

**Securities Industry Association**

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November 3, 1992

Mr. Michael Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

RE: Rules 17h-1T, 17h-2T and Form 17-H
Temporary Risk Assessment Rules

Dear Mr. Macchiaroli:

The Securities Industry Association's ("SIA")^{1/} Ad Hoc Risk Assessment Committee submits this letter to seek clarification and interpretation of various provisions and issues that have arisen under the recently enacted Temporary Risk Assessment Rules, Rules 17h-1T, 17h-2T and Form 17-H ("Rules") under the Securities Exchange Act of 1934. Due to the imminent requirements for reporting under the Rules -- as of December 31, 1992 -- SIA requests a response to the issues raised below as promptly as possible:

- ^{1/} The Securities Industry Association is the trade association representing over 600 securities firms headquartered throughout the United States and Canada. Its members include securities organizations of virtually all types--investment banks, brokers, dealers and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter market and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for approximately 90% of the securities business being done in North America.

Material Associated Persons

1. In Rule 17h-1T(a)(iv) and (v) and Form 17-H, Item 4, balance sheets and income statements ("financial statements") are required to be maintained and reported for the reporting broker-dealer and its ultimate holding company. Clarification is requested that financial statements are required only for those ultimate holding companies which are Material Associated Persons ("MAPs"); not necessarily the ultimate parent.

2. In the introductory paragraph of Form 17-H it refers to "certain of their associated persons." Please clarify that the reporting broker-dealer is to use the Form to report information regarding MAPs and the only information to be reported on the Form regarding "associated persons" would relate to the Organizational Chart and Risk Management and Other Policies.

3. Clarify that Form 17-H, Part II reporting for separate MAPs is to include gross positions, including intercompany positions. It is understood these intercompany positions will be netted-out in consolidating financials.

4. Clarify that a MAP with subsidiaries, which are not MAPs, only has to file for those subsidiaries on a consolidated basis. Also, please clarify that financial statements are only required for the consolidating holding company which is a MAP. Finally, clarify that all filings are to be in accordance with local GAAP and no additional filings are required from broker-dealer MAPs, as they file FOCUS reports with the SEC.

5. Please clarify that a separate holding company which is not a MAP but has many MAP subsidiaries may report the MAP subsidiaries' financial information on a consolidated basis through the non-MAP holding company.

6. Please clarify that there is no reporting obligation if a broker-dealer has no holding company. Also, if a broker-dealer is itself a holding company, please clarify that there is no filing requirement since the SEC receives FOCUS reports. Finally, please clarify that natural persons are not required to report under the Rules and that partnerships and Subchapter S corporations are treated as natural persons for purposes of the Rules.

7. Clarify that the disclosure of certain off-balance sheet risks may be prepared on a consolidated MAP basis.

8. Clarify that the requirement for a breakdown of real estate loans and investments by property type (and in some instances geographic distribution) may be presented on a MAP-only basis.

Financial Statements

9. Clarify that although notional or contractual amounts of commodity positions are required to be reported under Form 17-H, Section II, "Financial Instruments with Off-Balance Sheet Risk and with Concentration of Credit Risk" there is no reporting requirement for commodity positions.

10. Clarify that the recordkeeping and reporting of aggregate securities positions, commodities positions and bridge loans are only for MAPs and not for broker-dealers.

11. Please clarify that footnotes to financial statements as outlined in Rule 17h-1T(a)(iv) and (v) do not have to be constantly repeated in each filing -- they can be referred back to previous footnotes and updated only to the extent a material change has occurred.

12. The Release states "[s]eparate consolidating and consolidated information is not required for each Material Associated Person included in the consolidating and consolidated information." However, Form 17-H, Item 4(2) states "[t]he consolidating financial statements must be presented on a subsidiary basis and shall indicate which subsidiaries are Material Associated Persons". Clarify that financial statements are required on a MAP basis only and non-material subsidiaries can be aggregated (combined in one column).

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13. Clarify that if the ultimate parent MAP's reporting schedule is different from the reporting broker-dealer, reporting should be based on the broker-dealer's reporting schedule.

Foreign Entities

14. Clarify that the only records to be maintained at a MAP or a records storage facility, provided they are kept within the boundaries of the U.S, are Form 17-H and/or forms filed with a foreign regulator.

15. The Rules permit the filing of "reports filed" with a foreign regulator. Clarify that this refers to primary forms filed with any foreign securities regulator.

16. Clarify that if the periods of time for financial information required by a foreign regulator differ from those required under the Rules, that Form 17-H reports track the foreign regulatory requirement. (For example, if a foreign regulator requires a report within 90 days of a quarter-end, the Form 17-H filing contain the foreign filing data may be made by such later date even though there is a reporting time lag.)

17. Rule 17h-2T(d) indicates that a broker-dealer is in compliance with the reporting requirements of the Rules if such broker-dealer furnishes in accordance with the provisions of the section, copies of the reports filed by such MAP with a Foreign Financial Regulatory Authority ("FFRA"). Clarify that the reports which would need to be furnished to the SEC for an entity that files financial statements with a FFRA, would be those filed with the FFRA on a quarterly basis. The reports to be filed with the SEC would be those primary reports filed with the FFRA which most closely correspond to the requirements of the Rules. Also, clarify that filing such reports exempts the foreign MAP from filing the items as stated in Rule 17h-1T(a) (vi), (vii), (viii), (ix), and (x).

General

18. Clarify that a broker-dealer which is not part of a holding company structure (has no affiliates or subsidiaries) is exempt from the rules as the SEC will receive their FOCUS report information.

19. Clarify that the legal proceedings required to be reported are under local GAAP and are to be disclosed by the highest level MAP holding company, not necessarily the ultimate holding company.

20. Clarify that Form 17-H is not required to be electronically filed on EDGAR for ultimate holding companies which are publicly filing.

21. Clarify that the form of the organization chart to be submitted does not have to be in a chart format and written descriptions of the organizational structure are sufficient. Furthermore, the organization chart and policies should reflect the firm's structure as of September 30, 1992.

22. Clarify that intermediate holding companies which are not MAPs can be eliminated from the Rules' requirements.

23. Rule 17h-1T(a)(vi) requires a separate listing of each single "unhedged" securities or commodities position that exceeds the Materiality Threshold. Clarify that the definition of "unhedged" is for the broker-dealer reasonably to determine. Furthermore, that the Materiality Threshold applies to only the Reporting broker-dealer.

24. Rule 17h-1T(a)(viii) excludes "intra-group receivables" from material unsecured extensions of credit. Clarify that "intra-group" refers to exposure within the ultimate holding company structure and therefore only activities outside the holding company are to be reported.

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25. Rule 17h-2T(a)(1) makes reference to the fourth quarter filing requirement for Form 17-H as 60 calendar days after fiscal year-end. This time frame likely will result in submitting preliminary information which may be materially different from that reflected in the year-end financial statements filed within 105 calendar days after fiscal year-end. Clarify that Form 17-H, does not require a fourth quarter filing, only a cumulative year-end filing within 105 days of fiscal year-end.

26. Clarify that reports filed with a banking regulator may be filed when they are due to the banking regulator because of the various reporting time frames under the banking regulations.

27. Specifically, with respect to Form 17-H reporting requirements for swap agreements:

a) Clarify that interest rate swaps that are neither U.S. denominated nor cross currency (e.g. a D-Mark/D-Mark swap) are to be reported in Form 17-H, Part II, (II)(D).

b) Clarify that a foreign exchange swap is a foreign forward transaction.

c) Clarify what the requirement is under Form 17-H, Part II, Section (II)(C)(3), for broker-dealers to report the contractual value together with the value of the underlying instruments of naked written option contracts. Also, clarify that the term "naked" is to be determined by the broker-dealer and the definition of "contractual value" means mark-to-market value.

d) Clarify that foreign currency swaps are to be reported in Form 17-H, Part II, Section (II)(B)(2).

28. Clarify that the Rules' reporting requirement will encompass real estate development only for investment purposes, not real estate development for use wholly or substantially by the broker-dealer, its holding company, or its other affiliates.

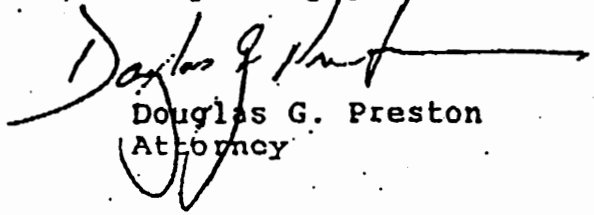
29. Clarify that there is no affirmative obligation under Rule 17h-1T(a)(ii)(A) to create written policies and procedures concerning the broker-dealer, including methods for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons.

30. Clarify that capital levels for the exemptive sections of the Rules refer to capital as of the reporting date.

31. Clarify that exemptive requests for broker-dealers which are associated with another broker-dealer are to be made by the reporting broker-dealer.

Please contact the undersigned if there are any questions or comments regarding the points raised in this letter.

Very truly yours,



Douglas G. Preston
Attorney

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