

Kansas City, MO, Charles B. Wheeler Downtown, Takeoff Minimums and Textual DP, Amdt 2

Kansas City, MO, Kansas City Intl, Takeoff Minimums and Textual DP, Orig

St. Charles, MO, St. Charles County Smartt, RNAV (GPS) RWY 18, Orig

St. Charles, MO, St. Charles County Smartt, VOR RWY 18, Amdt 1

St. Charles, MO, St. Charles County Smartt, GPS RWY 18, Orig, CANCELLED

St. Charles, MO, St. Charles County Smartt, Takeoff Minimums and Textual DP, Amdt 2

St. Joseph, MO, Rosecrans Memorial, Takeoff Minimums and Textual DP, Amdt 6

St. Louis, MO, Lambert-St. Louis Intl, LDA PRM RWY 30L, Orig (Simultaneous Close Parallel)

St. Louis, MO, Lambert-St. Louis Intl, LDA/DME RWY 30L, Orig

St. Louis, MO, Lambert-St. Louis Intl, ILS PRM RWY 30R, Orig (Simultaneous Close Parallel)

St. Louis, MO, Lambert-St. Louis Intl, ILS OR LOC RWY 30R, ILS RWY 30R (CAT II), ILS RWY 30R (CAT III), Amdt 8

St. Louis, MO, Lambert-St. Louis Intl, LDA/DME RWY 30L, Amdt 2C, CANCELLED

St. Louis, MO, Lambert-St. Louis Intl, Takeoff Minimums and Textual DP, Orig

St. Louis, MO, Spirit of St. Louis, Takeoff Minimums and Textual DP, Orig

Ruidoso, NM, Sierra Blanca Regional, ILS OR LOC/DME RWY 24, Orig

Ruidoso, NM, Sierra Blanca Regional, LOC/DME RWY 24, Orig-B, CANCELLED

Batavia, NY, Genesee County, ILS OR LOC RWY 28, Amdt 5

Buffalo, NY, Buffalo Niagara Intl, NDB RWY 23, Orig

Goldshoro, NC, Goldshoro-Wayne Muni, NDB RWY 23, Amdt 1, CANCELLED

Statesville, NC, Statesville Regional, GPS RWY 10, Amdt 1, CANCELLED

Statesville, NC, Statesville Regional, RNAV (GPS) RWY 10, Orig

Statesville, NC, Statesville Regional, VOR/DME RWY 10, Amdt 8

Statesville, NC, Statesville Regional, Takeoff Minimums and Textual Departures, Orig

Ardmore, OK, Ardmore Downtown Executive, NDB RWY 35, Amdt 5, CANCELLED

Eugene, OR, Mahlon Sweet Field, LOC/DME RWY 16L, Orig

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 9L, Amdt 1

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 9R, Amdt 2

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9L, Orig, CANCELLED

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 9R, Amdt 1, CANCELLED

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 17, Amdt 1

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) Y RWY 17, Orig, CANCELLED

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27L, Amdt 1

Philadelphia, PA, Philadelphia Intl, RNAV (GPS) RWY 27R, Amdt 1

Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 5, Orig

Orangeburg, SC, Orangeburg Muni, RNAV

Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 23, Orig

Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 35, Orig

Orangeburg, SC, Orangeburg Muni, NDB RWY 5, Amdt 1

Orangeburg, SC, Orangeburg Muni, VOR RWY 5, Amdt 4C, CANCELLED

Houston, TX, William P. Hobby, ILS OR LOC RWY 4, ILS RWY 4 (CAT II), ILS RWY 4 (CAT III), Amdt 40

The FAA published an Amendment in Docket No. 30452; Amdt No. 3128 to Part 97 of the Federal Aviation Regulations (Vol. 70, FR No. 155, page 47092, dated August 12, 2005) Under section 97.27 effective for 1 Sep 2005 which is hereby rescinding the Cancellation in its entirety:

Boise, ID, Boise Air Terminal (Gowen Field), NDB RWY 10R, Amdt 27A, CANCELLED

[FR Doc. 05-18376 Filed 9-15-05; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### 15 CFR Parts 736, 738, 742, 744, and 748

[Docket No. 050803216-5216-01]

RIN 0694-AD30

#### Revisions and Clarifications to the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by deleting a redundant paragraph and redesignating the remaining paragraphs in one section for clarity; inserting material inadvertently omitted from previous rules in three places in the EAR; clarifying instructions for applying for authorization to transfer items subject to the EAR in-country; adding an alias for a previously listed entity on the Entity List; and removing references to two Export Control Classification Numbers (ECCNs) that do not exist. The purpose of these amendments is to make corrections and clarifications to the EAR so the public will find them easier to use.

**DATES:** This rule is effective September 16, 2005.

**ADDRESSES:** Although this is a final rule, comments are welcome and should be sent to [publiccomments@bis.doc.gov](mailto:publiccomments@bis.doc.gov), fax (202) 482-3355, or to Regulatory Policy Division, Bureau of Industry and Security, Room H2705, U.S. Department of Commerce, Washington, DC 20230. Please refer to regulatory identification number (RIN) 0694-AD30 in all

comments, and in the subject line of e-mail comments.

**FOR FURTHER INFORMATION CONTACT:** Timothy Mooney, Office of Exporter Services, Bureau of Industry and Security, Telephone: (202) 482-2440, E-mail: [tmooney@bis.doc.gov](mailto:tmooney@bis.doc.gov).

#### SUPPLEMENTARY INFORMATION:

This rule makes the following corrections and clarifications:

1. A redundant paragraph is deleted in Supplement No. 2 to part 736 of the EAR, which sets forth the Administrative Orders of the Bureau of Industry and Security (BIS). Prior to the publication of this rule, Administrative Order Two contained a paragraph designated as (a), the introductory text of which merely repeated the title of the order. The order contained no paragraph designated as (b). This rule removes the introductory text of paragraph (a) and redesignates all subsequent paragraphs accordingly.

2. In paragraph 738.2(d)(2)(i)(A), an omission is corrected by adding "UN United Nations Embargo" in alphabetical order to the list of all possible Reasons for Control. That phrase was previously inadvertently omitted.

3. In paragraph 738.4(b)(3) (Sample analysis), a typographical error is fixed in the third sentence by inserting the preposition "of" into the phrase discussing nuclear nonproliferation controls. The phrase "I understand that though nuclear nonproliferation controls apply to a portion the entry \* \* \*" now reads "I understand that though nuclear nonproliferation controls apply to a portion of the entry \* \* \*".

4. In Section 742.19, references to ECCNs 2B994 and 2C994, which do not exist, are removed, and references to ECCNs 2D994 and 2E994 are added. In June 2000, the EAR were amended to reduce export and reexport controls to North Korea (65 FR 38148, June 19, 2000). Prior to publication of that rule, almost all exports and reexports to North Korea of items subject to the EAR required a license. Although that rule reduced license requirements to North Korea overall, it retained license requirements for most items controlled on the Commerce Control List (CCL). These license requirements were enumerated in a newly created Section 742.19 and included all items on the CCL except those items controlled under ECCNs 0A988 and 0A989. This was clarified as including all items controlled for Anti-Terrorism (AT) reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the

License Requirements section of an ECCN, as well as numerous specifically identified ECCNs which were controlled for AT reasons but which did not make reference to the Country Chart. When listing the ECCNs of items controlled for AT reasons but which did not make reference to the Country Chart, the rule mistakenly listed ECCNs 2B994 and 2C994, which did not then (and still do not) exist. In addition, the rule neglected to specifically mention ECCNs 2D994 and 2E994, both of which were controlled for AT reasons but did not reference the Country Chart. This rule corrects that error by replacing the references in paragraph 742.19(a)(1) to 2B994 and 2C994 with references to 2D994 and 2E994.

5. Supplement No. 4 to part 744 (Entity List) is amended by revising the entry for the Beijing University of Aeronautics and Astronautics (BUAA) by adding an alias, Beihang University. This alias is being added because the Chinese name for BUAA is sometimes translated into English as Beihang University. The Entity List now notifies the public that a license is required for the export or reexport of all items subject to the EAR to the "Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University".

6. In section 748.8 (Unique Application and Submission Requirements), this rule adds instructions on how to apply for authorization to transfer items subject to the EAR in-country using the BIS Multipurpose Application (Form 748-P) and its electronic equivalent in the Simplified Network Application Process (SNAP). This rule adds paragraph "(v) In-country transfers" to section 748.8 and adds specific instructions for filling out applications for in-country transfers in Supplement No. 2 to part 748 (Unique Application and Submission Requirements). These application instructions will insure that applications for in-country transfer authorization are filled out correctly, and will also clarify for the public that a temporary license application process created in 2004 is no longer necessary and should no longer be used due to improvements in BIS software. The history of the application process for in-country transfer authorization is explained in more detail below.

In July 2004, the EAR were amended when licensing responsibility for exports and reexports to Iraq of items subject to the EAR reverted from the Department of the Treasury to the Department of Commerce (69 FR 46077, July 30, 2004). These amendments created a new requirement for

authorization to make certain in-country transfers in Iraq. Because of an inability at that time to modify the BIS software that processes and tracks license application data submitted through the Multipurpose Application, BIS created a unique process to apply for authorization to transfer items in-country, which did not require use of either BIS Form 748-P or its electronic equivalent, but required the applicant to submit a letter request to BIS. That process was explained in guidance published on the BIS Web site. Since July 2004, additional requirements for in-country transfer authorization have been issued, specifically in sections 744.3 and 744.4 of the EAR.

From November 17, 2004 to June 17, 2005, BIS received 209 applications for in-country transfer authorization under section 746.3 and part 744 of the EAR, and pursuant to conditions that had been placed on licenses issued by BIS. Only one of these applications was submitted according to the letter process set up in July 2004, and the rest were submitted using BIS Form 748-P. To improve the handling of these applications, BIS updated its software, which can now more effectively process and track in-country transfer application data received from the Multipurpose Application. With this improved software, BIS is now eliminating the letter application process created in July 2004, and is instead requiring all in-country transfer authorization applications to be submitted using BIS Form 748-P or its electronic equivalent. This new process will apply to applications to make in-country transfers under the EAR, including under sections 744.3, 744.4, 744.6, 744.18 and 746.3 of the EAR, and pursuant to conditions imposed on licenses issued under the EAR.

Despite the progress that has been made updating BIS software, it still has not been modified to process and track data provided through fields that are not currently available on the BIS Form 748-P and its electronic equivalent. Therefore, as an interim measure, BIS requires an applicant for in-country transfer authorization to designate its proposed transaction as a "reexport" in Box 5 of the BIS 748-P or its electronic equivalent, which will allow BIS software to process and track information regarding both an original ultimate consignee and a new ultimate consignee related to the transaction. This rule also instructs the applicant to enter "in-country transfer" in Box 9 of BIS 748-P or its electronic equivalent, which will allow BIS software to recognize that the application is for in-country transfer authorization, rather

than reexport authorization. Further, the applicant is directed by this rule to state the same foreign country for both the original ultimate consignee and the new ultimate consignee.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 2, 2005, 70 FR 45273 (August 5, 2005), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

#### Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or by fax to (202) 395-7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(3) to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment because it is unnecessary. This regulation deletes a redundant paragraph and redesignates the remaining paragraphs in one section for clarity; inserts material inadvertently omitted from previous rules in three places in the EAR; clarifies instructions for applying for authorization to transfer items subject to the EAR in-country; adds an alias for a listed entity on the

Entity List; and removes references to two ECCNs that do not exist. The revisions made by this rule are administrative in nature and do not affect the rights and obligations of the public. Because these revisions are not substantive changes to the EAR, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in effectiveness required by U.S.C. 553(d) is not applicable because this rule is not a substantive rule. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

#### List of Subjects

##### 15 CFR Parts 736 and 738

Exports.

##### 15 CFR Part 742

Exports, Terrorism.

##### 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

##### 15 CFR part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 736, 738, 742, 744, and 748 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

#### PART 736—[AMENDED]

■ 1. The authority citation for part 736 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 2151 (note), Pub. L. 108–175; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004

Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

- 2. Supplement No. 2 to part 736, is amended in “Administrative Order Two” by:
  - a. Removing the introductory text of paragraph (a);
  - b. By redesignating paragraph (a)(1) as paragraph (a) introductory text and by redesignating paragraph (a)(2) as paragraph (b);
  - c. By redesignating paragraphs (a)(1)(i) and (a)(1)(ii) as paragraphs (a)(1) and (a)(2);
  - d. By redesignating paragraph (a)(1)(iii) as paragraph (a)(3); and
  - e. By redesignating paragraph (a)(1)(iv) as paragraph (a)(4).

#### PART 738—[AMENDED]

■ 3. The authority citation for part 738 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

#### § 738.2 [Amended]

■ 4. Section 738.2 paragraph (d)(2)(i)(A), is amended by adding in alphabetical order “UN United Nations Embargo” to the list of all possible Reasons for Control.

#### § 738.4 [Amended]

■ 5. Section 738.4 paragraph (b)(3) is amended by revising the phrase in the third sentence, “I understand that though nuclear nonproliferation controls apply to a portion the entry” to read “I understand that though nuclear nonproliferation controls apply to a portion of the entry”.

#### PART 742—[AMENDED]

■ 6. The authority citation for part 742 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec.

901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, 3 CFR, 2003 Comp., p. 320; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 7. Section 742.19 is amended by revising the second sentence of paragraph (a)(1), to read as follows:

#### § 742.19 Anti-terrorism: North Korea.

(a) License requirements.

(1) \* \* \* This includes all items controlled for AT reasons, including any item on the CCL containing AT column 1 or AT column 2 in the Country Chart column of the License Requirements section of an ECCN; and ECCNs 0A986, 0A999, 0B986, 0B999, 0D999, 1A999, 1B999, 1C995, 1C999, 1D999, 2A994, 2A999, 2B999, 2D994, 2E994, 3A999, and 6A999.

\* \* \* \* \*

#### PART 744—[AMENDED]

■ 8. The authority citation for part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 4, 2004, 69 FR 64637, 3 CFR, 2004 Comp., p. 303; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 9. Supplement No. 4 to part 744 is amended by revising under the Country, “China, People’s Republic of” the entry for “Beijing University of Aeronautics and Astronautics (BUAA)”, to read as follows.

## SUPPLEMENT NO. 4 TO PART 744.—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
China, People's Republic of.	Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University.	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266 5/14/01 70 FR [Insert FR Page Number] 9/16/05.
*	*	*	*	*

**PART 748—[AMENDED]**

■ 10. The authority citation for part 748 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 11. Section 748.8 is amended by adding new paragraph (v), to read as follows:

**§ 748.8 Unique application and submission requirements.**

\* \* \* \* \*

(v) *In-country transfers.*

■ 12. Supplement No. 2 to part 748 is amended by adding new paragraph (v), to read as follows:

**Supplement No. 2 to Part 748—Unique Application and Submission Requirements**

\* \* \* \* \*

(v) *In-country transfers.* To request an in-country transfer, you must specify “in-country transfer” in Block 9 (Special Purpose) and mark “Reexport” in Block 5 (Type of Application) of the BIS-748P “Multipurpose Application” form. The application also must specify the same foreign country for both the original ultimate consignee and the new ultimate consignee.

Dated: September 9, 2005.

**Matthew S. Borman,**  
*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 05-18373 Filed 9-15-05; 8:45 am]

**BILLING CODE 3510-33-P**

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Part 275**

[Release Nos. 34-52407; IA-2426; File No. S7-25-99]

RIN 3235-AH78

**Certain Broker-Dealers Deemed Not To Be Investment Advisers, Extension of Compliance Date**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** The Securities and Exchange Commission is extending the compliance date for the rule that identifies circumstances under which a broker-dealer's advice is not “solely incidental to” its brokerage business or to brokerage services provided to certain accounts and thus subjects the broker-dealer to the Investment Advisers Act of 1940.

**DATES:** The effective date for § 275.202(a)(11)-1, issued on April 12, 2005 (70 FR 20424, Apr. 19, 2005), remains April 15, 2005 (except for § 275.202(a)(11)-1(a)(1)(ii), which was effective May 23, 2005). Effective on September 19, 2005, the compliance date for § 275.202(a)(11)-1(b)(2) and § 275.202(a)(11)-1(b)(3) is extended from October 24, 2005 to January 31, 2006.

**FOR FURTHER INFORMATION CONTACT:** Catherine E. Marshall, Senior Counsel, or Nancy M. Morris, Attorney-Fellow, at (202-551-6787), or [Iarules@sec.gov](mailto:Iarules@sec.gov), Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-0506.

**SUPPLEMENTARY INFORMATION:** On April 12, 2005, the Securities and Exchange Commission (“Commission”) issued its release adopting rule 202(a)(11)-1 under the Investment Advisers Act of 1940 (“Advisers Act”) regarding the

application of the Advisers Act to certain broker-dealers. Paragraph (b)(2) of the rule provides that when a broker-dealer provides advice as part of a financial plan or in connection with providing financial planning services, a broker-dealer provides investment advice that is not “solely incidental to” (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule if it: (i) Holds itself out to the public as a financial planner or as providing financial planning services; or (ii) delivers to its customer a financial plan; or (iii) represents to the customer that the advice is provided as part of a financial plan or in connection with financial planning services. Paragraph (b)(3) provides that exercising investment discretion is not “solely incidental to” (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule (except for investment discretion granted by a customer on a temporary or limited basis).

The American Council of Life Insurers (“ACLI”), the Securities Industry Association (“SIA”) and the Financial Services Institute (“FSI”) each filed a petition for rulemaking under rule 192 of our Rules of Practice seeking an extension of certain compliance dates in rule 202(a)(11)-1.<sup>1</sup> The ACLI expressed

<sup>1</sup> American Council of Life Insurers, *Petition for Rulemaking Under Rule 192 of the SEC's Rules of Practice Concerning Extended Implementation Date in Rule 202(a)(11)-1(b)(2) Under the Investment Advisers Act of 1940*, July 27, 2005, File No. 4-507 (available at: <http://www.sec.gov/rules/petitions/4-507a.pdf>) (The ACLI is seeking an extension of the compliance date for rule 202(a)(11)-1(b)(2) until April 24, 2006.); Securities Industry Association, *Petition for Rulemaking; Request for Extension of Certain Compliance Dates for Rule 202(a)(11)-1 (S7-25-99)*, July 28, 2005, File No. 4-507 (available at: <http://www.sec.gov/rules/petitions/petn4-507.pdf>) (The SIA is seeking an extension of compliance dates for rule 202(a)(11)-1(b)(2) and (b)(3) until April 1, 2006.); Securities Industry Association, *Request for Extension of Certain Compliance Dates for Rule 202(a)(11)-1 (S7-25-99)*, August 25, 2005, File No. 4-507 (supplementing the SIA's petition for rulemaking) (available at: <http://www.sec.gov/rules/petitions/4-507b.pdf>); Financial

Continued