

Regulatory Circular 95-68

Date: August 16, 1995

To: Selected Member Firms

From: The Department of Financial Compliance

Re: Annual Audited Financial Statements

Section 17(e) of the Securities Exchange Act of 1934 and Rule 17a-5 thereunder (the "Rule") require that every registered broker or dealer annually file certified financial statements with the SEC.

Paragraph (d)(1)(iii) of the Rule sets forth an exemptive provision which provides that certain brokers and dealers are not required to comply with this filing requirement. Specifically, this exemptive provision is only available to those brokers and dealers that transact a business in securities solely with members of a national securities exchange and that have not carried any margin account, credit balance or security for any person who is defined as a "customer" in paragraph (c)(4) of the Rule. In addition, this exemption was intended to apply to, and has been limited to, specialists, market makers, and floor brokers that have no contact with the public and are subject to close daily supervision by an exchange.

Except for Designated Primary Market Makers, which are considered specialists for net capital purposes, the exemptive provision is not available to brokers or dealers subject to SEC Rule 15c3-1 (the "Net Capital Rule"). The reason the exemptive provision is not available to capital computing brokers or dealers is that their businesses are not limited to option market making.

The foregoing is consistent with the interpretation of the Rule which is set forth in the NYSE Interpretation Memo No. 94-6.

A copy of SEC Rule 17a-5 which deals with annual filing of audited financial statements is attached. Any questions should be directed to Robert Gardner at (312) 786-7937 or Nicolette Panice at (312) 786-7904.