

and dealers from all of Treasury's risk assessment rules if they: (1) Do not carry customer accounts and maintain capital (equity capital plus subordinated debt) of less than \$20 million; (2) maintain capital of less than \$250,000 (regardless of whether they carry customer accounts or not); or (3) have an affiliated registered broker or dealer,<sup>13</sup> provided that the registered broker or dealer is subject to, and in compliance with, the SEC's risk assessment rules, and provided that all of the MAPs of the registered government securities broker or dealer are also MAPs of the registered broker or dealer. A registered government securities broker or dealer that has no affiliates or holding company would not be subject to the Department's risk assessment rules. The Department's rules also allow affiliated registered government securities brokers and dealers to request in writing that the Department permit one of the firms—a "Reporting Registered Government Securities Broker or Dealer"—to maintain and report risk assessment information on behalf of the other affiliated firms. The Department will promptly advise the SEC and the National Association of Securities Dealers of such a request and consult with them in order to provide for an efficient examination process.

The Department is also adopting the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities. (See paragraphs (b) and (c) of 17 CFR 240.17h-1T, and paragraphs (c) and (d) of 17 CFR 240.17h-2T, as modified by §§ 404.2(b) and 405.5, respectively). With respect to such affiliates, registered government securities brokers and dealers will be deemed in compliance with the financial and securities recordkeeping requirements of the rule by maintaining copies of reports that such affiliates already submit to certain domestic and foreign regulators. The registered government securities brokers and dealers will, however, remain responsible for maintaining organizational charts, risk management policies, and records of legal proceedings in which they are involved, and will have to submit such information on Form 17-H (Items 1-3 of Part I of the form).

The Department believes that these types of special provisions and exemptions will preclude duplicative

<sup>13</sup> Similarly, the CFTC's final risk assessment rules permit FCMs that are, or that have affiliates that are, registered broker-dealers or registered government securities broker-dealers to file Form 17-H in partial compliance with the CFTC's rules. See *Supra* note 9.

and unnecessary recordkeeping and reporting for various registered government securities brokers and dealers without compromising regulators' need to capture information on the potentially risky activities of entire holding company systems.

### C. Scope of Proposed Risk Assessment Rules

In proposing its risk assessment rules, the SEC noted that it believed the majority of registered brokers and dealers that conduct a business with the public do not pose the types of risks the Reform Act was designed to address.

Following this precept, the SEC exempted from its rules registered brokers and dealers whose activities are not likely to pose a material threat to the investing public or the marketplace (e.g., limited purpose mutual fund brokers), whose operations are relatively small (as measured by capital levels), or whose functions do not include carrying customer accounts (unless they are large firms).

The SEC also adopted special provisions for registered brokers and dealers that have certain regulated affiliates, such as banks, insurance companies, futures commission merchants, and foreign affiliates, recognizing the existence of certain regulatory reporting by these entities and eliminating the need to create a new set of records for such entities. In lieu of adhering to the bulk of the SEC's risk assessment rules, registered brokers and dealers are, in certain specified cases, able to maintain and submit copies of reports that these affiliates already routinely submit to U.S. and foreign regulators.

Of the approximately 5,600 registered brokers and dealers that conduct a public business, SEC staff informs us that roughly 250 firms are currently following the SEC's risk assessment rules. These are the largest firms and the ones that potentially pose the most risk to the markets. In contrast, of the 33 registered government securities firms in existence at the time of this writing, approximately 11 are potentially subject to the Department's risk assessment rules since we estimate that 22 of the 33 firms will qualify for at least one of the Treasury exemptions. It appears that five registered government securities brokers and dealers will qualify for an exemption because their capital levels are under \$250,000. Fourteen firms will qualify for an exemption because they do not carry customer accounts and have capital of less than \$20 million. Six firms will potentially qualify for an exemption because their affiliated

registered brokers and dealers follow the SEC's risk assessment rules.<sup>14</sup>

Of the 11 firms potentially subject to the Department's rules, three are affiliated within the same holding company structure. Thus, any one of the firms will be able to request that the Department authorize it to be the Reporting Registered Government Securities Broker or Dealer on behalf of the other two firms. Of the remaining eight firms that are potentially subject to the Department's rules, three have foreign bank holding companies, which could ease their recordkeeping and reporting requirements considerably. These firms should be able to maintain and submit the same reports that their holding companies submit to foreign financial regulatory authorities, with a copy translated into English. The amount of information the remaining five firms will be required to maintain and report will be based on the number of MAPs designated and the types of activities the MAPs conduct. The Department believes this approach meets the objectives of the statute without imposing significant costs or burdens on market participants. In order to provide affected firms time to make personnel and systems adjustments required for compliance, the Department has adopted a multi-month phase-in period.<sup>15</sup> Refer to Section III below for the Department's implementation schedule.

In preparing the rules, the Department consulted with the staffs of the SEC and the bank regulatory agencies; they concur with the Department's approach.

The Department is also promulgating technical amendments to § 404.2 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising newly redesignated paragraph (c). The revisions to redesignated paragraph (c) will more accurately define the terms "registered government securities broker or dealer" and "the Secretary of the Treasury" as they are used to modify 17 CFR 240.17a-7.

### III. Implementation Schedule

Most of the Department's implementation dates have been

<sup>14</sup> The total estimated number of firms qualifying for exemptions exceeds 22 because we anticipate that some firms will qualify for more than one exemption.

<sup>15</sup> Many of the commentators to the SEC's proposed risk assessment rules stated that they would be required to make personnel and systems adjustments to comply with the rules. To ease the burden associated with meeting the requirements of its rules, the SEC adopted a phased-in implementation schedule. The Department is adopting a similar phased-in approach to implementation.