SUPPLEMENT NO. 4 TO PART 744.—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
*	*	*	*	*
China, People's Republic of.	Beijing University of Aeronautics and Astronautics (BUAA), a.k.a. Beihang University.	For all items subject to the EAR.	See § 744.3(d) of this part.	66 FR 24266 5/14/01 70 FR [Insert FR Page Number] 9/16/05.
*	*	*	*	*

PART 748—[AMENDED]

■ 10. The authority citation for part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 2, 2005, 70 FR 45273 (August 5, 2005).

■ 11. Section 748.8 is amended by adding new paragraph (v), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(v) *In-country transfers.*

■ 12. Supplement No. 2 to part 748 is amended by adding new paragraph (v), to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(v) *In-country transfers.* To request an in-country transfer, you must specify ''in-country transfer'' in Block 9 (Special Purpose) and mark ''Reexport'' in Block 5 (Type of Application) of the BIS–748P ''Multipurpose Application'' form. The application also must specify the same foreign country for both the original ultimate consignee and the new ultimate consignee.

Dated: September 9, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–18373 Filed 9–15–05; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. 34–52407; IA–2426; File No. S7–25–99]

RIN 3235–AH78

Certain Broker-Dealers Deemed Not To Be Investment Advisers, Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Securities and Exchange Commission is extending the compliance date for the rule that identifies circumstances under which a broker-dealer's advice is not ''solely incidental to'' its brokerage business or to brokerage services provided to certain accounts and thus subjects the broker-dealer to the Investment Advisers Act of 1940.

DATES: The effective date for § 275.202(a)(11)–1, issued on April 12, 2005 (70 FR 20424, Apr. 19, 2005), remains April 15, 2005 (except for § 275.202(a)(11)–1(a)(1)(ii), which was effective May 23, 2005). Effective on September 19, 2005, the compliance date for § 275.202(a)(11)–1(b)(2) and § 275.202(a)(11)–1(b)(3) is extended from October 24, 2005 to January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine E. Marshall, Senior Counsel, or Nancy M. Morris, Attorney-Fellow, at (202–551–6787), or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: On April 12, 2005, the Securities and Exchange Commission (''Commission'') issued its release adopting rule 202(a)(11)–1 under the Investment Advisers Act of 1940 (''Advisers Act'') regarding the application of the Advisers Act to certain broker-dealers. Paragraph (b)(2) of the rule provides that when a broker-dealer provides advice as part of a financial plan or in connection with providing financial planning services, a broker-dealer provides investment advice that is not ''solely incidental to'' (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule if it: (i) Holds itself out to the public as a financial planner or as providing financial planning services; or (ii) delivers to its customer a financial plan; or (iii) represents to the customer that the advice is provided as part of a financial plan or in connection with financial planning services. Paragraph (b)(3) provides that exercising investment discretion is not ''solely incidental to'' (a) the business of a broker or dealer within the meaning of the Advisers Act or (b) brokerage services within the meaning of the rule (except for investment discretion granted by a customer on a temporary or limited basis).

The American Council of Life Insurers (''ACLI''), the Securities Industry Association (''SIA'') and the Financial Services Institute (''FSI'') each filed a petition for rulemaking under rule 192 of our Rules of Practice seeking an extension of certain compliance dates in rule 202(a)(11)–1.[1] The ACLI expressed

[1] American Council of Life Insurers, *Petition for Rulemaking Under Rule 192 of the SEC's Rules of Practice Concerning Extended Implementation Date in Rule 202(a)(11)–1(b)(2) Under the Investment Advisers Act of 1940,* July 27, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507a.pdf*) (The ACLI is seeking an extension of the compliance date for rule 202(a)(11)–1(b)(2) until April 24, 2006.); Securities Industry Association, *Petition for Rulemaking; Request for Extension of Certain Compliance Dates for Rule 202(a)(11)–1 (S7–25–99),* July 28, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/petn4–507.pdf*) (The SIA is seeking an extension of compliance dates for rule 202(a)(11)–1(b)(2) and (b)(3) until April 1, 2006.); Securities Industry Association, *Request for Extension of Certain Compliance Dates for Rule 202(a)(11)–1 (S7–25–99),* August 25, 2005, File No. 4–507 (supplementing the SIA's petition for rulemaking) (available at: *http://www.sec.gov/rules/petitions/4–507b.pdf*); Financial

Continued

concerns about its members' ability to fulfill the enterprise-wide transformation necessary to comply with the financial planning provision of rule 202(a)(11)–1(b)(2) by the October 24, 2005, compliance date. The SIA and the FSI expressed concerns about their members' ability to comply with the financial planning and investment discretion provisions of rule 202(a)(11)–1(b)(2) and (b)(3) by the October 24, 2005, compliance date. All three organizations state that, to comply with the rule, many of their members face requirements that will make it difficult to complete their compliance efforts by the October compliance date.

Specifically, with respect to subparagraph (b)(2), the ACLI and the SIA note that, among other things, the detailed personnel training and system enhancements (which need to be coded and tested) required by the rule will add to compliance complexities. The ACLI states, for example, that its members need time to ascertain the application of the rule to their activities, train their employees to fulfill their Advisers Act obligations, and license their employees as investment adviser representatives under state law. The SIA and the FSI state that their member firms need time to make judgments about their activities, products and services that are, and are not, subject to the Advisers Act and to develop and disseminate meaningful disclosures about brokerage and advisory relationships which, they state, will require substantial computer programming changes.

With respect to subparagraph (b)(3), the SIA and the FSI state that broker-dealers must evaluate each account currently classified as ''discretionary'' to determine whether it is discretionary within the meaning of the rule, to discuss with each affected client the investment options available for each account and to provide those clients with time to choose whether they want to maintain their accounts as non-discretionary brokerage accounts or investment discretion advisory accounts. According to the SIA, the volume of accounts, coupled with associated recordkeeping requirements and time spent waiting for customer responses, will cause the process to take a longer time to complete than currently permitted by the rule. In this regard, the SIA notes that this process will be labor intensive and time-consuming and will involve functions other than merely categorizing accounts. For example, for those clients who elect to have their accounts be advisory accounts, the SIA states that the broker-dealers will need time to create and finalize advisory agreements, prepare ADV filings and related adviser disclosures, adopt internal policies and procedures, and implement internal system infrastructure and trade processing so that the accounts comply with the Advisers Act. For accounts that will become non-discretionary brokerage accounts, the SIA states that its members likewise will need to consult with clients about the clients' options, document the new brokerage services, and develop systems to document that the account is a non-discretionary brokerage account. Further complicating the compliance process, according to the SIA, due to year-end reporting requirements, many member firms ''black-out'' their systems to changes from late-November through the end of the year. Finally, the SIA states that some broker-dealers who provide services that will be deemed to be investment advice under the rule are not currently registered as investment advisers and will need time to register as advisers and comply with the Advisers Act. The FSI similarly states that its members need additional time to review accounts and to consult with their clients about the clients' options and choices.

The ACLI, the SIA, and the FSI thus seek an extension of the compliance date so that their members have more time to take the actions necessary to bring them into compliance with the rule.

We have received three letters in opposition to the rulemaking petitions filed by the ACLI and the SIA. We have not received any letters that directly oppose the FSI's rulemaking petition.

The Investment Adviser Association (''IAA'') filed a letter in opposition to the SIA's petition to extend the compliance date for paragraph (b)(3) of rule 202(a)(11)–1 concerning investment discretion advisory accounts.[2] The Consumer Federation of America, Fund Democracy, Consumer Action, and Consumers Union (collectively, ''CFA'') and Joseph Capital Management, LLC (''JCM'') each filed a letter in opposition to the ACLI's and the SIA's petitions to extend the compliance dates for the financial planning and investment discretion provisions of rule 202(a)(11)–1.[3]

The IAA and CFA assert that determining whether a broker-dealer exercises investment discretion over an account is neither difficult nor time-consuming and that the SIA never indicated in its comment letter to this rulemaking that this determination would be difficult or time consuming. In a similar vein, JCM asserts that the final rule was ''liberal'' in the time constraints originally imposed and that the petitioners have not adequately justified their extension requests. The IAA and the CFA further assert that the SIA and its members have long been aware that the final rule would require broker-dealers to treat investment discretion accounts as advisory accounts. With respect to financial planning, while the CFA acknowledges that ''brokers and insurance agents will be required to undertake a significant effort to come into compliance with the rule in the allotted time,'' the CFA further states that investor protection concerns ''justify that effort.'' JCM challenges the SIA's assertion that its members will be required to develop and disseminate disclosure once they determine whether a given activity is financial planning within the meaning of the rule. JCM asserts that financial planning activities have always triggered application of the Advisers Act.[4] According to JCM, the SIA's and ACLI's requests thus are inconsistent with our emphasis on compliance with the federal securities laws.

The Commission is persuaded that extending the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) for a short period of time is appropriate. While we have concerns about the effect of the

Services Institute Inc., *Request for Extension of Compliance Dates for Certain Aspects of Rule 202(a)(11)–1 (S7–25–99),* Aug. 25, 2005, File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507c.pdf*) (The FSI is seeking an extension of the compliance dates for rule 202(a)(11)–1(b)(2) and (b)(3) until April 24, 2006.) Although the FSI did not expressly petition for rulemaking, we so construe its extension request.

[2] Letter of Investment Adviser Association to Jonathan G. Katz (Aug. 4, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/dgtittsworth080405.pdf*).

[3] Letter from Barbara Roper, Director of Investor Protection, Consumer Federation of America; Mercer Bullard, Founder and President, Fund Democracy; Kenneth McEldowney, Executive Director, Consumer Action; and Sally Greenberg, Senior Counsel, Consumers Union, to Jonathan G. Katz, Secretary, Commission (Aug. 11, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/4507–2.pdf*); Letter from Ron A. Rhoades, Chief Compliance Officer, Joseph Capital Management, LLC, to Jonathan G. Katz, Secretary, Commission (Aug. 18, 2005), File No. 4–507 (available at: *http://www.sec.gov/rules/petitions/4–507/4507–3.pdf*).

[4] JCM cites our staff's interpretive release on financial planning. Applicability of the Investment Advisers Act to Financial Planners, Pension Consultants, and Other Persons Who Provide Investment Advisory Services as a Component of Other Financial Services, Investment Advisers Act Release No. 1092 (Oct. 8, 1987) [52 FR 38400 (Oct. 16, 1987)]. We note, however, that the release expressly contemplated that, under appropriate circumstances, broker-dealers who provide financial planning services may have been able to avail themselves of the statutory exception set out in section 202(a)(11)(C).

extension in delaying the anticipated benefits of the rule, in our judgment a limited extension of the compliance date is, on balance, appropriate. Our judgment is based on the representations made by the SIA, the ACLI, and the FSI (whose members are required to comply with the rule and thus are in a position to assess the level of difficulty and time involved in their complying with the rule) and our experience in overseeing the industry. We are not, however, persuaded that a delay of up to an additional six months is necessary given that we already afforded broker-dealers approximately a six-month compliance period, and that these provisions will provide investors with important protections.[5] Accordingly, the Commission believes it is appropriate to extend the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) until January 31, 2006. The rule's effective date of April 15, 2005 remains unchanged.

The Commission for good cause finds that, for the reasons cited above, including the brief length of the extension we are granting, notice and solicitation of comment regarding the extension of the compliance date for rule 202(a)(11)–1(b)(2) and (b)(3) are impracticable, unnecessary, or contrary to the public interest.[6] In this regard, the Commission notes that broker-dealers need to be informed as soon as possible of the extension and its length in order to plan and adjust their implementation processes accordingly.

Dated: September 12, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18384 Filed 9–15–05; 8:45 am]

BILLING CODE 8010–01–P

[5] JCM asserts that providing the requested relief will exacerbate and extend investor confusion with respect to fee-based accounts. We disagree. Broker-dealers already are required to comply with the specific disclosure provisions of rule 202(a)(11)–1(a)(1)(ii).

[6] See section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (''APA'') (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest). The change to the compliance date is effective upon publication in the **Federal Register**, which is less than 30 days after publication. The APA allows effective dates less than 30 days after publication in the **Federal Register** for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' *See* section 553(d)(1) of the APA.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9225]

RIN 1545–BD53

Corporate Reorganizations; Guidance on the Measurement of Continuity of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that provide guidance regarding the satisfaction of the continuity of interest requirement for corporate reorganizations. The final regulations affect corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective September 16, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Fienberg, at (202) 622–7770 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The Internal Revenue Code of 1986 (Code) provides for general nonrecognition treatment for reorganizations described in section 368 of the Code. In addition to complying with the statutory and certain other requirements, to qualify as a reorganization, a transaction generally must satisfy the continuity of interest (COI) requirement. COI requires that, in substance, a substantial part of the value of the proprietary interests in the target corporation be preserved in the reorganization.

On August 10, 2004, the IRS and Treasury Department published a notice of proposed rulemaking (REG–129706–04) in the **Federal Register** (69 FR 48429) (hereinafter the proposed regulations) identifying certain circumstances in which the determination of whether a proprietary interest in the target corporation is preserved would be made by reference to the value of the issuing corporation's stock on the day before there is an agreement to effect the potential reorganization. In particular, in cases in which the consideration to be tendered to the target corporation's shareholders is fixed in a binding contract and includes only stock of the issuing corporation and money, the issuing corporation stock to be exchanged for the proprietary interests in the target corporation would be valued as of the end of the last business day before the first date there is a binding contract to effect the potential reorganization (the signing date rule). Under the proposed regulations, consideration is fixed in a contract if the contract states the number of shares of the issuing corporation and the amount of money, if any, to be exchanged for the proprietary interests in the target corporation. The signing date rule is based on the principle that, in cases in which a binding contract provides for fixed consideration, the target corporation shareholders generally can be viewed as being subject to the economic fortunes of the issuing corporation as of the signing date.

No public hearing regarding the proposed regulations was requested or held. However, several written and electronic comments regarding the notice of proposed rulemaking were received. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

These final regulations retain the general framework of the proposed regulations but make several modifications in response to the comments received. The following sections describe the most significant comments and the extent to which they have been incorporated into these final regulations.

A. Fixed Consideration

As stated above, the proposed regulations require that the consideration in a contract be fixed in order for the signing date rule to apply. One commentator identified a number of contractual arrangements that do not provide for fixed consideration within the meaning of the proposed regulations, but, nevertheless, are arrangements in which the consideration should be treated as fixed and, therefore, eligible for the signing date rule. In particular, the commentator identified a number of circumstances in which, rather than stating the number of shares and money to be exchanged for target corporation shares, a contract may provide that a certain percentage of target corporation shares will be exchanged for stock of the issuing corporation. One such circumstance is where a merger agreement permits the target corporation some flexibility in issuing its shares between the signing date and effective date of the potential reorganization. Such an issuance may occur, for example, upon the exercise of employee stock options. As a result, the total number of outstanding target corporation shares at the effective time