

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

March 7, 1983

Mr. John T. Capetta

Kelley, Drye & Warren

One Landmark Square

Stamford, Connecticut 06901

Dear Mr. Capetta:

This is in response to your letter of February 14, 1983, in which you request an interpretation of paragraph (d)(1)(iii) of Rule 17a-5 of the Securities Exchange Act ("Act") (17 CFR 240.17a-5).

Section 17(e) of the Act requires that every registered broker or dealer annually file certified financial statements with the Commission. This section was added to the Act by Congress in the 1975 amendments. This provision was deemed necessary to ensure compliance with the Commission's financial responsibility program. Pursuant to the 1975 amendments, the Commission amended Rule 17a-5 to implement, among other things, the new provisions of Section 17(e).

Rule 17a-5, as amended, provides an exemption from certification for certain limited classes of brokers and dealers. The exemptive provisions of Rule 17a-5 are self-executing, i.e., a broker-dealer meeting the conditions set forth therein need not be specifically exempted. The exemptive provisions in Rule 17a-5(d)(1)(iii) [*2] are available only to those brokers and dealers which transact a business in securities only with members of a national securities exchange and have not carried any margin accounts, credit balance or security for any person who is defined as a "customer" in Rule 17a-5(c)(4). This exemption was intended to apply to, and has been limited to, specialists, market makers and floor brokers which have no contact with the public and are subject to close daily supervision by an exchange.

I hope this clarifies your understanding of Rule 17a-5(d)(1)(iii). If you have any further questions on this matter, please do not hesitate to contact the Commission's New York Regional Office or myself.

Sincerely,

Hugh T. Wilkinson

Attorney-Adviser

KELLEY DRYE & WARREN

ONE LANDMARK SQUARE

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(203) 324-1400

February 14, 1983

John Bryce, Esq.

Staff Attorney

Division of Market Regulation

The Securities and Exchange Commission

450 Fifth Street, Northwest

Washington, D.C. 20544

Re: Regulation § 17a-5(d)(1)(iii)

Dear Mr. Bryce:

We request an interpretation of the exemption under Securities Exchange Act Regulation § 17a-5(d)(1)(iii) from the requirement that a broker-dealer [*3] file financial statements. Regulation § 17a-5(d)(1)(iii) provides that:

A broker or dealer which is a member of a national securities exchange and has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance or

security for any person who is defined as a "customer" in paragraph (c)(4) of this section, shall not be required to file a report under this paragraph.

Our client is a member organization of The New York Stock Exchange, Inc., and transacts business solely for its own account with other members of the Exchange, thus putting it squarely within the exemption. Nevertheless, you have indicated that the SEC takes the position that Regulation § 17a-5(d)(iii) applies only to specialists, floor brokers and market makers, and thus that our client is not exempt from filing audited financial statements annually.

We wish to point out that our client, as a member organization, is subject to the net capital rule and to the heavy scrutiny of the Exchange notwithstanding the fact that it trades solely for its own account. We also wish to point out that in other sections of the Securities [*4] Exchange Act Regulations where the Commission has chosen to limit applicability to specialists and floor brokers, and not to exchange members generally, for example, Regulation § 15c-3-I(b)(1), it has done so explicitly by using the terms "specialist" and "floor broker." Since, as you have indicated, the SEC has not issued any formal opinion regarding this question, we request an interpretation of Regulation § 17a-5(d)(iii) in light of the fact that our client falls squarely within the wording and, so far as we can determine, the intent of the exemption.

If you have any questions, please call me.

Sincerely,

John T. Capetta