

# Special NASD Notice to Members 98-34

## SEC Requests Comment On Amendments To Rule 17a-5 Requiring Reports On Year 2000 Preparedness

### Suggested Routing

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### Executive Summary

The Securities and Exchange Commission (SEC) is soliciting comment on temporary rule amendments to SEC Rule 17a-5 that would require broker/dealers to file two reports regarding their Year 2000 readiness. There is a short time frame for submitting comments to the SEC. *Comments must be submitted on or before April 13, 1998.*

Pertinent details of the proposed amendments are outlined below. Members are urged to read SEC Release No. 34-39724 in its entirety. The release was published in the *Federal Register*, a copy of which follows the text of this *Notice*. See 63 FR 12056 (March 12, 1998).

Questions regarding this *Notice* or Year 2000 issues should be directed to Lyn Kelly, National Association of Securities Dealers, Inc. (NASD<sup>®</sup>) Year 2000 Program Director, at (301) 590-6342, or send an e-mail to [y2k@nasd.com](mailto:y2k@nasd.com). For further information about the NASD Year 2000 Program, visit the Year 2000 Web Pages on the NASD ([www.nasd.com](http://www.nasd.com)) and NASD Regulation<sup>SM</sup> ([www.nasdr.com](http://www.nasdr.com)) Web Sites. All comments concerning the rule proposal described in this *Notice* should be addressed to the SEC, rather than to the NASD.

### Summary Details Submission Of Comments

Comments must be submitted on or before **April 13, 1998**. The SEC is soliciting comments on any aspect of the proposed temporary amendments. (See attached *Federal Register* for specifics.) Some of these items include comment on:

- Whether \$100,000 minimum net capital is an appropriate threshold for the reporting requirement in order to meet the SEC's objectives

in collecting information about Year 2000 readiness.

- The type of content that will be addressed in the two reports. For example, should the reports include any additional material information specific to an individual broker/dealer's management of Year 2000 problems? Should broker/dealers report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? With regard to broker/dealers having to report the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing, should the SEC establish a materiality threshold for determining whether an exception needs to be reported?
- Whether the SEC's desire to receive an independent public accountant's attestation of a broker/dealer's preparation for possible Year 2000 problems can be combined with, or would already be part of, independent public accountants' responsibilities, in accordance with Generally Accepted Accounting Principles.
- Whether certain sections of these reports, or the entire reports, should be publicly available. As proposed, both reports would be publicly available. Should broker/dealers be required to file an additional report in 1999 regarding the results of integrated or industry-wide testing?
- The SEC also requests anyone commenting to provide analyses and data relating to costs and benefits associated with the proposal in order to help the SEC evaluate the costs and benefits that may result from the proposed temporary rule amendment.

## Summary Of Proposed Rule Amendments

As drafted, the proposed rule amendments would require broker/dealers that had a minimum net capital requirement of \$100,000 or more on December 31, 1997, to file two reports regarding their Year 2000 compliance.

### First Report

Every broker/dealer with a minimum net capital requirement of \$100,000 or more as of December 31, 1997, must file the first report that describes its preparation for the Year 2000 and the steps it is taking to avoid Year 2000 problems. This report must be filed with the SEC and the broker/dealer's designated examining authority (DEA) no later than 45 days after the rule amendments are adopted by the SEC.

### Second Report

A second report must be filed by every broker/dealer with a minimum net capital requirement of \$100,000 or more as of its fiscal year-end 1998 and by every broker/dealer that was required to file the first report. The second report must be filed with the SEC and the broker/dealer's DEA within 90 days after the date of the broker/dealer's 1998 fiscal year-end financial statements.

### Contents Of First And Second Reports

At a minimum, the broker/dealer must discuss the following information in both its first and second reports:

1. Whether its board of directors (or similar body) has approved and funded plans for preparing and testing its computer systems for potential Year 2000 problems.
2. Whether its plans exist in writing and address all of its major computer systems throughout the world.
3. Whether it has assigned existing employees, hired new employees, or engaged third parties to provide help in avoiding Year 2000 problems and, if so, what work these individuals have done as of the date of the reports.
4. What its current progress is with respect to the following matters:
  - Awareness of potential Year 2000 problems.
  - Assessment of steps necessary to avoid Year 2000 problems.
  - Implementation of necessary steps to avoid Year 2000 problems.
  - Internal testing of software, including the number and nature of the exceptions resulting from testing.
  - Integrated or industry-wide testing with other broker/dealers, other financial institutions, customers, and vendors, including the number and nature of the exceptions resulting from testing.
  - Implementation of tested software that avoids Year 2000 problems.
5. Whether it has written contingency plans for problems occurring after December 31, 1999.
6. What levels of its management are responsible for addressing potential Year 2000 problems, including a description of each individual's Year 2000 responsibilities and a percentage estimate of the time spent by each individual on Year 2000 issues during the preceding 12-month period.
7. Identification of its contact person for Year 2000 matters.

### Additional Requirement For Second Report

A broker/dealer will be required to file with its second report an attestation from an independent public accountant in which the accountant gives an opinion regarding whether there is a reasonable basis for the assertions made by the broker/dealer in its second report. See attached *Federal Register* for specific requirements.

### Books And Records Advisory

In its release, the SEC also advises that a broker/dealer with computer problems caused by the Year 2000 may be deemed in violation of Rule 17a-3's requirement to have accurate books and records. Moreover, any broker/dealer that fails to make and keep current books and records would be required to notify the SEC under Rule 17a-11.

**Comment letters should refer to File No. S7-7-98 and be submitted in triplicate to:**

**Jonathan G. Katz, Secretary  
Securities and Exchange  
Commission  
450 Fifth Street, N.W.  
Washington, DC 20549**

Comments also may be submitted electronically to the following e-mail address: [rulecoments@sec.gov](mailto:rulecoments@sec.gov). File No. S7-7-98 should be included on the subject line if e-mail is used.

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