time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Watford City, ND, and to modify Class E airspace at Williston, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP, at Watford City Municipal Airport by creating controlled airspace at the airport and modifying controlled airspace nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 1200 feet AGL, is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 72—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Watford City, ND [New]

Watford City Airport, ND
(Lat. 47° 47′ 45″ N., long. 103° 15′ 13″ W.)

That airspace extending upward form 700 feet above the surface within a 7.4-mile radius of the Watford City Airport.

* * * * *

AGL ND E5 Williston, ND [Revised]

Williston, Sloulin Field International Airport, ND
(Lat 48° 10′ 41″ N., long. 103° 38′ 33″ W.)
Williston VORTAC
(Lat. 48° 15′ 12″ N., long. 103° 45′ 02″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Sloulin Field International Airport, and within 4.0 miles each side of the Williston VORTAC 317° radial, extending from the 6.6-mile radius to 12.7 miles northwest of the airport, and within 4.0 miles each side of the 124° bearing from the airport, extending from the 6.6-mile radius to 13.4 miles southeast of the airport, and within 3.8 miles each side of the Williston VORTAC 135° radial extending from the 6.6-mile radius to 12.3 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface within a 21.8-mile radius of the Williston VORTAC extending from the Williston VORTAC 172° radial clockwise to V–430, and within 39.2 miles of the Williston VORTAC extending from V–430 clockwise to V–71, and within a 60.0-mile radius of the Williston VORTAC extending from V–71 clockwise to the 172° radial of the Williston VORTAC, excluding those portions within Federal Airways.

* * * * *

Issued in Des Plaines, Illinois on February 24, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–6398 Filed 3–11–98; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39724; IC–23059; IA–1704; File No. S7–7–98]

RIN 3235–AH36

Reports To Be Made by Certain Brokers and Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is soliciting comment on temporary rule amendments to Rule 17a–5 under the Securities Exchange Act of 1934 (''Exchange Act'') that would require certain broker-dealers to file with the Commission and their designated examining authority two reports regarding Year 2000 compliance. The reports would enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; supplement the Commission's examination module for Year 2000 issues; help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning; and help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000. Additionally, the Commission is issuing an advisory notice on its books and records rules relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–7–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, 202/942–0132; Peter R. Geraghty, Assistant Director, 202/942–0177; Lester Shapiro, Senior Accountant, 202/942–0757; or Christopher M. Salter, Staff Attorney, 202/942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 2–2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date ''01/01/00'' as being the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems can also arise earlier than January 1, 2000 as dates in the next millennium are entered into non-Year 2000 compliant programs. For example, broker-dealers operating in the U.S. securities industry could experience, among other things: (1) Computer programs not accepting settlement dates in the year 2000; (2) various computational models, such as those used for risk analysis, hedging, and derivatives pricing and trading, being inaccurate or unworkable; and (3) difficulty calculating interest payments and maturity dates for debt instruments that mature after the Year 2000. Problems also may occur due to certain software programs recognizing dates in the Year 1999 or thereafter as something other than the correct date. These problems and other software problems directly or indirectly related to the next millennium are referred to in this release as Year 2000 Problems. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. broker-dealers and foreign financial firms and markets.[1] Because accurate output from computer programs is vital to a broker-dealer's recordkeeping and operations, broker-dealers currently should be taking steps to avoid Year 2000 Problems.

Accordingly, the Commission is evaluating the ability of participants in the U.S. securities industry to manage and prevent Year 2000 Problems. The Commission has identified six stages involved in the preparation for Year 2000: (1) Awareness of potential Year 2000 Problems; (2) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems; (3) implementation of the steps needed to avoid Year 2000 Problems; (4) internal testing of software designed to avoid Year 2000 Problems; (5) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers); and (6) implementation of tested software that will avoid Year 2000 Problems. The internal and integrated testing phases are the most difficult phases and ordinarily will require the most resources. At the time of the Commission staff's June 1997 ''Year 2000 Report'' to Congress, most members of the securities industry were engaged in the assessment and remediation phases of the Year 2000 effort.[2] Additionally, beginning in the third quarter of 1996, the Commission's Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of broker-dealers that hold or receive customer funds or securities.

II. Proposed Changes

Rule 17a–5 under the Exchange Act, among other things, sets forth the reports that a registered broker-dealer is required to prepare and file with the Commission.[3] To monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems, the Commission is proposing temporary amendments to Rule 17a–5. The amendments would require certain registered broker-dealers to file with the Commission and their designated examining authority (''DEA'') two reports regarding the broker-dealer's readiness for the Year 2000. The reports will also (1) enable the Commission staff to report to Congress in 1998 and 1999 regarding the industry's preparedness, (2) supplement the Commission's examination module for Year 2000 issues, (3) help the Commission coordinate self-regulatory organizations on industry-wide testing, implementation, and contingency planning, and (4) help increase broker-dealer awareness that they should be taking specific steps now to prepare for the Year 2000.

A. Broker-Dealer's First Report

A temporary paragraph (5) would be added to subparagraph (e) of Rule 17a-5 that would require each registered broker-dealer with a minimum net capital requirement of $100,000 or more[4] as of December 31, 1997 to file with the Commission and its DEA a report describing the broker-dealer's preparation for the Year 2000 and the steps the broker-dealer is taking to avoid Year 2000 Problems (''First Report''). This report would evaluate the broker-dealer's actions regarding the Year 2000 as of December 31, 1997. The Commission is establishing a $100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The $100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a First Report. The Commission also is establishing a $100,000 minimum net capital threshold because broker-dealers below this level likely rely on broker-dealers with minimum capital levels above $100,000 to facilitate their

[1] International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at http://www.iosco.org.

[2] At the request of Congressman Dingell, in June 1997, the Commission staff prepared a comprehensive report describing, in part, the extent to which the securities industry is preparing to avoid Year 2000 Problems. The Commission staff will prepare similar reports in 1998 and 1999. *See* Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 (June 1997), available at http://www.sec.gov/news/studies/yr2000.htm. *See also* Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 Before the Subcomm. on Financial Services and Technology of the Senate Comm. on Banking, Housing, and Urban Affairs (July 30, 1997).

[3] 17 CFR 240.17a–5.

[4] The Commission estimates that approximately 2,200 of the approximately 7,800 registered broker-dealers would be required to file First and Second Reports because their net capital requirement is $100,000 or greater.

business operations (*i.e.*, clearing functions).

The First Report would be required to be filed no later than 45 days after the Commission adopts the rule amendment. This report would review the broker-dealer's plans and preparations for the Year 2000, including, but not limited to, the areas discussed in paragraph II.C. below.

B. Broker-Dealer's Second Report

Temporary paragraph (e)(5) of Rule 17a-5 also would require each registered broker-dealer with a minimum net capital requirement of $100,000 or more as of its fiscal year-end 1998 to file with the Commission and its DEA a report, as of the date of the broker-dealer's 1998 fiscal year-end financial statements, describing the broker-dealer's progress in addressing Year 2000 Problems (''Second Report''). In addition, each broker-dealer required to file the First Report would be required to file the Second Report regardless of its minimum net capital requirement as of its 1998 fiscal year-end. This is to ensure that the Commission can continue to monitor the progress of broker-dealers who filed the First Report but whose minimum capital requirement may have changed since December 31, 1997. As previously mentioned, the Commission is establishing a $100,000 minimum net capital threshold because broker-dealers subject to this minimum net capital level likely have substantial financial exposure to the market and to customers. The $100,000 minimum net capital threshold will require all market makers, dealers, and clearing firms to file a Second Report.

A broker-dealer would file the Second Report with the Commission and its DEA within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. The Second Report would include, but not be limited to, the areas discussed in paragraph II.C. below.

C. Areas Addressed in First and Second Reports

The First and Second Reports would be required to discuss the following areas:

(1) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(3) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are: (i) awareness of potential Year 2000 Problems; (ii) assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;[5] (iii) implementation of the steps needed to avoid Year 2000 Problems;[6] (iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such testing; and (vi) implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the broker-dealer has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems;[7] and

(6) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

The list above is the minimum criteria that should be addressed in the First Report. The Second Report should address the above criteria as well as make certain specific assertions described in paragraph II.D. below. A broker-dealer should include any additional material information concerning its management of Year 2000 Problems that will help the Commission and DEAs assess the broker-dealer's readiness for the Year 2000.

D. Independent Public Accountant's Attestation To Be Attached to the Second Report

Broker-dealers would have to file with the Second Report an attestation from an independent public accountant (''Attestation''). The Attestation would take the form of a letter that would give the independent public accountant's opinion whether there is a reasonable basis for the broker-dealer's assertions in the Second Report regarding the areas specified in proposed Rule 17a–5(e)(5)(v)(A) through (G). Specifically, the Second Report would have to include assertions by the broker-dealer responding to the following and the independent public accountant would have to attest to the following:[8]

(1) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in (1) above;

(3) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in (1) above:

(4) Whether the broker-dealer's plans described in (1) above address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (These provisions do not apply to subsidiaries, affiliates, and divisions of the broker-dealer that are regulated by U.S. or foreign regulators other than the Commission);

(5) Whether the broker-dealer has assigned existing employees, hired new

[5] In addition to assessing what steps it should take to make its computer systems Year 2000 compliant, the broker-dealer must communicate with its vendors and significant customers about their Year 2000 readiness.

[6] Broker-dealers should have plans to have all their hardware and software changes in place by December 1998 so that they can conduct testing, including industry-wide testing, during 1999.

[7] Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software. In addition, the broker-dealer's contingency plan should provide for the failure of external systems that interact with the broker-dealer's computer systems. For example, the broker-dealer's plan should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000.

[8] The Commission notes that some of the areas that the broker-dealer would be required to respond to in subsection (v) of the proposed rule overlap with the areas set forth in subsection (iv). The areas addressed in subsection (iv) ask for additional information from the broker-dealer for which the Commission is not seeking an independent public accountant's attestation. The overlap exists because the Commission wants to narrowly tailor the specific assertions on which the independent public accountant must report in the attestation attached to the Second Report.

employees, or engaged third parties to implement the broker-dealer's plans described in (1) above;

(6) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(7) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

The Attestation only pertains to the areas discussed above. The Commission does not expect the Attestation to address assertions in the First and Second Report that are not pertinent to proposed Rule 17a–5(e)(5)(v)(A) through (G). The Attestation would be required to be filed with the Second Report.

III. Notice Regarding Current Books and Records Requirements

Rule 17a–3 under the Exchange Act, among other things, requires registered broker-dealers to make and keep current certain books and records relating to the broker-dealer's business.[9] Current books and records are an integral part of the Commission's regulatory program. Among other things, these records help the Commission to assess the financial stability of a broker-dealer and to protect investors. Any broker-dealer whose computer systems have not been modified to address Year 2000 Problems may have records that are inaccurate or not current.

Consequently, the Commission advises broker-dealers that a broker-dealer with computer systems that have Year 2000 Problems may be deemed not to have accurate and current records and be in violation of Rule 17a–3. Accurate and current books and records are essential for a broker-dealer to operate in a safe manner. The Commission also reminds broker-dealers that Rule 17a–11 under the Exchange Act requires every broker-dealer to promptly notify the Commission of its failure to make and keep current books and records.[10]

IV. Request for Comments

The Commission solicits commenters' views on any aspect of the proposed temporary amendments to Rule 17a–5. Initially, the Commission seeks comment on whether the term ''Year 2000 Problems'' should be modified to account for any other specific potential computer problems that may occur directly or indirectly due to the Year 2000. The Commission also seeks comment on the $100,000 net capital threshold, and whether that amount is the appropriate threshold to meet the Commission's objectives as stated in this release. The Commission also seeks comments on the areas 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? What additional material information could be included? For example, 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 Commission establish a materiality threshold for determining whether an exception needs to be reported? If so, how should the Commission determine such a threshold? Regarding management responsibility for Year 2000 plans, should a particular officer of the broker-dealer be required to sign the reports?

The Commission believes that the Attestation could be rendered in accordance with the accounting profession's Statements on Standards for Attestation Engagements.[11] The Commission seeks commenters' views on that issue, and on any alternative means that would provide the Commission with an independent assessment of the status and adequacy of a broker-dealer's preparation for possible Year 2000 Problems. Specifically, the Commission seeks commenters' views on whether the Commission'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, to opine on whether a broker-dealer can continue as a going concern.

The Commission also seeks comment on whether the Attestation should be prepared by the same independent public accountant who prepares the annual audit of the broker-dealer's 1998 fiscal year-end financial statements. As proposed, the First and Second Reports would be publicly available. The Commission seeks comment on whether certain sections of these reports, or the entire reports, should not be publicly available. Further, the Commission is seeking comment as to whether broker-dealers should be required to file an additional report in 1999 regarding the results of its participation in integrated or industry-wide testing for Year 2000 Problems. Finally, do the concerns discussed in this release apply to other financial institutions over which the Commission has regulatory responsibilities? Should the Commission, for example, require registered investment advisers and investment companies to file reports to the Commission regarding Year 2000 compliance?

V. Costs and Benefits of the Proposed Amendment and Its Effect on Competition

The Commission requests that commenters provide analyses and data relating to costs and benefits associated with the proposal herein. This information will assist the Commission in its evaluation of the costs and benefits that may result from the proposed temporary rule amendment. The Commission understands that the two reports regarding the broker-dealer's readiness for the Year 2000 would impose some costs on broker-dealers.[12] The Commission, however, believes that these costs are necessary and justified in light of the Commission's responsibilities under the federal securities laws. Year 2000 Problems could harm investors. The required reports will inform the Commission of the preparations broker-dealers subject to the temporary rule are taking to avoid Year 2000 Problems. The reporting requirements also may help broker-dealers understand that they should be taking steps now to avoid Year 2000 Problems.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in amending rules under the Exchange Act, to consider the anti-competitive effects of such amendments, if any.[13] The Commission has considered the proposed temporary amendment in light

[9] 17 CFR 240.17a–3.

[10] 17 CFR 240.17a–11(d).

[11] AICPA Professional Standards, Vol. 1, 2491–2800.

[12] *See infra* Section VII for the Commission's estimate of the costs that the proposed temporary amendment to Rule 17a–5 will impose on affected broker-dealers.

[13] *See* 15 U.S.C. 78w(a)(2).

of the standards cited in Section 23(a)(2), and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed temporary rule amendment is necessary to enable the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. The Commission solicits commenters' views regarding the effects of the proposed temporary rule amendment on competition, efficiency, and capital formation. The Commission also seeks comments on the proposed temporary rule amendment's impact on the economy on an annual basis, including any empirical data.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act,[14] regarding the rules contained in the proposed temporary amendment to Rule 17a–5 under the Exchange Act. As discussed more fully in the analysis, some of the broker-dealers that the proposed temporary amendment would affect are small entities, as defined by the Commission's rules. The IRFA states that the purpose of the proposed temporary rule is for the Commission to ascertain what steps broker-dealers are taking to avoid Year 2000 Problems.

The IRFA sets forth the statutory authority for the proposed temporary rule. The IRFA also discusses the effect of the proposed rule on broker-dealers that are small entities pursuant to Rule 240.0–10 under the Exchange Act. For purposes of the proposed temporary rule, a small entity is a broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to section 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[15] Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered broker-dealers, of which approximately 5,300 are small entities. Based on FOCUS data for the fourth quarter of 1996, only about 600 broker-dealers that are small entities would be required to file the two reports on Year 2000 compliance. Thus, by limiting the coverage of the temporary rule amendment to firms with minimum net capital requirements of $100,000 or more, the Commission is exempting over 88% of small entities potentially subject to the temporary rule amendment.

The IRFA states that the proposed temporary rule would impose new reporting requirements because certain broker-dealers would have to file with the Commission and their DEA two reports regarding the broker-dealer's readiness for the Year 2000. The Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, the Commission estimates that, on average, a respondent would pay approximately $25,000 to the independent public accountant for the preparation of the Attestation. The IRFA also states that the proposed temporary rule would not impose any other reporting, recordkeeping, or compliance requirements, and that the Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed temporary rule.

The analysis discusses the various alternatives considered by the Commission in connection with the proposed temporary rule that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed temporary rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities. As noted above, the Commission proposes to exempt over 88% of small entities subject to the temporary rule amendment. The Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed temporary rule for small entities. The Commission also believes that it would be inconsistent with the purpose of the rule proposal to exempt additional small entities from the proposed temporary rule or to use performance standards to specify different requirements for small entities. As discussed in the IRFA, small broker-dealers with a minimum net capital requirement of $100,000 or more would be required to file the two reports because they likely are market makers, dealers, or clearing firms with substantial financial exposure to the market and customers.

In the IRFA, the Commission encourages the submission of written comments with respect to any aspect of the IRFA. In particular, the Commission is interested in comments that specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed temporary rule. A copy of the IRFA may be obtained by contacting Christopher M. Salter, The Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549, (202) 942–0772.

VII. Paperwork Reduction Act

The proposed temporary amendment to Rule 17a–5 contains ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[16] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: ''Proposed Temporary Amendment to Rule 17a–5.''

The proposed temporary amendment would require information collection because certain broker-dealers would have to file two reports with the Commission and their DEA. The first report would need to be filed no later than 45 days after the Commission adopts the rule amendments and the second report would need to be filed within 90 days after the date of the broker-dealer's 1998 fiscal year-end financial statements. These reports are necessary for the Commission to monitor the steps broker-dealers are taking to manage and avoid Year 2000 Problems. Based on FOCUS reports filed for the fourth quarter of 1996, there are approximately 7,800 registered broker-dealers, of which approximately 2,200 would be subject to the proposed temporary amendment. The Commission believes that for business reasons prudent broker-dealers should already have developed plans for potential computer problems caused by Year 2000 Problems. Therefore, the Commission believes that broker-dealers subject to the proposed temporary

[14] 5 U.S.C. 603.

[15] 17 CFR 240.0–10(c)(1–2).

[16] 44 U.S.C. 3501 *et seq.*

amendment would incur only those costs necessary to prepare the two reports required by the temporary amendment. While the amount of time needed to comply with the temporary rule amendment would vary from a minimum of 8 hours to a maximum of 100 hours, the Commission estimates that, on average, a respondent would devote approximately 50 employee hours of preparation time to each report and 20 employee hours of discussion time with the independent public accountant who prepares the Attestation. Additionally, a broker-dealer would have to pay additional fees, above the fees it will have to pay for its annual audit, to an independent public accountant for preparation of the Attestation. While the Commission estimates that the amount of additional accounting fees to comply with the temporary rule amendment would vary from a minimum of $5,000 to a maximum of $200,000, the Commission estimates that, on average, a respondent would spend approximately $25,000 for the preparation of the Attestation. It is important to note that these costs would only be incurred once. The temporary rule amendment would not impose a continuing requirement.

A broker-dealer with a minimum net capital requirement of $100,000 or greater as of December 31, 1997 and the date of its 1998 fiscal year-end financial statements would be required to file the reports described in the proposed temporary amendment.[17] As proposed, all reports received by the Commission pursuant to the proposed temporary amendment would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7–7–98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a) and 23(a) thereof, 15 U.S.C. 78o(c)(3) and 78w, the Commission proposes to amend § 240.17a–5 of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

Text of Proposed Rule Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.17a–5 by adding paragraph (e)(5) to read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

* * * * *

(e) *Nature and form of reports.* * * *

(5)(i) For purposes of this section, the term *Year 2000 Problem* shall include any erroneous result caused by:

(A) Computer software incorrectly reading the date ''01/01/00'' as being the year 1900 or another incorrect year;

(B) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(C) Computer software failing to detect that the Year 2000 is a leap year; or

(D) Any other computer software error that is directly or indirectly caused by paragraph (e)(5)(i)(A), (B), or (C) of this section.

(ii) A broker or dealer with a minimum net capital requirement of $100,000 or greater as of December 31, 1997 shall file a report on the broker-dealer's preparation for Year 2000 Problems. The report shall address each topic in paragraph (e)(5)(iv) of this section. The report shall be filed no later than 45 days after the Commission adopts the rule amendments.

(iii) A broker or dealer with a minimum net capital requirement of $100,000 or greater as of the date of its 1998 fiscal year-end financial statements shall file a report on the broker-dealer's preparation for Year 2000 Problems. In addition, each broker or dealer subject to paragraph (e)(5)(ii) of this section shall file a report pursuant to this paragraph (iii) regardless of its minimum net capital requirement as of the date of its 1998 fiscal year-end financial statements. The report shall address each topic in paragraphs (e)(5)(iv) and (v) of this section. The report shall be filed within 90 days after the date of the broker or dealer's 1998 fiscal year-end financial statements.

(iv) The reports prepared pursuant to paragraphs (e)(5)(ii) and (iii) of this section shall include a discussion of the following: A broker-dealer should include any additional material information in both reports concerning its management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the broker-dealer's readiness for the Year 2000:

(A) Whether the board of directors (or similar body) of the broker-dealer has approved and funded plans for preparing and testing the broker-dealer's computer systems for potential computer problems caused by Year 2000 Problems;

(B) Whether the broker-dealer's plans exist in writing and address all of a broker-dealer's major computer systems wherever located throughout the world;

(C) Whether the broker-dealer has assigned existing employees, hired new

[17] Due to a change in its business, it is possible that a broker-dealer would only have to file one of the reports required by the temporary rule amendment. For example, a firm that has a minimum net capital requirement of $5,000 as of December 31, 1997 and $100,000 as of the date of its 1998 fiscal year financial statements would not have to file the First Report, but it would have to file the Second Report.

employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, describe the work that these individuals have performed as of the date of each report;

(D) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(*1*) Awareness of potential Year 2000 Problems;

(*2*) Assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;

(*3*) Implementation of the steps needed to avoid Year 2000 Problems;

(*4*) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(*5*) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(*6*) Implementation of tested software that will avoid Year 2000 Problems;

(E) Whether the broker-dealer has written contingency plans in the event, that after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(F) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

(v) The report prepared pursuant to paragraph (e)(5)(iii) of this section shall also include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the broker or dealer's assertions in response to the following:

(A) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(B) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in paragraph (e)(5)(v)(A) of this section;

(C) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of the plans described in paragraph (e)(5)(v)(A) of this section;

(D) Whether the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions;)

(E) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to implement the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section;

(F) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(G) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

(vi) The broker or dealer shall file two copies of each report prepared pursuant to paragraphs (e)(5)(ii) and (e)(5)(iii) of this section with the Commission's principal office in Washington, D.C. and one copy of each report with the broker-dealer's designated examining authority. The reports required by paragraphs (e)(5)(ii) and (e)(5)(iii) of this section will be publicly available.

Dated: March 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–6342 Filed 3–12–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–39726; File No. S7–8–98]

RIN 3235–AH42

Year 2000 Readiness Reports To Be Made by Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is soliciting comment on proposed temporary Rule 17Ad–18 under the Securities Exchange Act of 1934 (''Exchange Act''). The proposed temporary rule would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an independent public accountant that would give the Independent Public Accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the Commission is issuing an advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

DATES: The comment period will expire on April 13, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–8–98 this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, 202/942–4187; Thomas C. Etter, Jr., Special Counsel, 202/942–0178; or Jeffrey S. Mooney, Special Counsel, 202/942–4174, Division of Market Regulation, Securities and Exchange Commission,