

TO: Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SUB: Comment on proposed rule making, "Exemption of Certain Foreign Brokers or Dealers,"
and request for relief for 'natural persons' thereunder.

REF: File Number S7-16-08

The Commission is commended for increasing the class of 'qualified investors' with access to full service foreign brokers by adopting 15 U.S.C. 78c(a)54.

However, we find the subclass of 'natural persons' admitted at 54(A)(xii) to be woefully inadequate. We estimate that the \$25,000,000 discretionary investment requirement admits just 2 of every 10,000 individual investors with discretionary investments. That effectively perpetuates the status quo for most sophisticated individual investors.

From our personal experience the restriction to unsolicited transactions increases the risk for ordinary investors:

- Foreign brokers are reluctant to establish such accounts because they fear even "Thank you for your business" on a transaction statement will be interpreted by the Commission as a solicitation.
- The Commission's rules are so confusing that some just declare such accounts as "Illegal under SEC rules."
- This forces us to use higher risk brokerage.
- In the U.K. the Commission's rules deny us the safety of Crestco custody.
- Research reports and securities descriptions on foreign broker web sites carry the footnote, "Not for viewing by U.S. persons." This denies us the most basic investor protection--access to information.

The status quo and its proposed perpetuation also deny us fundamental economic opportunities with our foreign portfolios:

- Cross-foreign-border M & A may offer a choice of a bond in lieu of cash. This option is specifically not available to U.S. holders because it is considered "solicitation of sale of a bond."
- We are denied the opportunity to participate in foreign DRIPs because the Commission considers that to be solicitation of sale of a stock.

Most of the Roundtable discussion appeared to center on the plight of the individual investor. A good part of the discussion is characterized by two quotes. Alan L. Beller said, "... I don't like the idea of drawing lines that exclude retail investors because they don't have \$5 million. ... and I don't like it because ... money is not the same thing as sophistication." Prof. Roberta S. Karmel said, "... I think what's important is for the SEC to get comfortable with the regulation by foreign regulator and the disclosure regime of a foreign jurisdiction, and that maybe right now these retail investors are being protected in a way that's not in their best interest. ... I think the SEC should confront these problems head on and come up with a regime that includes the ability of individual investors as well as institutional investors to more easily access foreign securities for investment."

The ultimate fallacy in using a dollar amount is found in the law itself. At 54(B) the level is lowered to \$10,000,000 for playing in the "Wild West" of asset-backed securities! On the other hand, the Commission places no dollar requirement on Americans even incidentally resident abroad. Of these the Commission states at page 39196 of the filing, "... we have no knowledge of investor protection concerns being raised." The only foreign financial experience mandated by living abroad is having a cash account denominated in a foreign currency.

The panelists seem to believe that the sophisticated individual investor self-selects investing abroad based on his personal comfort level with the foreign culture. They emphasized that that cultural comfort has to be very strong before the decision is made to invest abroad. It is likely that such investors are even more sophisticated in the foreign financial markets than a typical American living there.

Based on the foregoing, we request that the Commission use its authority at 54(C) to either rewrite 54(A)(xii) or create a new 54(A)(xv) to read, "**any natural person(s) who owns SEC registered securities of a type similar to what he (they) will acquire in foreign markets, and who holds a cash account not denominated in U.S. dollars.**"

The prerequisite to already hold similar U.S. securities seems to be a reasonable interpretation of the panelists measure of sophistication that is not money. Since the types of securities registered by the SEC are also typically registered elsewhere, this appears to provide the Commission with an investor protection comfort level in line with Prof. Karmel's criteria. The requirement for a cash account not denominated in U.S. dollars incorporates the minimal financial experience mandate on U.S. residents abroad.

Respectfully submitted,
Carl N. Brooks
August 29, 2008