broaden U.S. investors' access to foreign sources of information through structures that maintain important regulatory safeguards. Accordingly, the Commission supports allowing direct contact between foreign broker-dealers and U.S. institutional investors, subject to requirements concerning these contacts and the execution of orders.\footnote{116} The Rule as adopted allows a foreign broker-dealer to contact U.S. institutional investors if an associated person of a registered broker-dealer participates in each of these contacts. In each case, any resulting transactions must be effected through an intermediary registered broker-dealer.\footnote{117} which need not be affiliated with the foreign broker-dealer through ownership or control. The Commission believes that these provisions of the intermediary concept used in the Chase Capital Markets US letter and set forth in the proposed rule and the expanded rule greatly increase the utility of the exemption in paragraph (a)(1) of the Rule, the operation of which is described more fully below.\footnote{118}

(1) Comments on U.S. broker-dealer requirements. As proposed, Rule 15a-6 would have provided an exemption from broker-dealer registration for foreign broker-dealers that effected trades with certain U.S. institutional investors through a registered broker-dealer.\footnote{119}

The foreign broker-dealer's personnel involved in contacts with U.S. institutional investors would have been subject to certain requirements, and the registered broker-dealer would have been responsible for supervising the contact and any resulting trades. If a trade was agreed upon, the rule would have required the registered broker-dealer to effect the trade on behalf of the investor, taking full responsibility for all aspects of the trade. In proposing Rule 15a-6, the Commission stated that requiring the intermediation of a registered broker-dealer would maintain important regulatory safeguards. The registered broker-dealer's responsibility for effecting all trades, combined with its recordkeeping and reporting duties pursuant to section 17 of the Exchange Act\footnote{120} and the rules thereunder,\footnote{121} "would facilitate Commission review of this trading and also subject this trading to the U.S. broker-dealer's supervisory responsibility."\footnote{122}

Fifteen commenters argued that the Commission should not require the participation of a registered broker-dealer affiliate in transactions with major institutional investors.\footnote{123} In particular, commenters asserted that U.S. institutions meeting the $300 million asset test in the proposed rule should be able to be solicited by foreign broker-dealers and then transact business directly with those broker-dealers, because requiring the intermediation of a registered broker-dealer would increase costs, impede the flow of foreign research to U.S. institutions, and reduce the ability of these institutions to invest in foreign markets in which local broker-dealers had not established registered U.S. affiliates. Other commenters maintained that the Commission should grant an exemption from the registration requirements of section 15(a) to foreign broker-dealers required to be affiliated with the foreign broker-dealer. See note 142 infra.

\footnote{111} See note 150 infra and accompanying text.

\footnote{112} Letter from Amy Wiormann-Kraft, Attorney, Office of Chief Counsel, Division of Market Regulation, SEC, to Frank C. Palm, Eav., Milbank, Tweed, Hadley & McCloskey (July 28, 1987).


\footnote{114} See supra note 150 and accompanying text.

\footnote{115} See supra note 141.

\footnote{116} Letter from Bernard H. Repe, President, SEU, to the Commission, July 16, 1980, (hereinafter referred to as "DeCote & Company") (1987).

\footnote{117} See notice 150 infra and accompanying text.

\footnote{118} See Release 34-25485, 53 FR at 24502.

\footnote{119} It would be permissible for more than one registered broker-dealer to serve as intermediary between U.S. institutional investors, major U.S. institutional investors, and a foreign broker-dealer seeking to comply with the Rule.

\footnote{120} The Division of Investment Management generally would expect to respond favorably to no-action requests regarding registration as an investment adviser from foreign broker-dealers complying with the provisions of paragraph (c)(1) of the Rule. See supra notes 123-28 and accompanying text.

\footnote{121} Release 34-25485 did not make clear, however, whether the required registered broker-dealer was to be a registered broker-dealer of the foreign broker-dealer or a registered broker-dealer in the United States.
that deal only with institutional investors, on the grounds that these investors' interests would be adequately represented by the institutional nature or size of these investors. The Commission had requested comment on whether the nature of the relationship between the foreign broker-dealer and the registered broker-dealer should "involve a specified degree of ownership or control." Three commenters replied that no affiliate relationship should be required between the foreign broker-dealer and the intermediary supervisory dealer. These commenters generally argued that the use of any registered broker-dealer to perform the duties set forth in the proposed rule would provide sufficient investor protection and would lower the costs of compliance with the rule by smaller foreign broker-dealers. Finally, one commenter suggested that nonresident registered broker-dealers be permitted to perform the duties assigned to the registered broker-dealer by the proposed rule, regardless of their location or affiliation with the foreign broker-dealer.

Nine commenters argued that the responsibilities imposed on the registered broker-dealer-affiliate by the proposed rule should be reduced in some fashion. The comments stated that the registered broker-dealer's supervisory responsibilities regarding the activities of the foreign broker-dealer should be relaxed, because the registered broker-dealer's lack of information and control regarding the foreign broker-dealer's activities and relative lack of expertise in foreign securities and markets would hinder the performance of its supervisory duties. In particular, one commenter said that the foreign broker-dealer alone should be responsible for all requirements concerning confirmation and extension of credit in connection with securities transactions, and correspondingly liable in case of failure. Another commenter emphasized the protection afforded by other provisions in the proposed rule and the registered broker-dealer's difficulty in supervising foreign personnel operating independently in different time zones.

Other commenters took a slightly different approach, suggesting that the registered broker-dealer be allowed to delegate certain functions, but not liability for performing them, to the foreign broker-dealer. Thus, these commenters would allow the registered broker-dealer to assume liability for the acts and omissions of the foreign broker-dealer, rather than actually performing the functions assigned to the registered broker-dealer by the proposed rule. They also opposed requiring the registered broker-dealer to maintain all books and records for U.S. institutional investors' accounts, claiming that the requirement in the rule for the foreign broker-dealer to provide the Commission, upon request, with information or documents within its possession, custody, or control would be an adequate substitute.

The Commission has determined to continue to require the intermediation of a registered broker-dealer, to address concerns regarding financial responsibility and the effective enforcement of U.S. securities laws. The Rule does not require, however, any affiliation between the foreign broker-dealer and the registered broker-dealer through ownership or control. This position, together with the conditional eligibility of nonresident registered broker-dealers to serve as intermediaries under the Rule, should reduce greatly the costs incurred by a foreign broker-dealer in establishing a relationship with a registered broker-dealer to comply with the conditions of the direct contact exemption. Accordingly, the Commission does not believe that it is appropriate to allow the registered broker-dealer to delegate the performance of its duties under the Rule to the foreign broker-dealer, with the exception of physically executing foreign securities trades in foreign markets or on foreign exchanges.

The registered broker-dealer would have an obligation, as it has for all customer accounts, to review any Rule 15a-6 account records for indications of potential problems.

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144 Release 24-35898, 53 FR at 23650.
145 In particular, SEC rules impose specific supervisory duties on U.S. members regarding customers' accounts, e.g., Article III, Section 27, NASD Rules of Practice, NASD Manual (2003) ¶7177 at 2108 ("Each member shall review the activities of each office which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.").
146 See supra note 138 and accompanying text.
147 Security Pacific.
148 The Rule draws on the definition of "U.S. broker or dealer" in the expanded rule. Paragraph (b)(1) of the Rule defines the term "registered broker or dealer" to include persons registered with the Commission under sections 15(b)(1) or (2) of the Exchange Act, 15 U.S.C. §78o-11, §78q-11(b), §78o-12(b), §78q-12(b), respectively.
149 The Rule permits a nonresident registered broker-dealer to serve as intermediary under the Rule. Commenters noted that the nonresident broker-dealer would comply with Rule 17a-7(a). 17 CFR 240.17a-7(a). See infra Part IV.B, fn. 10.
150 See infra note 146 and accompanying text.
Moreover, if the registered broker-dealer ignores indications of irregularity that should alert the registered broker-dealer to the likelihood that the foreign broker-dealer is taking advantage of its role as a licensed U.S. customer or otherwise violating U.S. securities laws, and the registered broker-dealer continues to effect questionable transactions on behalf of the foreign broker-dealer of its customer, the registered broker-dealer’s role in the trades may give rise to possible violations of the federal securities laws. Finally, Rule 15a-6 as adopted does not allow banks to serve as the institutional investor or the U.S. institutional investor for the registered broker-dealer under the Securities Act. The Commission does not believe that it would be appropriate to permit an unregistered entity to perform this function, since this entity would not be subject to the Commission’s extensive statutory authority to regulate, examine, and discipline registered broker-dealers.

(2) Comments on U.S. institutional investor classifications. Proposed Rule 15a-6 would have allowed unregistered foreign broker-dealers to contact certain classes of U.S. institutional investors, which were limited to U.S. persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act, that, with the exception of registered broker-dealers, had total net assets of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers.

CI. Merrill Lynch, Pierce, Fenner & Smith Inc., NASDAQ, and the New York Stock Exchange believe that the proposed rule’s exclusion of registered broker-dealers, which were limited to U.S. persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act, that, with the exception of registered broker-dealers, had total net assets in excess of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers.

D. The Financial Industry Authority, Inc., and the National Association of Securities Dealers, Inc., believe that the proposed rule’s exclusion of registered broker-dealers, which were limited to U.S. persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act, that, with the exception of registered broker-dealers, had total net assets in excess of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers.

As elaborated below, however, the Commission has decided to exclude banks acting in a broker or dealer capacity (including acting as a municipal or government securities broker or dealer) or the category of persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act, that, with the exception of registered broker-dealers, had total net assets in excess of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers.

VI. Applicability of Proposed Rule 15a-6

A. Scope of Rule 15a-6

Sale of Securities. The Commission is proposing to adopt a rule allowing foreign broker-dealers to contact certain classes of U.S. institutional investors, which were limited to U.S. persons described in Rule 501(a) (1), (2), or (3) of Regulation D under the Securities Act, that, with the exception of registered broker-dealers, had total net assets of $100 million. These investors included domestic banks, savings and loan associations, brokers or dealers.

B. U.S. Institutional Investors

Six commenters expressed a desire to expand the definition of U.S. institutional investor to include all accredited investors under Regulation D, regardless of assets. In particular, the claim was made that persons qualifying as accredited investors under Regulation D, but with less than $100 million in assets, possessed adequate sophistication and judgment in financial matters to deal directly with foreign broker-dealers, consistent with their ability to make investment decisions without the disclosure afforded by the registration requirements of the Securities Act. The Commission was alerted that an asset test did not necessarily correlate with the degree of sophistication required to deal with unregistered foreign broker-dealers. Other commenters expressed a somewhat narrower view, asserting that the definition of U.S. institutional investor should be limited to institutional accredited investors.

C. Commenters on Proposed Rule 15a-6

After considering the comments, the Commission has decided to retain the proposed rule’s $100 million asset test for foreign broker-dealers contacting major U.S. institutional investors with associated persons of registered broker-dealer participating in the contact. As the Commission


4. The NYSE.

5. The Institute of International Bankers and the NYSE.

6. The National Association of Securities Dealers, Inc., and NASDAQ. In proposing Rule 15a-6, the Commission noted that accredited institutional investors under Regulation D are not the same as registered broker-dealers. Rule 34-6261, 5 FR at 26804. But see note 16 infra.

7. See also Business Week, "Re-Examining 510(b)," which would provide a self-regulatory exemption from the registration requirements of the Securities Act for creation of securities in institutional investors, the Commission recognizes that sophistication is in all circumstances an effective substitute for broker-dealer regulation. For example, systemic safeguards flowing from broker-dealer registration, such as financial responsibility requirements, are benefits that can be assured more effectively through governmental regulation.

8. After considering the comments, the Commission has decided to retain the proposed rule’s $100 million asset test for foreign broker-dealers contacting major U.S. institutional investors with associated persons of registered broker-dealer participating in the contact. As the Commission


10. The NYSE.

11. The Institute of International Bankers and the NYSE.

12. The National Association of Securities Dealers, Inc., and NASDAQ. In proposing Rule 15a-6, the Commission noted that accredited institutional investors under Regulation D are not the same as registered broker-dealers. Rule 34-6261, 5 FR at 26804. But see note 16 infra.

13. The NYSE.

14. The National Association of Securities Dealers, Inc., and NASDAQ. In proposing Rule 15a-6, the Commission noted that accredited institutional investors under Regulation D are not the same as registered broker-dealers. Rule 34-6261, 5 FR at 26804. But see note 16 infra.

stated in proposing the rule, the asset test was based on the view that "direct U.S. oversight of the competence and conduct of foreign sales personnel may be of less significance where they are soliciting only U.S. institutional investors with high levels of assets," and the $100 million asset level was intended "to increase the likelihood that the institution or its investment advisers have prior experience in foreign markets that provides insight into the reliability and reputation" of foreign broker-dealers.

Currently, the Commission continues to believe that institutions with this level of assets are more likely to have the skills and experience to assess independently the integrity and competence of foreign broker-dealers providing this access. Moreover, these larger institutions have greater ability to demand information, demonstrating the financial position of the foreign broker-dealer.

Accordingly, the Rule allows foreign broker-dealers to contact U.S. institutional investors with participation of a U.S. associated person, and to contact independently U.S. institutional investors with over $100 million in assets or assets under management. The Rule thus adds the $100 million asset test to the U.S. institutional investor definition for certain purposes.148

The Commission notes that the expanded rule deleted the language in the proposed rule that included the following in the definition of U.S. institutional investor: institutions organized or incorporated under the laws of the United States, its territories or possessions, or any state or the District of Columbia; institutions organized or incorporated under the laws of any foreign jurisdiction but conducting business principally in the United States; and branches of foreign broker-dealers in the United States or its territories or possessions.

The Commission has deleted these references from the Rule as unnecessary, because these entities already are included in the definition of foreign persons present in this country on other than a temporary basis. Paragraph (a)(3)(i)(B) of the Rule sets forth the conditions to be met by a foreign broker-dealer wishing to engage in direct contacts with U.S. institutional investors or major U.S. institutional investors without registration. Paragraph (a)(3)(i)(A) requires the foreign broker-dealer to meet these transactions through a registered broker-dealer, as discussed below. Under paragraph (a)(3)(i)(B), the foreign broker-dealer must provide the Commission, upon request or pursuant to agreements reached between any foreign securities authority and the Commission, or the U.S. government, with any information or documents within its possession, custody, or control of the foreign broker-dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under the direct contact exemption under paragraph (a)(2) of the Rule. Unlike the proposed rule, however, these requirements are subject to an exception for information, documents, testimony, or assistance withheld in compliance with foreign blocking statutes or secrecy laws.

If, after the foreign broker-dealer has exercised its best efforts to provide this information, documents, testimony, or assistance, which specifically includes requesting the appropriate foreign government to provide the foreign broker or dealer to provide the requested information, documents, testimony, or assistance to the Commission, the foreign broker-dealer is prohibited by applicable foreign law or regulations from satisfying the Commission's request, then it would continue to qualify for the exemption under paragraph (a)(3). Under paragraph (c), however, the Commission, after notice and opportunity for hearing, may withdraw the direct contact exemption under paragraph (a)(3) of the Rule with respect to the subsequent activities of the foreign broker-dealer, or class thereof, whose home country's law or regulations have prohibited the foreign broker-dealer from responding to the Commission's requests for information, documents, testimony, or assistance under paragraph (a)(3)(i)(B).

Several commenters suggested that the Commission not require foreign broker-dealers to comply with the requirements in paragraph (a)(3)(i)(B) to the extent that doing so would result in a violation of foreign blocking statutes, secrecy laws, or legal requirements to obtain the consent of foreign customers.150 The Commission agrees with the commenters that automatic removal of a foreign broker-dealer from the Rule's protections would be inappropriate. Nevertheless, given the importance of the Commission's access to information, documents, testimony, and assistance concerning foreign broker-dealers' exempted activities for the Commission's enforcement of the U.S. securities laws, the Commission believes that foreign broker-dealers should be given strong incentives to comply with the foreign securities authority or other appropriate governmental body administering the relevant foreign law or regulations restricting compliance.


149 See supra note 108 and accompanying text regarding U.S. jurisdictional research; see supra notes 15-20 and accompanying text regarding U.S. laws by foreign associated persons. The Rule also includes certain criteria created under Rule 144(a)(1), Regs. 17 CFR 240.144(a)(1), within the definition of U.S. institutional investor. In addition, when proposing Rule 144(a), the Commission said that U.S. banks and foreign banks can both qualify as foreign associated persons. See supra note 108. Rule 144(a)(1), Regs. 17 CFR 240.144(a)(1), reiterates the definition in section 3(a)(19) of the Securities Act, which generally means "any national bank or any banking institution organized under the laws of any State, Territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official." 15 U.S.C. 84(a)(1).

150 Section 3(a)(19) of the Exchange Act, 15 U.S.C. 78c(a)(19), defines this term to mean "any governmental organization or any governmental body or regulatory organization organized by or for a foreign government to administer or enforce its laws as they relate to securities matters." See Insider Trading and Securities Fraud Enforcement Act of 1980, Pub. L. No. 96-114, section 904, 102 Stat. 1497, 4601.
Therefore, the Commission has retained these requirements in paragraph (a)(3), subject to an exception for information, documents, testimony, or assistance that the foreign broker-dealer has used its best efforts to provide, but has been prohibited from making available by foreign laws or regulations. Moreover, the Commission would have the ability under paragraph (c) to remove the exemption for a foreign broker-dealer or class of foreign broker-dealers in circumstances where the Commission believes that its inability to obtain information, documents, testimony, or assistance because of foreign blocking statutes or secrecy laws raises serious investor protection or enforcement concerns. Under paragraph (c), the exemption under paragraph (a)(3) can be withdrawn only prospectively, and only by Commission order after notice and hearing, to which the usual procedural rights would attach. In addition, Commission withdrawal of the exemption is discretionary, not mandatory, and it would be subject to the same review as other Commission orders.

The requirements in paragraph (a)(3)(B) of the Rule apply only to transactions effected under the registered broker-dealer provisions of paragraph (a)(3). As proposed by the Commission, these requirements would have applied to any transactions of a foreign broker-dealer with a U.S. institutional investor or the registered broker-dealer through which they were effected. The limitation in the Rule was suggested by several commenters. The Commission does not wish to impose unnecessary burdens on foreign broker-dealers seeking to conduct their operations in the United States in a responsible way, with respect to a foreign broker-dealer's activities outside the Rule through cooperation with foreign securities authorities.

17 If the Commission required testimony of a foreign associated person who is no longer associated with the foreign broker-dealer, or who terminated association with the foreign broker-dealer, the Commission made no request, the Commission would consider the foreign broker-dealer to have complied with the Rule if it used its best efforts to obtain the testimony in taking the evidence of those persons.


20 The Bank of America, Quakke, the PSA, the SIA, the BAA, Security Pacific, and Solomon & Company.

21 See note 170 supra.

Paragraph (a)(3)(iii) of the Rule imposes requirements on foreign associated persons of the foreign broker-dealer. Paragraph (b)(2) of the Rule defines "foreign associated person" to mean any natural person resident outside the United States who is an associated person, as defined in section 3(a)(18) of the Exchange Act, of a foreign broker-dealer, and who participates in the solicitation of, a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of the Rule. The Commission has adopted this definition from paragraph (b)(3) of the proposed rule, with the addition of the phrase "under paragraph (a)(3) of this rule" for clarification. Paragraphs (a)(3)(ii)(A) and (B) of the Rule requires foreign associated persons of the foreign broker-dealer effecting transactions with U.S. institutional investors or major U.S. institutional investors to conduct all foreign broker-dealer's activities from outside the United States, with one exception. This exception allows a foreign associated person to conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that the foreign associated person is accompanied on these visits by an associated person of a registered broker-dealer that accepts responsibility for the foreign associated person's communications with these investors, and that transactions in any securities discussed by the foreign associated person are effected only through that registered broker-dealer pursuant to the provisions of paragraphs (a)(3), not by the foreign broker-dealer. This exception has been added to the proposed rule in response to several comments that foreign associated persons should be allowed to visit U.S. institutions in this country, to create and sustain business relationships with these investors.

The proposed rule prohibited any U.S. activities by foreign associated persons, but the Commission believes that, where a registered broker-dealer is present and acts as an intermediary in the execution of orders, visits to these investors should be permitted.

Paragraph (a)(3)(iii)(B) of the Rule requires that foreign associated persons not be subject to a statutory or otherwise applicable disciplinary disqualification specified in section 3(a)(9) of the Exchange Act, or any substantially equivalent foreign act, or any order, finding, or order denying, suspending, revoking registration of any associated person, or any order denying suspending or revoking registration or suspension, or any order or order not have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(9) of the Exchange Act, or any order.

This language is a more complete description of the applicable disciplinary disqualifications cited in paragraph (a)(iii) of the proposed rule and paragraph (b)(3)(ii) of the expanded rule, both of which refer to violations of substantially equivalent foreign statutes or regulations.

Finally, paragraph (a)(3)(iii)(A) of the Rule requires the use of a registered broker-dealer as an intermediary in effecting transactions with U.S. institutional investors or major U.S. institutional investors and foreign associated persons and the foreign broker-dealer as a condition for this exemption. Paragraph (a)(3)(iii)(A) first requires that transactions with these investors be effected through the

10 Quakke, the PSA, Chase Manhattan Government Securities, the SIA, the BAA, Security Pacific, the FTBBA, Solomon & Company, and Merrill Lynch.


registered broker-dealer. This means that the registered broker-dealer must handle all aspects of these transactions except the negotiation of their terms, 18 which may occur between the investors and the foreign broker-dealer (through its foreign associated persons). Paragraph (a)(3)(ii)(A) requires the registered broker-dealer to ensure that transactions with foreign associated persons are subject to direct Commission oversight. The registered broker-dealer must also ensure that the performance of these functions is subject to all required confirmations 19 and account statements to the investors. These documents are significant points of contact between the investors and the broker-dealer, and they provide important information. Also, as between the foreign broker-dealer and the registered broker-dealer, the latter is required to extend or arrange for the extension of any credit to these investors in connection with the purchase of securities 19. In addition, the registered broker-dealer is responsible for maintaining required books and records relating to the transactions conducted under paragraph (a)(3) of the Rule, including those required by Rule 17a-7(a)(10) and 17a-189, which facilitates Commission supervision and investigation of these transactions. 19 As adopted, the functions required of the registered broker-dealer in paragraph (a)(3)(ii)(A) are taken from the proposed rule, with some exceptions to the language of the proposed rule. Paragraph (a)(4)(iii)(B) of the Rule requires the registered broker-dealer to participate in the performance of certain functions described in paragraph (a)(3)(ii)(B) of the Rule, also has been drawn from the proposed rule. In addition, paragraph (a)(4)(iii)(D) of the Rule requires the registered broker-dealer to obtain from the foreign broker-dealer and each foreign associated person written consent to service of process for any civil action brought by the Commission or any SRO, as defined in section 3(A)(ii)(B) of the Exchange Act, stating that compliance with that rule. Sullivan & Cromwell spoke without elaboration of a registered broker-dealer that "should not be considered to be a foreign broker-dealer. If this term acquired the meaning of an introducing or clearing relationship, the foreign broker-dealer held U.S. customers' funds and securities. regulation of the foreign broker-dealer would be required. See Part II.B. supra. 20 Paragraph (3)(iii)(D) of the expanded rule, the Rule requires the registered broker-dealer to extend or arrange for the extension of any credit to these investors in connection with the purchase of securities.

18 Of course, the rules of foreign securities exchanges and over-the-counter markets may require the foreign broker-dealer, as a matter of local or state law, to perform specific functions and physical execution of transactions in foreign securities listed on those exchanges or traded in those markets. The Rule would permit the foreign broker-dealer to perform these functions. 19 See Rule 10b-9, 17 CFR 240.10b-9. The confirmation requirements imposed by Rule 10b-9 are a significant means of supervising transactions. 20 The extensive U.S. regulation of these functions is intended to prohibit U.S. investors and securities markets. See e.g., sections 17 and 110(b) of the Exchange Act, 17 U.S.C. 801 and 801(d), and the rules and regulations thereunder, e.g., Regulation T, 17 CFR 222.100a-18, and Rule 16(b)-3, 17 CFR 240.16(b)-2.

17 CFR 240.17a-3 and 17a-4. But see note 150 supra and accompanying text concerning delegation of data processing functions to the foreign broker-dealer. Of course, because the registered broker-dealer would "book" Rule 15a-3 trades as its own, it would be required to comply with the provisions of Rule 15a-3. 17 CFR 240.15a-3. The Commission's regulation of these transactions, and it would be responsible for receiving, delivery, and safeguarding funds and securities on behalf of the investors. The Commission would encourage the use of designated foreign custodian banks deemed satisfactory by the Commission for purposes of

18 Of course, because the registered broker-dealer would "book" Rule 15a-3 trades as its own, it would be required to comply with the provisions of Rule 15a-3. 17 CFR 240.15a-3. Merrill Lynch believed that it should be permitted for foreign custodian banks to handle the clearance and settlement of foreign securities transactions by the investors under the Rule. The Commission notes that Rule 15a-3(a)(4) 17 CFR 240.15a-3(a)(4) already permits the use of designated foreign custodian banks deemed satisfactory by the Commission for purposes of

19 Compliance with that rule. Sullivan & Cromwell spoke without elaboration of a registered broker-dealer that "should not be considered to be a foreign broker-dealer. If this term acquired the meaning of an introducing or clearing relationship, the foreign broker-dealer held U.S. customers' funds and securities. regulation of the foreign broker-dealer would be required. See Part II.B. supra. 20 Paragraph (3)(iii)(D) of the expanded rule, the Rule requires the registered broker-dealer to extend or arrange for the extension of any credit to these investors in connection with the purchase of securities.

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Transactions with Certain Persons. Paragraph (a)(4)(i) of the Rule provides an exemption for a second type of direct position by foreign-broker-dealers that affect any transactions in securities with other brokers or dealers in foreign markets to recognize that dealers in foreign markets may transmit securities of foreign broker-dealers to act as broker or dealer capacity.

The Commission does not intend this exemption to permit the foreign broker-dealer to act as a dealer in the United States through an affiliated registered broker-dealer or to act as principal for its own account. The Commission recognizes that dealers in foreign markets or banks acting in a broker or dealer capacity could sell securities to registered broker-dealers without registration.

In response, the Commission expressly has exempted trades of foreign broker-dealers with registered broker-dealers and with banks acting in a broker or dealer capacity.

The Commission notes that the staff has taken no-action positions by foreign-broker-dealers under the Rule that the staff would take the position.

The Commission would take the position, however, that a foreign person not otherwise deemed a resident of the United States under applicable law would be presumed to be temporarily present in this country for the purpose of claiming this exemption different from those generally established under state or federal law. The Commission does not believe that it would be appropriate to establish a separate standard of residency for the purpose of claiming this exemption.

One commenter asked the Commission to define U.S. residency for purposes of compliance with this and other exemptions in the Rule. The Commission does not believe that it would be appropriate to establish a separate standard of residency for the purpose of claiming this exemption different from those generally established under state or federal law.

While the proposed interpretive statement said that a foreign broker-dealer had a bona fide, pre-existing relationship before the foreign person entered the United States, this paragraph codifies part of the proposed interpretive statement.
reduce the costs and increase the efficiency of international securities transactions as well as facilitate the international flow of information. The differing procedures in the Rule for nondirect and direct contacts by foreign broker-dealers with U.S. investors also will facilitate the access of U.S. investors to foreign securities markets through those foreign broker-dealers and the research that they provide, consistent with the regulatory safeguard afforded by broker-dealer registration. In light of the importance that the Commission attaches to broker-dealer registration and regulation in the international context, the Commission believes that the exemptions in Rule 15a-6 are in the public interest and consistent with the protection of U.S. investors.

V. Effects on Competition and Regulatory Flexibility Act Certification

Section 21(a)(2) of the Exchange Act \(^{216}\) requires that the Commission, when adopting rules under the Exchange Act, consider the anticompetitive effects of those rules. If any, and balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission believes that adoption of the Rule will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, especially since the Rule provides exemptions for eligible foreign broker-dealers from the broker-dealer registration requirements under the Exchange Act.

Pursuant to section 3(b) of the Regulatory Flexibility Act,\(^ {217} \) when the Commission proposed Rule 15a-6 Chairman Ruder certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.\(^ {218} \) The Commission did not receive any comments on the Chairman's certification.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Statutory Basis and Text of Amendments

The Commission hereby amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulations as follows:


\(^ {218} \) Release No. 23805, 53 FR at 23655.

S-031999 002599(17-JUL-89-10:18:47)
(a)(3)(iii)(B) of the Act, and
(b) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3-3 under the Act (17 CFR 240.15c3-3); and
(c) Maintains all required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 17a-4); and
(d) Maintains books and records in a form, content, and manner prescribed by the Commission under the Act (17 CFR 240.15c3-2), including any books and records required under Rule 15c3-3 and any other books and records related to the transactions.
(e) Conducts all securities activities through the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD; and
(f) Maintains a written record of the information and consents required by paragraphs (a)(3)(ii)(C) and (D) of this section, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this section, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a-7(a) under the Act (17 CFR 240.17a-7(a)), and makes these records available to the Commission upon request.

(4) Effectuates transactions in securities with or for, or induces or attempts to induce the purchaser or sale of any security by:

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker or dealer capacity as permitted by U.S. law;

(ii) The African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds;

(iii) A foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;

(iv) Any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States;

(v) U.S. citizens resident outside the United States, provided that the transactions occur outside the United States, and that the foreign broker or
dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.

(b) When used in this rule, (1) The term "family of investment companies" shall mean:

(i) Except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) The term "foreign associated person" shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 6(a)(18) of the Act. of the foreign broker or dealer, and who participates in the activities of U.S. institutional investors or a major U.S. institutional investor under paragraph (a)(2) of this section.

(3) The term "foreign broker or dealer" shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of "broker or dealer" in sections 3(a)(4) or 3(a)(5) of the Act.

(4) The term "major U.S. institutional investor" shall mean a person that is:

(a) A U.S. institutional investor that has, or has had, management, total assets in excess of $100 million, provided, however, that for purposes of determining the total assets of an investment company under this rule, the investment company may include the assets of any family of investment companies of which it is a part.

(b) An investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940 whose total assets under management in excess of $100 million.

(c) The term "registered broker or dealer" shall mean a person that is registered with the Commission under sections 15(b), 15(b)(2), or 15(c)(2) of the Act.

(6) The term "United States" shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

The term "U.S. institutional investor" shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or


(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.

By the Commission.

Jonathan G. Katz,
Secretary.
[FR Doc. 89-18775 Filed 7-17-89; 8:45 am]
BILLING CODE 9105-01-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange-Visitor Program; Extension of Stay—Exchange Visitors From the People's Republic of China

AGENCY: United States Information Agency.

ACTION: Temporary rule.

SUMMARY: This notice amends the regulations found at 22 CFR 514.33.

General limitations of stay, to permit the extension of the authorized duration of stay for one year for exchange visitors from the People's Republic of China who entered the United States on or before June 6, 1989, and whose authorized period of stay will expire before June 6, 1990. This action is taken in consonance with the current foreign policy of the United States as evidenced by the White House of June 5.

EFFECTIVE DATES: This temporary rule is effective from June 6, 1989, and shall remain in effect until June 6, 1990.

ADDRESS: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 304 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lynn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 465-8629.

SUPPLEMENTARY INFORMATION: In furtherance of the foreign policy, the Agency amends the prescribed duration of stay in 22 CFR 514.33 to permit a one-year extension for exchange visitors from the People's Republic of China whose authorized period of stay will expire before June 6, 1990.

This modification of the rule will enable exchange visitors from the People of the Republic of China to maintain their current J-1 visa status by applying to the Immigration and Naturalization Service for an extension. It does not apply to exchange visitors from the People's Republic of China arriving in the United States after June 8, 1989. Changes of category or program objective will not be permitted for exchange visitors whose stay is extended under this rule.

Program sponsors may issue a new IAP-66 form to exchange visitors from the People's Republic of China to permit the one-year extension of the J-1 status in accordance with this temporary rule.

This action is taken without regard to the notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553, as it comes within the exception at 5 U.S.C. 553(a)(1) as "foreign affairs function of the United States." Further, because of the immediacy of the problem of exchange visitors from the People's Republic of China whose authorized stay will expire momentarily, notice and public comment thereon are impracticable and unnecessary.