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Are Unregistered Trading Funds And Discretionary Asset Managers Securities Dealers? A Rule Proposal May Treat Them So

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I. INTRODUCTION

Unregistered trading funds and discretionary asset managers have historically operated in the asset management sector and not as securities dealers subject to the comprehensive broker-dealer regulatory regime of the Securities Exchange Act of 1934 ("Exchange Act") and rules of self-regulatory organizations ("SROs"). The Securities and Exchange Commission ("SEC" or "Commission") has proposed rules that, if adopted in their current form, could materially re-shape a portion of the asset management sector by potentially treating unregistered trading funds and some discretionary asset managers as securities or government securities dealers as a result of their trading activity [*see* Securities Exchange Act Release No. 94524 (March 28, 2022) ("Proposing Release")].

Last week, the SEC proposed two rules, each of which proposes to define a "regular business" for purposes of the registration requirements of dealers and government securities dealers under the Exchange Act.[1] The Commission acknowledged the proposed rules could extend to private funds (i.e., those organized in reliance on exclusions in Section 3(c)(1) or Section 3(c)(7) of the Investment Company Act of 1940 ("1940 Act")) and to a lesser extent discretionary asset managers (trading for their own accounts and for clients under proposed attribution principles), among others, but was silent as to their application to other unregistered funds. The proposed rules, however, expressly exclude funds registered under the 1940 Act and market participants owning or controlling assets of less than $50 million.

The Commission's proposal follows its continued interest in market structure issues and most recently the effects algorithmic and high-frequency trading has on market volatility.

II. COMMENT PERIOD AND FIRM CONTACT

The comment period is open until the later of 30 days from the Federal Register publication date of the Proposing Release or May 27, 2022. We encourage you to contact C. Dirk Peterson at dpeterson@mcintyrelf.com or (202) 659-3905 for more information regarding the regulatory impacts of the Commission's proposed rules.

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1 Section 15(a)(1) and Section 15C(a)(1) of the Exchange Act require the registration of securities dealers and government securities dealers, respectively. 15 U.S.C. §78o(a)(1) and 15 U.S.C. §78o-5(a)(1). Section 3(a)(5) of the Exchange Act defines the term "dealer" generally to mean any person engaged in the business of buying and selling securities for the dealer's own account through a broker or otherwise and excludes traders that buy and sell securities for their own accounts but not as a "regular business." 15 U.S.C. §78c(a)(5). Section 3(a)(44) of the Exchange Act prescribes a similar definition for "government securities dealers" buying and selling Treasuries and other "government securities" for their own accounts as part of a regular business. 15 U.S.C. §78c(a)(44). Section 15(b)(8) of the Exchange Act requires SRO membership of a registered dealer either with a national securities association (i.e., the Financial Industry Regulatory Association ("FINRA")) or one or more national securities exchanges. Section 15C(e)(1) requires similar SRO membership of "government securities dealers." 15 U.S.C. §78o-5(e)(1).

III. BACKGROUND

Our firsthand experience with dealer status of unregistered funds, particularly unregistered trading funds, such as hedge funds, dates back nearly three decades. In other words, the Commission's interest in the market activities of unregistered trading funds is not novel or the first time the SEC and its staff have addressed the regulatory treatment, including the dealer status, of these types of funds. In 1992, for example, the SEC staff reviewed the activities of hedge funds in response to a request from Congress concerning their regulatory treatment and the potential systemic market risk posed by their size and the scope of their securities trading.[2] The Markey Letter noted that hedge funds do not typically register with the SEC as dealers in reliance on the so-called "trader" exclusion that distinguishes traders from dealers because, although traders buy and sell securities for their own accounts like dealers, they do not do so as a regular business. We have from time to time addressed the trader exclusion in response to securities and bank regulatory queries for certain private and bank-related funds, distinguishing the fund as trader from a securities dealer based on recognized indicia of a dealer business enunciated in a line of SEC and SEC staff positions.

Namely, the trader exclusion has formed a well-established principle separating the asset management sector from the securities and government securities dealer sector. The SEC has previously guided these distinctions, noting that the "in the business" and "regular business" elements of the dealer definition mean that "dealers normally have a regular clientele, hold themselves out to the public as buying or selling securities at a regular place of business, have a regular turnover (or participate in the distribution of new issues), and generally transact a substantial portion of their business with investors (or, in the case of dealers who are market makers, principally trade with other professionals)."[3]

Additionally, the SEC staff has identified the following as potential dealer activity in cases where a market participant: (1) advertises or otherwise holds itself out as willing to buy for or sell securities from its own account on a continuous basis; (2) purchases or sells securities as principal from or to customers; (3) carries a dealer inventory in securities; (4) quotes a market in securities; (5) provides investment advice as an incidental service; (6) extends or arranges for the extension of credit in connection with securities transactions; (7) runs a book of repurchase and reverse repurchase agreements; (8) uses an interdealer broker for securities transactions; (9) lends securities to customers; (10) issues or originates securities; (11) guarantees contract performance or indemnifies parties for any loss or liability from the failure of a securities transaction to be successfully consummated; and (12) participates in a selling group or acts as an underwriter.[4]

These positions have applied to, and guided, the asset management sector for decades in order to confirm fund trading activities as those belonging to a trader, and not to a dealer. The Commission now seems to believe that

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2 *See* Letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to Edward J. Markey, Chairman, Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives (June 12, 1992) (the "Markey Letter").

3 Securities Exchange Act Release No. 46745 (Oct. 30, 2002) (discussing the dealer/trader distinction in connection with bank securities activities).

4 *See, e.g., Acqua Wellington North American Equities Fund, Ltd.,* SEC No-Action Letter (pub. avail. July 11, 2001) (confirming the trader status of fund even though the fund was required to be disclosed as a statutory underwriter). Neither the SEC nor the staff has identified any single factor or combination of factors as definitive of a dealer business, and our experience is that the industry weighs and balances these factors in combination, such that no single factor determines if it is more likely than not that a trader crosses an albeit imprecise line into dealer status.

advancements in electronic trading and the resulting entry of "liquidity providers" as notable market participants and intermediaries require a revisit and an apparent change of established norms relevant to trader and dealer distinctions. Although the proposals do not repeal or replace any previous no-action letters or interpretative positions, they do seek to codify for the first time a definition of a "regular business" based on three qualitative liquidity standards (and an additional quantitative liquidity standard in the case of a government securities dealer) intending to identify the regularity of a market participant's perceived role as a liquidity provider and hence a dealer.

Moreover, the proposed liquidity standards are not intended as the exclusive means of determining dealer status. According to the SEC, a market participant may nevertheless be a dealer based on other factors not otherwise identified by the proposed liquidity standards.

IV. THE PROPOSALS

A. Proposed Rule 3a5-4 and Proposed Rule 3a44-2 under the Exchange Act

Scope of Proposals and Relevant Exclusions

The rules' coverage extends beyond unregistered trading funds and discretionary asset managers and appears predominantly intended to cover Treasury and equity trading activities of unregistered proprietary trading firms (so-called "PTFs") and unregistered high-frequency traders – market participants identified (but not defined) by the Commission in the Proposing Release.[5] Because of the application of the proposed liquidity standards and the way "account" is defined under the rules, the SEC specifically noted the rules could capture some "private funds" established in reliance on Section 3(c)(1) or Section 3(c)(7) of the 1940 Act. Their reach, however, is more expansive, with the potential to capture others in the financial industry that implement hedging and arbitrage strategies that heretofore were not considered *per se* indicative of a securities or government securities dealer business. Depending on their trading strategies, the proposed rules could capture bank-sponsored common or collective investment trusts that also are not registered under the 1940 Act, not in reliance on the private fund exclusions, but in reliance on Section 3(c)(3) and Section 3(c)(11) of the 1940 Act,[6] as well as others not traditionally thought to be dealers.

The stated purpose of the proposals is to foster market stability and investor protection via dealer regulation across all market participants performing similar liquidity functions. Although the Commission seeks to functionally regulate active liquidity providers, not heretofore registered as dealers, the rules exclude registered funds, even though they may have similar liquidity status as private funds, because (according to the Proposing Release)

5 The Proposing Release focused primarily on the U.S. Treasury market and the predominance of electronic trading among intermediaries, especially unregistered PTFs, that are reported to have comprised from time to time about half of the daily trading volume in the interdealer market for U.S. Treasury securities. Proposing Release at pp. 4-8 and pp. 23-26.

6 The SEC should consider clarifying if bank-related funds are or are not intended to be covered under the proposed rules. Although banks, when acting as a fiduciary or trustee on behalf of an account, are not dealers when buying and selling securities for the account, the proposed rules are not clear if the fiduciary/trustee account itself is intended to be captured. That is, bank-related funds, such as common or collective investment trusts, are not registered under the 1940 Act in reliance on Section 3(c)(3) or Section 3(c)(11) of the 1940 Act to the extent the common or collective investment trusts are, among other things, maintained by a "bank." *See* 15 U.S.C. §80a-3(c)(3) and §80a-3(c)(11) (exceptions from 1940 Act regulation for common and collective investment trusts maintained by a bank). Banks are not dealers if the bank buys or sells securities on behalf of an account in the bank's capacity as trustee or fiduciary. 15 U.S.C. §78c(a)(5)(C)(ii)(II) (bank-dealer exception for accounts over which a bank acts as trustee or fiduciary). The meaning of "account" under the proposed rules, as discussed more below, could capture bank-sponsored and unregistered funds as "accounts" that would not independently qualify for the bank-dealer exclusions Section 3(a)(5)(C) of the Exchange Act.

registered funds are subject to regulation by the 1940 Act and private funds are not.This rationalization, of course, not only ignores the express intent to deregulate the activities of private trading funds,[7] but also ignores the market transparency obligations to which private trading funds and/or their asset managers currently are subject. That is, private trading funds, to the extent their size and scope make them liquidity providers, are subject to periodic large trader reporting on Form 13H,[8] a reporting regime identified in the Markey Letter as having the potential to enhance the market transparency of hedge funds. They are also subject to periodic Form 13F filings[9] and their asset managers are required to file Form PF,[10] as well as to make and annually update disclosures of their business, maintain books and records (including the preservation of trading records), and submit to periodic examination by the Commission's examination staff. Thus, it is not quite accurate to suggest that the unregistered fund sector exists in a regulatory desert unknown to the Commission, thus justifying their inclusion in the proposed rules, while the registered fund sector is excluded. Moreover, the SEC does not adequately explain why an alternative regulatory structure justifies excluding the registered fund sector, but the same principle does not apply to discretionary asset managers regulated by the Investment Advisers Act of 1940 ("Advisers Act").

At the very least, we believe the SEC should strongly consider excluding the asset management sector in its entirety – all funds registered under the 1940 Act and funds not required to be so registered, as well as all federally registered investment advisers – because the regular business of this industry sector has historically operated under established conventions as traders and has not been regulated as dealers. Arguably, the SEC offered little persuasive evidence of the need to regulate unregistered trading funds as dealers in the face of a clear intent to deregulate their operations. Nor did the SEC provide evidence that discretionary asset managers already subject to SEC regulation and oversight under the Advisers Act are in need of a fundamental change of their operations under a super-regulatory dealer regime. As far as we can surmise, PTFs and high frequency traders (the apparent focus of the proposal) historically have not been afforded an express intent to deregulate their activities nor have they apparently been subject to an alternative regulatory regime under the federal securities laws. These factors alone suggest a flawed comparison of apples to oranges drawn by the Commission by functionally regulating unregistered trading funds and discretionary asset managers, with PTFs and high frequency traders, as if they were dealers.

Standards of Liquidity

The SEC focuses on liquidity as a primary hallmark of a regular dealer business. Thus, the proposed rules seek to identify a regular dealer business on the basis of three qualitative liquidity standards and, in the case of government securities dealers, an additional quantitative liquidity standard, each as a touchstone for market

7 The legislative history of the private fund exclusions from the 1940 Act reveals Congress knew that private funds had potential to hold substantial assets, but the public interest was insufficient to warrant subjecting them to the substantive governance and other operational regulations of the 1940 Act. *See, e.g.,* Investment Trusts and Investment Companies: Hearings on S. 3580 Before the Subcomm. on Securities and Exchange of the Senate Comm. on Banking and Currency, 76th Cong., 3rd Sess., 179 (1940) (statements of Senator Wagner and David Schneker, Chief Counsel, Investment Trust Study, Securities and Exchange Commission). Fifty-six years later, rather than restrict or repeal the deregulatory effects of private funds, Congress amended the 1940 Act to add Section 3(c)(7) of the 1940 Act to expand available exclusions for private funds comprised of qualified purchasers. See National Securities Markets Improvement Act of 1996, Pub-L 104-290 (1996).

8 For more than a decade, the SEC has collected market information of "large traders" in periodic filings of transactions in "NMS-securities" on Form 13H. See 17 C.F.R. §240.13h-1 (the large trader reporting rule).

9 Form 13F filings, a more than 40-year-old periodic reporting regime, requires "institutional investment managers" to report on holdings in equity securities. The filing obligation is broadly applied and not limited to registered investment adviser, and includes other market participants, such as unregistered funds. See 17 C.F.R. §240.13f-1.

10 Form PF requires the reporting by asset managers to a wide range of private funds of financial and trading information for purposes of monitoring systemic market risk. *See* 17 C.F.R. §275.204(b)-1 (rule requiring reporting on Form PF).

liquidity and hence indicative of a regular dealer business. According to the proposals, a regular business of a securities or a government securities dealer constitutes a "routine pattern" of buying and selling securities/government securities such that trading has the effect of providing liquidity to other market participants as a result of one or more of the following qualitative standards:

- "routinely making roughly comparable purchase and sales of the same securities/government securities in a day;" or
- "routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants;" or
- "earning revenue primarily by capturing the bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests" (collectively, the "Qualitative Standards").

An additional quantitative standard is added to identify a regular business of a government securities dealer if trading in each of four out of the last six months constituted more than $25 billion of the trading volume of government securities ("Quantitative Standard").

Imprecision of Liquidity Standards

First, one can possibly be forgiven for asking: "Does any of this even make sense, and assuming it might, how can these amorphous standards possibly be identified, enforced, and monitored?" The Qualitative Standards are vague and practicably unworkable. The use of the term "routine" is remarkably imprecise, even in the face of SEC guidance saying it means, in the case of hedging, activity somewhere between occasional and continuous, or, in the case of trading interest displays, activity occurring multiple times a day or more than half a month over time. That lack of clarity, on one hand, does not lend itself to sound compliance planning and, as applied to the unregistered fund sector, does not justify a potentially radical overhaul of an established way of trading and doing business. The lack of clarity, on the other hand, could lead to inadvertent violations of registration requirements and potential voidability of contracts, enforcement exposure, and resulting monetary and reputational risk.

Second, aspects of the Qualitative Standards seem to be historical hallmarks of portfolio trading that heretofore have not been viewed by themselves as dealer activity. That is, investment strategies have historically included hedging and arbitrage strategies that implement offsetting long/short positions in the same or similar securities and that derive value and positive account performance by taking advantage of pricing differentials in bid-ask spreads. Does the implementation of these strategies now mean an accepted fund portfolio trading strategy "routinely makes roughly comparable purchase and sales of the same securities in a day" as a dealer? Or by taking long/short positions or seeking arbitrage opportunities, are fund portfolio trading strategies "routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants" as dealer or otherwise does the value recognized by these strategies mean that positive account performance is tantamount to economic rewards for acting as a dealer?

Presumably, the Qualitative Standards are not intended for many types of unregistered funds, such as private equity funds, real-estate equity funds, real estate investment trusts, and venture capital funds; nor are they likely intended to apply to other kinds of accounts, such as insurance company general accounts or retirement benefit plans, all of which trade in securities for their own accounts. However, given the lack of express exclusions for their trading activities, these market participants will first need better reliability on the application of Qualitative Standards and nonetheless will need to establish compliance and monitoring protocols to ensure their trading activities are not captured by the proposed liquidity standards.

Additionally, better clarity is needed to address if the Quantitative Standard could have the unwitting effect of extending to the trading of market participants not otherwise contemplated by the SEC to be regulated as dealers.

Accounts and "Controlled" Accounts under the Proposed Rules

The proposed rules establish a complex meaning of "account" for purposes of applying the liquidity standards to determine a regular dealer business. So, an account in the name of the market participant itself would be an "account" for purposes of the rules. If that account is in the name of a registered fund or a market participant with less than $50 million in assets, that account is excluded entirely from the proposed rules. That seems clear enough.

Less clear are cases where an account is "held by" or for the "benefit of" a market participant that is not a registered fund or that has $50 million or more in assets or the account should be aggregated across an enterprise. These are the cases of "controlled" accounts where the proposal becomes unduly complicated and much less clear of the intended reach on an enterprise-wide basis. The proposal easily enough excludes accounts whose beneficial owner is a registered broker, a registered dealer, a registered government securities dealer, and a registered fund held by a market participant.

The same clarity, however, does not apply outside of that class of regulated beneficial owners to other market participants, even regulated financial institutions such as banks and insurance companies that buy and sell securities for their own account (e.g., an insurance company general account) or for other accounts (*e.g.,* bank-related unregistered funds) across an integrated financial enterprise, such that they might fall within one or more of the Qualitative Standards or within the Quantitative Standard.

A "controlled" account is intended to carry the meaning of control prescribed by the large trader reporting rule in Rule 13h-1 under the Exchange Act. That is, control means the power to direct or cause the direction of management or policies of another by ownership, contract or otherwise. It is also measured by voting rights, rights to sell, and rights based on contributions to or amounts received on dissolution of 25% or more of equity of another person. The Proposing Release, but not the rule language itself, clarifies that the exercise of discretionary management alone is not intended to be control for these purposes unless, in the case of a registered investment adviser, the adviser has voting authority over the "voting securities of the client," trading authority to sell or direct the sale of "voting securities of a client," or rights based on capital contributions to or rights to amounts upon dissolution of the client.

The Proposing Release notes that voting and trading authority for these purposes applies to the voting securities "issued by" the client. That clarification means that voting and discretion to liquidate the portfolio securities owned by the client by themselves should not cause an advisory account to be a "controlled" account. The SEC should consider making that distinction clear in the four corners of the proposed rules, as well as stating that discretionary management alone is not *per se* control.

Unregistered fund complexes that manage parallel unregistered funds and that deploy operational management via general partner or a member manager, as is typical, can create controlled accounts subject to the attribution and aggregation principles intended by the rules, even though an affiliated asset manager typically exercises discretionary asset management over the portfolio trading of the accounts. The proposals are not clear, however, how accounts in this context may be included, aggregated, and attributed across a fund complex. The SEC should consider other exclusions under the meaning of "account" and clarity in much greater detail the potential reach of the definition of account, particularly as the attribution and aggregation principles apply to an integrated financial services firm.

B. Effect of Proposed Rule 3a5-4 and Proposed Rule 3a44-2

Regulation of Unregistered Funds as Securities or Government Securities Dealers

Fund portfolio trading should not be a dealer business. Stated most directly, the regular and only business of a fund (registered or unregistered) is to "invest, reinvest, own, hold, and *trade in securities for its own account*."[11] The SEC has not persuasively made the case why the Exchange Act should preempt the 1940 Act in its application to unregistered trading funds, especially since regulating part of the fund sector as dealers does not seem to remedy the Commission's stated need for "a more comprehensive view of the markets through regulatory oversight . . . [that] would enhance market stability and investor protection" [Proposing Release at 4].

The cause of materially reconfiguring a sector of the fund industry as dealers does not lead to the effect of enhancing market stability and investor protection. The two are not connected primarily because the Commission's expressed regulatory concerns relate to market structure and volatility and not dealer status *per se*, or, if they are connected, the Commission has not otherwise convincingly made the case that subjecting an expansive class of market participants for regulation leads to less volatile markets. And, in any event, the SEC already has oversight tools to view fund trading activity via access to the books and records of fund asset managers, SEC and SRO trade reporting through a fund's broker-dealer intermediaries, and extensive transaction and holdings reporting on Form 13H, Form 13F, and Form PF, an often overlapping system of reporting that apparently is no longer a sufficient window into the identity, size, holdings, counterparties, and systemic risk of unregistered funds and their asset managers. If the concern is enhanced market transparency, the SEC should first consider why these touted reporting regimes are failing to accomplish their stated purpose rather than subjecting the asset management sector to dealer regulation.

Making a convincing cause and effect connection is essential to effective rulemaking because the proposed rules present a radically different compliance system for the asset management sector generally and an existential threat to unregistered trading funds, particularly leveraged trading funds, among other things. Registered securities and government securities dealers are subject to extensive and substantive regulation at the federal, SRO, and state level, including the intra-day maintenance of minimum net-capital.[12] Most significant for many unregistered trading funds are restrictions on leverage under the Commission's net-capital rule that would apply to all that are registered dealers.[13] Leverage limits could cause a leveraged fund to be out of compliance with its

11 15 U.S.C. §80a-3(a)(1)(A) (emphasis added)(setting forth one part of a three-part definition of an investment company for purposes of the 1940 Act).

12 *See* 17 C.F.R. §240.15c3-1 for securities dealers. Government securities dealers are subject to capital requirements prescribed by Treasury. See 17 C.F.R. §402.2.

13 *See* 17 C.F.R. §240.15c3-1(a)(1)(i) and (ii) and (c)(1).

financial responsibilities and require it to cease conducting business until its investment strategies and way of doing business are significantly modified, if even possible, all of which would likely be in material contravention of the disclosures previously made to fund investors. Moreover, the leverage restrictions of the 1940 Act were a primary reason why private trading funds are afforded an express exclusion. Now the SEC is going to assert leverage limits through the back door by treating private trading funds as dealers? This result seems to be contrary to the clear intent of Congress and the statutory regime specifically applicable to unregistered funds.

Additionally, the net-capital rule was never intended to apply to portfolio management, and its requirements are contrary to effective management of assets. For example, a fund regulated as a dealer would mean that its portfolio would be subject to securities haircuts and restrictions on concentration.[14] The portfolio to the extent treated as excess net capital would be subject to restrictions and prohibitions on withdrawals of capital,[15] thus possibly preventing liquidations to meet periodic redemptions to investors, all of which would be outside of investor expectations based on fund disclosure documents. Of course, many other substantive regulatory obligations would apply, such as imposing FINRA licensure on officers, financial officers, and others performing day-to-day management of an unregistered fund's affairs, each or all of which could substantially modify the fund's management structure.

These are just a few of the substantive regulatory obligations that would require vetting, all of which was left mostly unaddressed by the Proposing Release.

Regulation of Discretionary Asset Managers as Securities or Government Securities Dealers

Similarly, the proposed rules raise significant compliance issues for asset managers should they become securities or government securities dealers. Asset managers registered under the Advisers Act are in the business of "advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities."[16]

Notably, discretionary asset managers would, not only be subject to intra-day maintenance of capital, as noted above, but also customer protection obligations, thus requiring the segregation of customer assets into a special reserve account for purposes of the Commission's customer protection rule.[17] The withdrawal of assets in a special reserve account are restricted in ways not contemplated by the Advisers Act,[18] and would significantly impede an adviser's fiduciary duty to manage client assets in the client's best interest. Registered advisers are already subject to a substantive custody rule prescribed by the Advisers Act.[19] Which custody rule would then apply to the asset

14 *See* 17 C.F.R. §240.15c3-1(c)(2).

15 *See* 17 C.F.R. §240.15c3-1(e)(1).

16 15 U.S.C. §80b-2(a)(11).

17 17 C.F.R. §240.15c3-3.

18 17 C.F.R. §240.15c3-3(e) and (g).

19 17 C.F.R. §275.206(4)-2.

manager for the same management and market activities of the same client accounts, the Exchange Act's customer protection rule or the Advisers Act's custody rule? The SEC left unaddressed the alignment of competing regulatory regimes for the same market participant performing the same market activities for the same client.

At the very least, the Commission's rulemaking should consider and address the substantive effects of the dealer regime on the asset management sector before imposing rules having the effect of substantially restructuring the industry.

V. CONCLUSIONS

The proposed dealer rules clearly raise credible questions and issues for the asset management sector specifically and the financial services industry generally. They also raise questions why the periodic reporting regimes authorized by Section 13(f) and Section 13(h) of the Exchange Act, and rules adopted pursuant to this authorization, no longer seem viable tools for regulating effects on the nation's securities markets by market participants that were never intended to operate or be regulated as securities or government securities dealers. We believe the Commission will need to carefully weigh these questions and issues prior to adopting new rules to avoid adverse effects on capital-raising efforts and on market participants not heretofore regulated as dealers.

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