

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

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Title: Section 240.17a-3 - Records to be made by certain exchange members, brokers and dealers.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Preservation of Records and Reports of Certain Stabilizing Activities.

§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.

(a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, (48 Stat. 895, 49 Stat. 1377, 52 Stat. 1075; 15 U.S.C. 78o) shall make and keep current the following books and records relating to its business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and securities loaned;

(iv) Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(v) Securities failed to receive and failed to deliver;

(vi) All long and all short securities record differences arising from the examination, count, verification and comparison pursuant to §§ 240.17a-5, 240.17a-12, and 240.17a-13 (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);

(vii) Repurchase and reverse repurchase agreements;

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for its account or for the account of its customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated. The term *instruction* shall include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall mean the time when the member, broker or dealer transmits the order or instruction for execution.

(ii) This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the member, broker or dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(7) A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person: in that circumstance, the member, broker or dealer shall produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order with a customer other than a member, broker or dealer entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated.

(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

(9) A record in respect of each cash and margin account with such member, broker or dealer indicating

(i) The name and address of the beneficial owner of such account, and

(ii) Except with respect to exempt employee benefit plan securities as defined in § 240.14a-1(d), but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such members, brokers or dealers, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers, and

(iii) In the case of a margin account, the signature of such owner; *Provided*, That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles and other options in which such member, broker or dealer has any direct or indirect interest or which such members, broker or dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved. An OTC derivatives dealer shall also keep a record of all eligible OTC derivative instruments as defined in § 240.3b-13 in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to § 240.15c3-1; *Provided, however*, (i) That such computation need not be made by any member, broker or dealer unconditionally exempt from § 240.15c3-1 by paragraph (b)(1) or (b)(3), thereof; and (ii) that any member of an exchange whose members are exempt from § 240.15c3-1 by paragraph (b)(2) thereof shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges therein listed of which it is a member. Such trial balances and computations shall be prepared currently at least once a month.

(12)(i) A questionnaire or application for employment executed by each "associated person" (as defined in paragraph (h)(4) of this section) of the member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the member, broker or dealer;

(B) The associated person's date of birth;

(C) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker or dealer with which the associated person was associated in any capacity when such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person or any member, broker or dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.

(H) A record of any other name or names by which the associated person has been known or which the associated person has used;

Provided, however, That if such associated person has been registered as a registered representative of such member, broker or dealer with, or the associated person's employment has been approved by, the Financial Industry Regulatory Authority, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the National Stock Exchange, Inc. or the International Securities Exchange, LLC, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this paragraph.

(ii) A record listing every associated person of the member, broker or dealer which shows, for each associated person, every office of the member, broker or dealer where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the member, broker or dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the member, broker or dealer.

(13) Records required to be maintained pursuant to paragraph (d) of § 240.17f-2.

(14) Copies of all Forms X-17F-1A filed pursuant to § 240.17f-1, all agreements between reporting institutions regarding registration or other aspects of § 240.17f-1, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

(15) Records required to be maintained pursuant to paragraph (e) of § 240.17f-2.

(16)(i) The following records regarding any internal broker-dealer system of which such a broker or dealer is the sponsor:

(A) A record of the broker's or dealer's customers that have access to an internal broker-dealer system sponsored by such broker or dealer (identifying any affiliations between such customers and the broker or dealer);

(B) Daily summaries of trading in the internal broker-dealer system, including:

(1) Securities for which transactions have been executed through use of such system; and

(2) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation):

(i) With respect to equity securities, stated in number of trades, number of shares, and total U.S. dollar value;

(ii) With respect to debt securities, stated in total settlement value in U.S. dollars; and

(iii) With respect to other securities, stated in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of such securities; and

(C) Time-sequenced records of each transaction effected through the internal broker-dealer system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if internal broker-dealer system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system).

(ii) For purposes of paragraph (a) of this section, the term:

(A) *Internal broker-dealer system* shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in Regulation ATS, §§ 242.300 through 242.303 of this chapter, that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor,

through use of the internal broker-dealer system or through the broker or dealer sponsor of such system;

(B) *Sponsor* shall mean any broker or dealer that organizes, operates, administers, or otherwise directly controls an internal broker-dealer trading system or, if the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved on a regular basis with executing transactions in connection with use of the internal broker-dealer system, other than solely for its own account or as a customer with access to the internal broker-dealer system; and

(C) *System order* means any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a security. The term "system order" does not include inquiries or indications of interest that are not entered into the internal broker-dealer system.

(17) For each account with a natural person as a customer or owner:

(i)(A) An account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an associated person of a member, broker or dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the associated person responsible for the account, if any, and approved or accepted by a principal of the member, broker or dealer. For accounts in existence on the effective date of this section, the member, broker or dealer must obtain this information within three years of the effective date of the section.

(B) A record indicating that:

(1) The member, broker or dealer has furnished to each customer or owner within three years of the effective date of this section, and to each customer or owner who opened an account after the effective date of this section within thirty days of the opening of the account, and thereafter at intervals no greater than thirty-six months, a copy of the account record or an alternate document with all information required by paragraph (a)(17)(i)(A) of this section. The member, broker or dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The member, broker or dealer may choose to exclude any tax identification number and date of birth from the account record or alternative document furnished to the customer or owner. The member, broker or dealer shall include with the account record or alternative document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the member, broker or dealer, and that the customer or owner should notify the member, broker or dealer of any future changes to information contained in the account record.

(2) For each account record updated to reflect a change in the name or address of the customer or owner, the member, broker or dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, on or before the 30th day after the date the member, broker or dealer received notice of the change.

(3) For each change in the account's investment objectives the member, broker or dealer has furnished to each customer or owner, and the associated person, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by paragraph (a)(17)(i)(B)(1) of this section, on or before the 30th day after the date the member, broker or dealer received notice of any change, or, if the account was updated for some reason other than the firm receiving notice of a change, after the date the account record was updated. The member, broker or dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner.

(C) For purposes of this paragraph (a)(17), the neglect, refusal, or inability of a customer or owner to provide or update any account record information required under paragraph (a)(17)(i)(A) of this section shall excuse the member, broker or dealer from obtaining that required information.

(D) The account record requirements in paragraph (a)(17)(i)(A) of this section shall only apply to accounts for which the member, broker or dealer is, or has within the past 36 months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. Additionally, the furnishing requirement in paragraph (a)(17)(i)(B)(1) of this section shall not be applicable to an account for which, within the last 36 months, the member, broker or dealer has not been required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. This paragraph (a)(17)(i)(D) does not relieve a member, broker or dealer from any obligation arising from the rules of a self-regulatory organization of which it is a member regarding the collection of information from a customer or owner.

(ii) If an account is a discretionary account, a record containing the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(iii) A record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered into on or after the effective date of this paragraph pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.

(18) A record:

(i) As to each associated person of each written customer complaint received by the member, broker or dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a member, broker or dealer may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

(ii) Indicating that each customer of the member, broker or dealer has been provided with a notice containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

(19) A record:

(i) As to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a member, broker or dealer may elect to produce the required information promptly upon request of a representative of a securities regulatory authority.

(ii) Of all agreements pertaining to the relationship between each associated person and the member, broker or dealer including a summary of each associated person's compensation arrangement or plan with the member, broker or dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

(20) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the member, broker or dealer has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the member, broker or dealer is a member which require that advertisements, sales literature, or any other communications with the public by a member, broker or dealer or its associated persons be approved by a principal.

(21) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

(22) A record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the member, broker or dealer is a member that require acceptance or approval of a record by a principal.

(23) A record documenting the credit, market, and liquidity risk management controls established and maintained by the broker or dealer to assist it in analyzing and managing the risks associated with its business activities, *Provided*, that the records required by this paragraph (a) (23) need only be made if the broker or dealer has more than:

(i) \$1,000,000 in aggregate credit items as computed under § 240.15c3-3a; or

(ii) \$20,000,000 in capital, which includes debt subordinated in accordance with § 240.15c3-1d.

(b)(1) This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker, or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a-3 and 240.17a-4: *Provided*, That the clearing broker or dealer has and maintains net capital of not less than \$25,000 and is otherwise in compliance with § 240.15c3-1 or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3-1 by paragraph (b)(2) thereof.

(2) This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker or dealer by a bank as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a-3 and 240.17a-4: *Provided*, That such member, broker, or dealer obtains from such bank an agreement in writing to the effect that the records made and kept by such bank are the property of the member, broker, or dealer: *And provided further*, That such bank files with the Commission a written undertaking in form acceptable to the Commission and signed by a duly authorized person, that such books and records are available for examination by representatives of the Commission as specified in section 17(a) of the Act, and that it will furnish to the Commission, upon demand, at its principal office in Washington, DC, or at any regional office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of such records. Such undertaking shall include the following provisions:

THE UNDERSIGNED HEREBY UNDERTAKES TO MAINTAIN AND PRESERVE ON BEHALF OF [BD] THE BOOKS AND RECORDS REQUIRED TO BE MAINTAINED AND PRESERVED BY [BD] PURSUANT TO RULES 17A-3 AND 17A-4 UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND TO PERMIT EXAMINATION OF SUCH BOOKS AND RECORDS AT ANY TIME OR FROM TIME TO TIME DURING BUSINESS HOURS BY EXAMINERS OR OTHER REPRESENTATIVES OF THE SECURITIES AND EXCHANGE COMMISSION, AND TO FURNISH TO SAID COMMISSION AT ITS PRINCIPAL OFFICE IN WASHINGTON, DC, OR AT ANY REGIONAL OFFICE OF SAID COMMISSION SPECIFIED IN A DEMAND MADE BY OR ON BEHALF OF SAID COMMISSION FOR COPIES OF BOOKS AND RECORDS, TRUE, CORRECT, COMPLETE, AND CURRENT COPIES OF ANY OR ALL, OR ANY PART, OF SUCH BOOKS AND RECORDS. THIS UNDERTAKING SHALL BE BINDING UPON THE UNDERSIGNED, AND THE SUCCESSORS AND ASSIGNS OF THE UNDERSIGNED.

Nothing herein contained shall be deemed to relieve such member, broker, or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in §§ 240.17a-3 and 240.17a-4.

(c) This section shall not be deemed to require a member of a national securities exchange, or a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o) as amended, to make or keep such records as are required by paragraph (a) reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.

(d) The records specified in paragraph (a) of this section shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(e) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.

(f) *Security futures products.* The provisions of this section shall not apply to security futures product transactions and positions in a futures account (as that term is defined in § 240.15c3-3 (a)(15)); *provided*, that the Commodity Futures Trading Commission's recordkeeping rules apply to those transactions and positions.

(g) Every member, broker or dealer shall make and keep current, as to each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section.

(h) When used in this section:

(1) The term *office* means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

(2) The term *principal* means any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the member, broker or dealer.

(3) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States.

(4) The term *associated person* means an "associated person of a member" or "associated person of a broker or dealer" as defined in sections 3(a)(21) and 3(a)(18) of the Act (15 U.S.C. 78c(a)(21) and (a)(18)) respectively, but shall not include persons whose functions are solely clerical or ministerial.

Cross For interpretative release applicable to § 240.17a-3, see No. 3040
Reference: tabulation, part 241 of this chapter.
[13 FR 8212, Dec. 22, 1948]

Editorial Note: For **Federal Register** citations affecting § 240.17a-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Code of Federal Regulations

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Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Preservation of Records and Reports of Certain Stabilizing Activities.

§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.17a-3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph § 240.17a-3(f).

(b) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a-3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to § 240.17a-3(g).

(2) All check books, bank statements, cancelled checks and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such member, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term communications includes sales scripts.

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA or Part IIB and in annual audited financial statements required by § 240.17a-5(d) and § 240.17a-12 (b):

(i) Money balance position, long or short, including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully

secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;

(ii) Money balance and position, long or short, including description, quantity, price and valuation of each security including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts, and in securities accounts payable to non-customers;

(iii) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(iv) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(v) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(vi) Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

(vii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;

(ix) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(x) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(xi) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker or dealer has an interest, including each participant's interest and margin deposit;

(xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.15c3-1;

(xiii) Detail relating to information for possession or control requirements under § 240.15c3-3 and reported on the schedule in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter);

(xiv) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.15c3-1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and

(xv) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by § 240.17a-5 and § 240.17a-12.

(9) The records required to be made pursuant to § 240.15c3-3(d)(5) and (o).

(10) The records required to be made pursuant to § 240.15c3-4 and the results of the periodic reviews conducted pursuant to § 240.15c3-4(d).

(11) All notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a) (16)(ii)(A) of § 240.17a-3. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this paragraph (b) (11) if they are provided to all customers with access to an internal broker-dealer system, or to

one or more classes of customers. Examples of notices to be preserved under this paragraph (b) (11) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

(12) The records required to be made pursuant to § 240.15c3-1e(c)(4)(vi).

(13) The written policies and procedures the broker-dealer establishes, documents, maintains, and enforces to assess creditworthiness for the purpose of § 240.15c3-1(c)(2)(vi)(E), (c)(2)(vi)(F) (1), (c)(2)(vi)(F)(2), and (c)(2)(vi)(H).

(c) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(d) Every member, broker and dealer subject to § 240.17a-3 shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.

(e) Every member, broker and dealer subject to § 240.17a-3 shall maintain and preserve in an easily accessible place:

(1) All records required under paragraph (a)(12) of § 240.17a-3 until at least three years after the associated person's employment and any other connection with the member, broker or dealer has terminated.

(2) All records required under paragraph (a)(13) of § 240.17a-3 until at least three years after the termination of employment or association of those persons required by § 240.17f-2 to be fingerprinted; and

(3) All records required pursuant to paragraph (a)(15) of § 240.17a-3 for the life of the enterprise.

(4) All records required pursuant to paragraph (a)(14) of § 240.17a-3 for three years.

(5) All account record information required pursuant to § 240.17a-3(a)(17) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.

(6) Each report which a securities regulatory authority has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report.

(7) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

(8) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member,

broker or dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.

(9) All records required pursuant to § 240.17a-3(a)(23) until three years after the termination of the use of the risk management controls documented therein.

(f) The records required to be maintained and preserved pursuant to §§ 240.17a-3 and 240.17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche, or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).

(2) If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

(i) The member, broker, or dealer must notify its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).

(ii) The electronic storage media must:

(A) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

(3) If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

(i) At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer may request.

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under § 240.17a-4 for the time required.

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) The member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §§ 240.17a-3 and 240.17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party ("the undersigned"), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

THE UNDERSIGNED HEREBY UNDERTAKES TO FURNISH PROMPTLY TO THE U.S. SECURITIES AND EXCHANGE COMMISSION ("COMMISSION"), ITS DESIGNEES OR REPRESENTATIVES, ANY SELF-REGULATORY ORGANIZATION OF WHICH IT IS A MEMBER, OR ANY STATE SECURITIES REGULATOR HAVING JURISDICTION OVER THE MEMBER, BROKER OR DEALER, UPON REASONABLE REQUEST, SUCH INFORMATION AS IS DEEMED NECESSARY BY THE STAFFS OF THE COMMISSION, ANY SELF-REGULATORY ORGANIZATION OF WHICH IT IS A MEMBER, OR ANY STATE SECURITIES REGULATOR HAVING JURISDICTION OVER THE MEMBER, BROKER OR DEALER TO DOWNLOAD INFORMATION KEPT ON THE BROKER'S OR DEALER'S ELECTRONIC STORAGE MEDIA TO ANY MEDIUM ACCEPTABLE UNDER RULE 17A-4.

FURTHERMORE, THE UNDERSIGNED HEREBY UNDERTAKES TO TAKE REASONABLE STEPS TO PROVIDE ACCESS TO INFORMATION CONTAINED ON THE BROKER'S OR DEALER'S ELECTRONIC STORAGE MEDIA, INCLUDING, AS APPROPRIATE, ARRANGEMENTS FOR THE DOWNLOADING OF ANY RECORD REQUIRED TO BE MAINTAINED AND PRESERVED BY THE BROKER OR DEALER PURSUANT TO RULES 17A-3 AND 17A-4 UNDER THE SECURITIES EXCHANGE ACT OF 1934 IN A FORMAT ACCEPTABLE TO THE STAFFS OF THE COMMISSION, ANY SELF-REGULATORY ORGANIZATION OF WHICH IT IS A MEMBER, OR ANY STATE SECURITIES REGULATOR HAVING JURISDICTION OVER THE MEMBER, BROKER OR DEALER. SUCH ARRANGEMENTS WILL PROVIDE SPECIFICALLY THAT IN THE EVENT OF A FAILURE ON THE PART OF A BROKER OR DEALER TO DOWNLOAD THE RECORD INTO A READABLE FORMAT AND AFTER REASONABLE NOTICE TO THE BROKER OR DEALER, UPON BEING PROVIDED WITH THE APPROPRIATE ELECTRONIC STORAGE MEDIUM, THE UNDERSIGNED WILL UNDERTAKE TO DO SO, AS THE STAFFS OF THE COMMISSION, ANY SELF-REGULATORY ORGANIZATION OF WHICH IT IS A MEMBER, OR ANY STATE SECURITIES REGULATOR HAVING JURISDICTION OVER THE MEMBER, BROKER OR DEALER MAY REQUEST.

(g) If a person who has been subject to § 240.17a-3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o), such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

(h) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-9 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.

(i) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to § 240.17a-3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

WITH RESPECT TO ANY BOOKS AND RECORDS MAINTAINED OR PRESERVED ON BEHALF OF [BD], THE UNDERSIGNED HEREBY UNDERTAKES TO PERMIT EXAMINATION OF SUCH BOOKS AND RECORDS AT ANY TIME OR FROM TIME TO TIME DURING BUSINESS HOURS BY REPRESENTATIVES OR DESIGNEES OF THE SECURITIES AND EXCHANGE COMMISSION, AND TO PROMPTLY FURNISH TO SAID COMMISSION OR ITS DESIGNEE TRUE, CORRECT, COMPLETE AND CURRENT HARD COPY OF ANY OR ALL OR ANY PART OF SUCH BOOKS AND RECORDS.

Agreement with an outside entity shall not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in § 240.17a-3.

(j) Every member, broker and dealer subject to this section shall furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the representative of the Commission.

(k) *Exchanges of futures for physical.* (1) Except as provided in paragraph (k)(2) of this section, upon request of any designee or representative of the Commission or of any self-regulatory organization of which it is a member, every member, broker or dealer subject to this section shall request and obtain from its customers documentation regarding an exchange of security futures products for physical securities, including documentation of underlying cash transactions and exchanges. Upon receipt of such documentation, the member, broker or dealer shall promptly provide that documentation to the requesting designee or representative.

(2) This paragraph (k) does not apply to an underlying cash transaction(s) or exchange(s) that was effected through a member, broker or dealer registered with the Commission and is of a type required to be recorded pursuant to § 240.17a-3.

(l) Records for the most recent two year period required to be made pursuant to § 240.17a-3(g) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

(m) When used in this section:

(1) The term *office* shall have the meaning set forth in § 240.17a-3(h)(1).

(2) The term *principal* shall have the meaning set forth in § 240.17a-3(h)(2).

(3) The term *securities regulatory authority* shall have the meaning set forth in § 240.17a-3(h)(3).

(4) The term *associated person* shall have the meaning set forth in § 240.17a-3(h)(4).

Cross For interpretative releases applicable to § 240.17a-4, see No. 3040
Referencand No. 8024 in tabulation, part 241 of this chapter.

[13 FR 8212, Dec. 22, 1948]

Editorial Note: For **Federal Register** citations affecting § 240.17a-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 4

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Title: Section 240.15c3-3 - Customer protection-reserves and custody of securities.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Rules Relating to Over-The-Counter Markets.

§ 240.15c3-3 Customer protection—reserves and custody of securities.

(a) *Definitions.* For the purpose of this section:

(1) The term *customer* shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer, a municipal securities dealer, or a government securities broker or government securities dealer. The term shall, however, include another broker or dealer to the extent that broker or dealer maintains an omnibus account for the account of customers with the broker or dealer in compliance with Regulation T (12 CFR 220.1 through 220.12). The term shall not include a general partner or director or principal officer of the broker or dealer or any other person to the extent that person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer. In addition, the term shall not include a person to the extent that the person has a claim for security futures products held in a futures account, or any security futures product and any futures product held in a "proprietary account" as defined by the Commodity Futures Trading Commission in § 1.3(y) of this chapter. The term also shall not include a counterparty who has delivered collateral to an OTC derivatives dealer pursuant to a transaction in an eligible OTC derivative instrument, or pursuant to the OTC derivatives dealer's cash management securities activities or ancillary portfolio management securities activities, and who has received a prominent written notice from the OTC derivatives dealer that:

(i) Except as otherwise agreed in writing by the OTC derivatives dealer and the counterparty, the dealer may repledge or otherwise use the collateral in its business;

(ii) In the event of the OTC derivatives dealer's failure, the counterparty will likely be considered an unsecured creditor of the dealer as to that collateral;

(iii) The Securities Investor Protection Act of 1970 (SIPA) does not protect the counterparty; and

(iv) The collateral will not be subject to the requirements of § 240.8c-1, § 240.15c2-1, § 240.15c3-2, or § 240.15c3-3.

(2) The term *securities carried for the account of a customer* (hereinafter also "customer securities") shall mean:

(i) Securities received by or on behalf of a broker or dealer for the account of any customer and securities carried long by a broker or dealer for the account of any customer; and

(ii) Securities sold to, or bought for, a customer by a broker or dealer.

(3) The term *fully paid securities* means all securities carried for the account of a customer in a cash account as defined in Regulation T (12 CFR 220.1 *et seq.*), as well as securities carried for the account of a customer in a margin account or any special account under Regulation T that

have no loan value for margin purposes, and all margin equity securities in such accounts if they are fully paid: *Provided, however*, that the term *fully paid securities* does not apply to any securities purchased in transactions for which the customer has not made full payment.

(4) The term *margin securities* means those securities carried for the account of a customer in a margin account as defined in section 4 of Regulation T (12 CFR 220.4), as well as securities carried in any other account (such accounts hereinafter referred to as "margin accounts") other than the securities referred to in paragraph (a)(3) of this section.

(5) The term *excess margin securities* shall mean those securities referred to in paragraph (a)(4) of this section carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of this section which the broker or dealer identifies as not constituting margin securities.

(6) The term *qualified security* shall mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.

(7) The term *bank* means a bank as defined in section 3(a)(6) of the Act and will also mean any building and loan, savings and loan or similar banking institution subject to supervision by a Federal banking authority. With respect to a broker or dealer that maintains its principal place of business in Canada, the term "bank" also means a Canadian bank subject to supervision by a Canadian authority.

(8) The term *free credit balances* means liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise, excluding, however, funds in commodity accounts which are segregated in accordance with the Commodity Exchange Act or in a similar manner, or which are funds carried in a proprietary account as that term is defined in regulations under the Commodity Exchange Act. The term "free credit balances" also includes, if subject to immediate cash payment to customers on demand, funds carried in a securities account pursuant to a self-regulatory organization portfolio margining rule approved by the Commission under section 19(b) of the Act (15 U.S.C. 78s(b)) ("SRO portfolio margining rule"), including variation margin or initial margin, marks to market, and proceeds resulting from margin paid or released in connection with closing out, settling or exercising futures contracts and options thereon.

(9) The term *other credit balances* means cash liabilities of a broker or dealer to customers other than free credit balances and funds in commodity accounts which are segregated in accordance with the Commodity Exchange Act or in a similar manner, or funds carried in a proprietary account as that term is defined in regulations under the Commodity Exchange Act. The term "other credit balances" also includes funds that are cash liabilities of a broker or dealer to customers other than free credit balances and are carried in a securities account pursuant to an SRO portfolio margining rule, including variation margin or initial margin, marks to market, and proceeds resulting from margin paid or released in connection with closing out, settling or exercising futures contracts and options thereon.

(10) The term *funds carried for the account of any customer* (hereinafter also "customer funds") shall mean all free credit and other credit balances carried for the account of the customer.

(11) The term *principal officer* shall mean the president, executive vice president, treasurer, secretary or any other person performing a similar function with the broker or dealer.

(12) The term *household members and other persons related to principals* includes husbands or wives, children, sons-in-law or daughters-in-law and any household relative to whose support a principal contributes directly or indirectly. For purposes of this paragraph (a)(12), a principal shall be deemed to be a director, general partner, or principal officer of the broker or dealer.

(13) The term *affiliated person* includes any person who directly or indirectly controls a broker or dealer or any person who is directly or indirectly controlled by or under common control with the broker or dealer. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie control of that entity for purposes of this paragraph.

(14) The term *securities account* shall mean an account that is maintained in accordance with the requirements of section 15(c)(3) of the Act (15 U.S.C. 78o(c)(3)) and § 240.15c3-3.

(15) The term *futures account* (also referred to as "commodity account") shall mean an account that is maintained in accordance with the segregation requirements of section 4d of the Commodity Exchange Act (7 U.S.C. 6d) and the rules thereunder.

(16) The term *PAB account* means a proprietary securities account of a broker or dealer (which includes a foreign broker or dealer, or a foreign bank acting as a broker or dealer) other than a delivery-versus-payment account or a receipt-versus-payment account. The term does not include an account that has been subordinated to the claims of creditors of the carrying broker or dealer.

(17) The term *Sweep Program* means a service provided by a broker or dealer where it offers to its customer the option to automatically transfer free credit balances in the securities account of the customer to either a money market mutual fund product as described in § 270.2a-7 of this chapter or an account at a bank whose deposits are insured by the Federal Deposit Insurance Corporation.

(b) *Physical possession or control of securities.* (1) A broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of customers.

(2) A broker or dealer shall not be deemed to be in violation of the provisions of paragraph (b)(1) of this section regarding physical possession or control of customers' securities if, solely as the result of normal business operations, temporary lags occur between the time when a security is required to be in the possession or control of the broker or dealer and the time that it is placed in the broker's or dealer's physical possession or under its control, provided that the broker or dealer takes timely steps in good faith to establish prompt physical possession or control. The burden of proof shall be on the broker or dealer to establish that the failure to obtain physical possession or control of securities carried for the account of customers as required by paragraph (b)(1) of this section is merely temporary and solely the result of normal business operations including same day receipt and redelivery (turnaround), and to establish that it has taken timely steps in good faith to place them in its physical possession or control.

(3) A broker or dealer shall not be deemed to be in violation of the provisions of paragraph (b)(1) of this section regarding physical possession or control of fully-paid or excess margin securities borrowed from any person, provided that the broker or dealer and the lender, at or before the time of the loan, enter into a written agreement that, at a minimum;

(i) Sets forth in a separate schedule or schedules the basis of compensation for any loan and generally the rights and liabilities of the parties as to the borrowed securities;

(ii) Provides that the lender will be given a schedule of the securities actually borrowed at the time of the borrowing of the securities;

(iii) Specifies that the broker or dealer:

(A) Must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, which fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6)(A)-(C) of the Act (15 U.S.C. 78c(a)(6)(A)-(C)) or such other collateral as the Commission designates as permissible by order as necessary or appropriate in the public interest and consistent with the protection of investors after giving consideration to the collateral's liquidity, volatility, market depth and location, and the issuer's creditworthiness; and

(B) Must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in paragraph (b)(3)(iii)(A) of this section to the lender by the close of the next business day as necessary to equal, together with the

collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

(iv) Contains a prominent notice that the provisions of the SIPA may not protect the lender with respect to the securities loan transaction and that, therefore, the collateral delivered to the lender may constitute the only source of satisfaction of the broker's or dealer's obligation in the event the broker or dealer fails to return the securities.

(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is initiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Corporation has taken the position that the provisions of the SIPA do not protect the counterparty with respect to the repurchase agreement; and

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purpose of this paragraph (b)(4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3-3 (c)(1), (c)(3), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure statement, which must be prominently displayed:

REQUIRED DISCLOSURE

THE [SELLER] IS NOT PERMITTED TO SUBSTITUTE OTHER SECURITIES FOR THOSE SUBJECT TO THIS AGREEMENT AND THEREFORE MUST KEEP THE [BUYER'S] SECURITIES SEGREGATED AT ALL TIMES, UNLESS IN THIS AGREEMENT THE [BUYER] GRANTS THE [SELLER] THE RIGHT TO SUBSTITUTE OTHER SECURITIES. IF THE [BUYER] GRANTS THE RIGHT TO SUBSTITUTE, THIS MEANS THAT THE [BUYER'S] SECURITIES WILL LIKELY BE COMMINGLED WITH THE [SELLER'S] OWN SECURITIES DURING THE TRADING DAY. THE [BUYER] IS ADVISED THAT, DURING ANY TRADING DAY THAT THE [BUYER'S] SECURITIES ARE COMMINGLED WITH THE [SELLER'S] SECURITIES, THEY WILL BE SUBJECT TO LIENS GRANTED BY THE [SELLER] TO ITS CLEARING BANK AND MAY BE USED BY THE [SELLER] FOR DELIVERIES ON OTHER SECURITIES TRANSACTIONS. WHENEVER THE SECURITIES ARE COMMINGLED, THE [SELLER'S] ABILITY TO RESEGREGATE SUBSTITUTE SECURITIES FOR THE [BUYER] WILL BE SUBJECT TO THE [SELLER'S] ABILITY TO SATISFY THE CLEARING LIEN OR TO OBTAIN SUBSTITUTE SECURITIES.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (b)(4)(iv), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(v) This paragraph (b)(4) shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or

dealer or any person to the extent that the person's claim is explicitly subordinated to the claims of creditors of the broker or dealer.

(5) A broker or dealer is required to obtain and thereafter maintain the physical possession or control of securities carried for a PAB account, unless the broker or dealer has provided written notice to the account holder that the securities may be used in the ordinary course of its securities business, and has provided an opportunity for the account holder to object.

(c) *Control of securities.* Securities under the control of a broker or dealer shall be deemed to be securities which:

(1) Are represented by one or more certificates in the custody or control of a clearing corporation or other subsidiary organization of either national securities exchanges or of a registered national securities association, or of a custodian bank in accordance with a system for the central handling of securities complying with the provisions of §§ 240.8c-1(g) and 240.15c2-1(g) the delivery of which certificates to the broker or dealer does not require the payment of money or value, and if the books or records of the broker or dealer identify the customers entitled to receive specified quantities or units of the securities so held for such customers collectively; or

(2) Are carried for the account of any customer by a broker or dealer and are carried in an omnibus credit account in the name of such broker or dealer with another broker or dealer in compliance with the requirements of section 7(f) of Regulation T (12 CFR 220.7(f)), such securities being deemed to be under the control of such broker or dealer to the extent that it has instructed such carrying broker or dealer to maintain physical possession or control of them free of any charge, lien, or claim of any kind in favor of such carrying broker or dealer or any persons claiming through such carrying broker or dealer; or

(3) Are the subject of bona fide items of transfer; provided that securities shall be deemed not to be the subject of bona fide items of transfer if, within 40 calendar days after they have been transmitted for transfer by the broker or dealer to the issuer or its transfer agent, new certificates conforming to the instructions of the broker or dealer have not been received by the broker or dealer, the broker or dealer has not received a written statement by the issuer or its transfer agent acknowledging the transfer instructions and the possession of the securities or the broker or dealer has not obtained a revalidation of a window ticket from a transfer agent with respect to the certificate delivered for transfer; or

(4) Are in the custody of a foreign depository, foreign clearing agency or foreign custodian bank which the Commission upon application from a broker or dealer, a registered national securities exchange or a registered national securities association, or upon its own motion shall designate as a satisfactory control location for securities; or

(5) Are in the custody or control of a bank as defined in section 3(a)(6) of the Act, the delivery of which securities to the broker or dealer does not require the payment of money or value and the bank having acknowledged in writing that the securities in its custody or control are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank; or

(6)(i) Are held in or are in transit between offices of the broker or dealer; or (ii) are held by a corporate subsidiary if the broker or dealer owns and exercises a majority of the voting rights of all of the voting securities of such subsidiary, assumes or guarantees all of the subsidiary's obligations and liabilities, operates the subsidiary as a branch office of the broker or dealer, and assumes full responsibility for compliance by the subsidiary and all of its associated persons with the provisions of the Federal securities laws as well as for all of the other acts of the subsidiary and such associated persons; or

(7) Are held in such other locations as the Commission shall upon application from a broker or dealer find and designate to be adequate for the protection of customer securities.

(d) *Requirement to reduce securities to possession or control.* Not later than the next business day, a broker or dealer, as of the close of the preceding business day, shall determine from its books or records the quantity of fully paid securities and excess margin securities in its possession or control and the quantity of fully paid securities and excess margin securities not in

its possession or control. In making this daily determination inactive margin accounts (accounts having no activity by reason of purchase or sale of securities, receipt or delivery of cash or securities or similar type events) may be computed not less than once weekly. If such books or records indicate, as of such close of the business day, that such broker or dealer has not obtained physical possession or control of all fully paid and excess margin securities as required by this section and there are securities of the same issue and class in any of the following noncontrol locations:

(1) Securities subject to a lien securing moneys borrowed by the broker or dealer or securities loaned to another broker or dealer or a clearing corporation, then the broker or dealer shall, not later than the business day following the day on which such determination is made, issue instructions for the release of such securities from the lien or return of such loaned securities and shall obtain physical possession or control of such securities within two business days following the date of issuance of the instructions in the case of securities subject to lien securing borrowed moneys and within five business days following the date of issuance of instructions in the case of securities loaned; or

(2) Securities included on the broker's or dealer's books or records as failed to receive more than 30 calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain physical possession or control of securities so failed to receive through a buy-in procedure or otherwise; or

(3) Securities receivable by the broker or dealer as a security dividend receivable, stock split or similar distribution for more than 45 calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain physical possession or control of securities so receivable through a buy-in procedure or otherwise; or

(4) Securities included on the broker's or dealer's books or records that allocate to a short position of the broker or dealer or a short position for another person, excluding positions covered by paragraph (m) of this section, for more than 30 calendar days, then the broker or dealer must, not later than the business day following the day on which the determination is made, take prompt steps to obtain physical possession or control of such securities. For the purposes of this paragraph (d)(4), the 30 day time period will not begin to run with respect to a syndicate short position established in connection with an offering of securities until the completion of the underwriter's participation in the distribution as determined pursuant to § 242.100(b) of Regulation M of this chapter (17 CFR 242.100 through 242.105); or

(5) A broker or dealer which is subject to the requirements of § 240.15c3-3 with respect to physical possession or control of fully paid and excess margin securities shall prepare and maintain a current and detailed description of the procedures which it utilizes to comply with the possession or control requirements set forth in this section. The records required herein shall be made available upon request to the Commission and to the designated examining authority for such broker or dealer.

(e) *Special reserve bank accounts for the exclusive benefit of customers and PAB accounts.* (1) Every broker or dealer must maintain with a bank or banks at all times when deposits are required or hereinafter specified a "Special Reserve Bank Account for the Exclusive Benefit of Customers" (hereinafter referred to as the *Customer Reserve Bank Account*) and a "Special Reserve Bank Account for Brokers and Dealers" (hereinafter referred to as the *PAB Reserve Bank Account*), each of which will be separate from the other and from any other bank account of the broker or dealer. Such broker or dealer must at all times maintain in the Customer Reserve Bank Account and the PAB Reserve Bank Account, through deposits made therein, cash and/or qualified securities in amounts computed in accordance with the formula attached as Exhibit A (17 CFR 240.15c3-3a), as applied to customer and PAB accounts respectively.

(2) With respect to each computation required pursuant to paragraph (e)(1) of this section, a broker or dealer must not accept or use any of the amounts under items comprising Total Credits under the formula referred to in paragraph (e)(1) of this section except for the specified purposes indicated under items comprising Total Debits under the formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof must be maintained in the Customer

Reserve Bank Account and PAB Reserve Bank Account pursuant to paragraph (e)(1) of this section.

(3) *Reserve Bank Account computations.* (i) Computations necessary to determine the amount required to be deposited in the Customer Reserve Bank Account and PAB Reserve Bank Account as specified in paragraph (e)(1) of this section must be made weekly, as of the close of the last business day of the week, and the deposit so computed must be made no later than one hour after the opening of banking business on the second following business day; *provided, however,* a broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in § 240.15c3-1) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding \$1,000,000, may in the alternative make the Customer Reserve Bank Account computation monthly, as of the close of the last business day of the month, and, in such event, must deposit not less than 105 percent of the amount so computed no later than one hour after the opening of banking business on the second following business day.

(ii) If a broker or dealer, computing on a monthly basis, has, at the time of any required computation, aggregate indebtedness in excess of 800 percent of net capital, such broker or dealer must thereafter compute weekly as aforesaid until four successive weekly Customer Reserve Bank Account computations are made, none of which were made at a time when its aggregate indebtedness exceeded 800 percent of its net capital.

(iii) A broker or dealer that does not carry the accounts of a "customer" as defined by this section or conduct a proprietary trading business may make the computation to be performed with respect to PAB accounts under paragraph (e)(1) of this section monthly rather than weekly. If a broker or dealer performing the computation with respect to PAB accounts under paragraph (e)(1) of this section on a monthly basis is, at the time of any required computation, required to deposit additional cash or qualified securities in the PAB Reserve Bank Account, the broker or dealer must thereafter perform the computation required with respect to PAB accounts under paragraph (e)(1) of this section weekly until four successive weekly computations are made, none of which is made at a time when the broker or dealer was required to deposit additional cash or qualified securities in the PAB Reserve Bank Account.

(iv) Computations in addition to the computations required in this paragraph (e)(3), may be made as of the close of any business day, and the deposits so computed must be made no later than one hour after the opening of banking business on the second following business day.

(v) The broker or dealer must make and maintain a record of each such computation made pursuant to this paragraph (e)(3) or otherwise and preserve each such record in accordance with § 240.17a-4.

(4) If the computation performed under paragraph (e)(3) of this section with respect to PAB accounts results in a deposit requirement, the requirement may be satisfied to the extent of any excess debit in the computation performed under paragraph (e)(3) of this section with respect to customer accounts of the same date. However, a deposit requirement resulting from the computation performed under paragraph (e)(3) of this section with respect to customer accounts cannot be satisfied with excess debits from the computation performed under paragraph (e)(3) of this section with respect to PAB accounts.

(5) In determining whether a broker or dealer maintains the minimum deposits required under this section, the broker or dealer must exclude the total amount of any cash deposited with an affiliated bank. The broker or dealer also must exclude cash deposited with a non-affiliated bank to the extent that the amount of the deposit exceeds 15% of the bank's equity capital as reported by the bank in its most recent Call Report or any successor form the bank is required to file by its appropriate Federal banking agency (as defined by section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)).

(f) *Notification of banks.* A broker or dealer required to maintain a Customer Reserve Bank Account and PAB Reserve Bank Account prescribed by paragraph (e)(1) of this section or who maintains a Special Account referred to in paragraph (k) of this section must obtain and preserve in accordance with § 240.17a-4 a written notification from each bank with which it maintains a Customer Reserve Bank Account, a PAB Reserve Bank Account, or a Special Account that the

bank was informed that all cash and/or qualified securities deposited therein are being held by the bank for the exclusive benefit of the customers and account holders of the broker or dealer in accordance with the regulations of the Commission, and are being kept separate from any other accounts maintained by the broker or dealer with the bank, and the broker or dealer must have a written contract with the bank which provides that the cash and/or qualified securities will at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank and will not be subject to any right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank.

(g) *Withdrawals from the reserve bank account.* A broker or dealer may make withdrawals from a Customer Reserve Bank Account and a PAB Reserve Bank Account if and to the extent that at the time of the withdrawal the amount remaining in the Customer Reserve Bank Account and PAB Reserve Bank Account is not less than the amount then required by paragraph (e) of this section. A bank may presume that any request for withdrawal from a reserve bank account is in conformity and compliance with this paragraph (g). On any business day on which a withdrawal is made, the broker or dealer shall make a record of the computation on the basis of which he makes such withdrawal, and he shall preserve such computation in accordance with § 240.17a-4.

(h) *Buy-in of short security differences.* A broker or dealer shall within 45 calendar days after the date of the examination, count, verification and comparison of securities pursuant to § 240.17a-13 or otherwise or to the annual report of financial condition in accordance with § 240.17a-5 or 240.17a-12, buy-in all short security differences which are not resolved during the 45-day period.

(i) *Notification in the event of failure to make a required deposit.* If a broker or dealer shall fail to make in its Customer Reserve Bank Account, PAB Reserve Bank Account or special account a deposit, as required by this section, the broker or dealer shall by telegram immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and shall promptly thereafter confirm such notification in writing.

(j) *Treatment of free credit balances.* (1) A broker or dealer must not accept or use any free credit balance carried for the account of any customer of the broker or dealer unless such broker or dealer has established adequate procedures pursuant to which each customer for whom a free credit balance is carried will be given or sent, together with or as part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing the customer of the amount due to the customer by the broker or dealer on the date of the statement, and that the funds are payable on demand of the customer.

(2) A broker or dealer must not convert, invest, or transfer to another account or institution, credit balances held in a customer's account except as provided in paragraphs (j)(2)(i) and (ii) of this section.

(i) A broker or dealer is permitted to invest or transfer to another account or institution, free credit balances in a customer's account only upon a specific order, authorization, or draft from the customer, and only in the manner, and under the terms and conditions, specified in the order, authorization, or draft.

(ii) A broker or dealer is permitted to transfer free credit balances held in a customer's securities account to a product in its Sweep Program or to transfer a customer's interest in one product in a Sweep Program to another product in a Sweep Program, *provided:*

(A) For an account opened on or after the effective date of this paragraph (j)(2)(ii), the customer gives prior written affirmative consent to having free credit balances in the customer's securities account included in the Sweep Program after being notified:

(1) Of the general terms and conditions of the products available through the Sweep Program; and

(2) That the broker or dealer may change the products available under the Sweep Program.

(B) For any account:

(1) The broker or dealer provides the customer with the disclosures and notices regarding the Sweep Program required by each self-regulatory organization of which the broker or dealer is a member;

(2) The broker or dealer provides notice to the customer, as part of the customer's quarterly statement of account, that the balance in the bank deposit account or shares of the money market mutual fund in which the customer has a beneficial interest can be liquidated on the customer's order and the proceeds returned to the securities account or remitted to the customer; and

(3)(i) The broker or dealer provides the customer with written notice at least 30 calendar days before:

(A) Making changes to the terms and conditions of the Sweep Program;

(B) Making changes to the terms and conditions of a product currently available through the Sweep Program;

(C) Changing, adding or deleting products available through the Sweep Program; or

(D) Changing the customer's investment through the Sweep Program from one product to another.

(ii) The notice must describe the new terms and conditions of the Sweep Program or product or the new product, and the options available to the customer if the customer does not accept the new terms and conditions or product.

(k) *Exemptions.* (1) The provisions of this section shall not be applicable to a broker or dealer meeting all of the following conditions:

(i) The broker's or dealer's transactions as dealer (as principal for its own account) are limited to the purchase, sale, and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for its own account with or through another registered broker or dealer;

(ii) The broker's or dealer's transactions as broker (agent) are limited to:

(a) The sale and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company;

(b) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and

(c) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(iii) The broker or dealer promptly transmits all funds and delivers all securities received in connection with its activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(iv) Notwithstanding the foregoing, this section shall not apply to any insurance company which is a registered broker-dealer, and which otherwise meets all of the conditions in paragraphs (k)(1)(i), (ii), and (iii) of this section, solely by reason of its participation in transactions that are a part of the business of insurance, including the purchasing, selling, or holding of securities for or on behalf of such company's general and separate accounts.

(2) The provisions of this section shall not be applicable to a broker or dealer:

(i) Who carries no margin accounts, promptly transmits all customer funds and delivers all securities received in connection with its activities as a broker or dealer, does not otherwise hold funds or securities for, or owe money or securities to, customers and effectuates all financial transactions between the broker or dealer and its customers through one or more bank accounts,

each to be designated as "Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer)"; or

(ii) Who, as an introducing broker or dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and who promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto pursuant to the requirements of §§ 240.17a-3 and 240.17a-4 of this chapter, as are customarily made and kept by a clearing broker or dealer.

(3) Upon written application by a broker or dealer, the Commission may exempt such broker or dealer from the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission finds that the broker or dealer has established safeguards for the protection of funds and securities of customers comparable with those provided for by this section and that it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

(l) *Delivery of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a broker or dealer to receive in the course of normal business operations following demand made on the broker or dealer, the physical delivery of certificates for:

(1) Fully-paid securities to which he is entitled, and,

(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; and, subject to the right of the broker or dealer under Regulation T (12 CFR 220) to retain collateral for its own protection beyond the requirements of Regulation T, excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(m) *Completion of sell orders on behalf of customers.* If a broker or dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason whatever the broker or dealer has not obtained possession of the securities from the customer within 10 business days after the settlement date, the broker or dealer shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity: *Provided, however,* The term *customer* for the purpose of this paragraph (m) shall not include a broker or dealer who maintains an omnibus credit account with another broker or dealer in compliance with section 7(f) of Regulation T (12 CFR 220.7(f)).

Note to paragraph (m):

See 38 FR 12103, May 9, 1973 for an order suspending indefinitely the operation of paragraph (m) as to sell orders for exempted securities (e.g., U.S. Government and municipal obligations).

(n) *Extensions of time.* If a registered national securities exchange or a registered national securities association is satisfied that a broker or dealer is acting in good faith in making the application and that exceptional circumstances warrant such action, such exchange or association, on application of the broker or dealer, may extend any period specified in paragraphs (d) (2) through (4), (h) and (m) of this section, relating to the requirement that such broker or dealer take action within a designated period of time to buy-in a security, for one or more limited periods commensurate with the circumstances. Each such exchange or association shall make and preserve for a period of not less than 3 years a record of each extension granted pursuant to paragraph (n) of this section which shall contain a summary of the justification for the granting of the extension.

(o) *Security futures products—(1) Where security futures products shall be held.* A broker or dealer registered with the Commission pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)) that is also a futures commission merchant registered with the Commodity Futures Trading Commission

pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)):

(i) Shall hold a customer's security futures products in either a securities account or a futures account; and

(ii) Shall establish written policies or procedures for determining whether customer security futures products will be placed in a securities account or a futures account and, if applicable, the process by which a customer may elect the type or types of account in which security futures products will be held (including the procedure to be followed if a customer fails to make an election of account type).

(2) *Disclosure and record requirements.* (i) Except as provided in paragraph (o)(2)(ii), before a broker or dealer registered with the Commission pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)) accepts the first order for a security futures product from or on behalf of a customer, the broker or dealer shall furnish the customer with a disclosure document containing the following information:

(A) A description of the protections provided by the requirements set forth under this section and SIPA applicable to a securities account;

(B) A description of the protections provided by the requirements set forth under section 4d of the Commodity Exchange Act (7 U.S.C. 6d) applicable to a futures account;

(C) A statement indicating whether the customer's security futures products will be held in a securities account or a futures account, or whether the firm permits customers to make or change an election of account type; and

(D) A statement that, with respect to holding the customer's security futures products in a securities account or a futures account, the alternative regulatory scheme is not available to the customer with relation to that account.

(ii) Where a customer account containing an open security futures product position is transferred to a broker or dealer registered with the Commission pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)), that broker or dealer may instead provide the statements described in paragraphs (o)(2)(i)(C) and (o)(2)(i)(D) of this section no later than ten business days after the date the account is received.

(3) *Changes in account type.* A broker or dealer registered with the Commission pursuant to section 15(b)(1) of the Act (15 U.S.C. 78o(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)) may change the type of account in which a customer's security futures products will be held; *provided that:*

(i) The broker or dealer creates a record of each change in account type, including the name of the customer, the account number, the date the broker or dealer received the customer's request to change the account type, if applicable, and the date the change in account type became effective; and

(ii) The broker or dealer, at least ten days before the customer's account type is changed:

(A) Notifies the customer in writing of the date that the change will become effective; and

(B) Provides the customer with the disclosures described in paragraph (o)(2)(i) of this section.

[37 FR 25226, Nov. 29, 1972; 38 FR 6277, Mar. 8, 1973, as amended at 42 FR 23790, May 10, 1977; 44 FR 1975, Jan. 9, 1979; 45 FR 37688, June 4, 1980; 47 FR 21775, May 20, 1982; 47 FR 23920, June 2, 1982; 50 FR 41340, Oct. 10, 1985; 52 FR 30333, Aug. 14, 1987; 63 FR 59400, Nov. 3, 1998; 67 FR 58299, Sept. 13, 2002; 68 FR 12783, Mar. 17, 2003; 78 FR 51902, Aug. 21, 2013]

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 4

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Title: Section 240.15c3-1 - Net capital requirements for brokers or dealers.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Rules Relating to Over-The-Counter Markets.

§ 240.15c3-1 Net capital requirements for brokers or dealers.

(a) Every broker or dealer must at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of this section, or to any of its activities under paragraph (a)(2) of this section, and must otherwise not be "insolvent" as that term is defined in paragraph (c)(16) of this section. In lieu of applying paragraphs (a)(1) and (a)(2) of this section, an OTC derivatives dealer shall maintain net capital pursuant to paragraph (a)(5) of this section. Each broker or dealer also shall comply with the supplemental requirements of paragraphs (a)(4) and (a)(9) of this section, to the extent either paragraph is applicable to its activities. In addition, a broker or dealer shall maintain net capital of not less than its own net capital requirement plus the sum of each broker's or dealer's subsidiary or affiliate minimum net capital requirements, which is consolidated pursuant to appendix C, § 240.15c3-1c.

Ratio Requirements

AGGREGATE INDEBTEDNESS STANDARD

(1)(i) No broker or dealer, other than one that elects the provisions of paragraph (a)(1)(ii) of this section, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer).

ALTERNATIVE STANDARD

(ii) A broker or dealer may elect not to be subject to the Aggregate Indebtedness Standard of paragraph (a)(1)(i) of this section. That broker or dealer shall not permit its net capital to be less than the greater of \$250,000 or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3-3, § 240.15c3-3a). Such broker or dealer shall notify its Examining Authority, in writing, of its election to operate under this paragraph (a)(1)(ii). Once a broker or dealer has notified its Examining Authority, it shall continue to operate under this paragraph unless a change is approved upon application to the Commission. A broker or dealer that elects this standard and is not exempt from Rule 15c3-3 shall:

(A) Make the computation required by § 240.15c3-3(e) and set forth in Exhibit A, § 240.15c3-3a, on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(B) Include in Items 7 and 8 of Exhibit A, § 240.15c3-3a, the market value of items specified therein more than 7 business days old;

(C) Exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in paragraphs (c)(2)(vi) (A) and (E) of this section and any related debit items from the Exhibit A requirement for 3 business days; and

(D) Deduct from net worth in computing net capital 1 percent of the contract value of all failed to deliver contracts or securities borrowed that were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, § 240.15c3-3a.

FUTURES COMMISSION MERCHANTS

(iii) No broker or dealer registered as a futures commission merchant shall permit its net capital to be less than the greater of its requirement under paragraph (a)(1) (i) or (ii) of this section, or 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the customer's account).

Minimum Requirements

See Appendix E (§ 240.15c3-1E) for temporary minimum requirements.

Brokers or Dealers That Carry Customer Accounts

(2)(i) A broker or dealer (other than one described in paragraphs (a)(2)(ii) or (a)(8) of this section) shall maintain net capital of not less than \$250,000 if it carries customer or broker or dealer accounts and receives or holds funds or securities for those persons. A broker or dealer shall be deemed to receive funds, or to carry customer or broker or dealer accounts and to receive funds from those persons if, in connection with its activities as a broker or dealer, it receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker or dealer carrying the account of a customer, escrow agent, issuer, underwriter, sponsor, or other distributor of securities. A broker or dealer shall be deemed to hold securities for, or to carry customer or broker or dealer accounts, and hold securities of, those persons if it does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer. A broker or dealer, without complying with this paragraph (a)(2)(i), may receive securities only if its activities conform with the provisions of paragraphs (a)(2) (iv) or (v) of this section, and may receive funds only in connection with the activities described in paragraph (a)(2)(v) of this section.

(ii) A broker or dealer that is exempt from the provisions of § 240.15c3-3 pursuant to paragraph (k)(2)(i) thereof shall maintain net capital of not less than \$100,000.

Dealers

(iii) A dealer shall maintain net capital of not less than \$100,000. For the purposes of this section, the term "dealer" includes:

(A) Any broker or dealer that endorses or writes options otherwise than on a registered national securities exchange or a facility of a registered national securities association; and

(B) Any broker or dealer that effects more than ten transactions in any one calendar year for its own investment account. This section shall not apply to those persons engaging in activities described in paragraphs (a)(2)(v), (a)(2)(vi) or (a)(8) of this section, or to those persons whose underwriting activities are limited solely to acting as underwriters in best efforts or all or none underwritings in conformity with paragraph (b)(2) of § 240.15c2-4, so long as those persons engage in no other dealer activities.

Brokers or Dealers That Introduce Customer Accounts And Receive Securities

(iv) A broker or dealer shall maintain net capital of not less than \$50,000 if it introduces transactions and accounts of customers or other brokers or dealers to another registered broker or dealer that carries such accounts on a fully disclosed basis, and if the broker or dealer

receives but does not hold customer or other broker or dealer securities. A broker or dealer operating under this paragraph (a)(2)(iv) of this section may participate in a firm commitment underwriting without being subject to the provisions of paragraph (a)(2)(iii) of this section, but may not enter into a commitment for the purchase of shares related to that underwriting.

Brokers or Dealers Engaged in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(v) A broker or dealer shall maintain net capital of not less than \$25,000 if it acts as a broker or dealer with respect to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account directly from or to the issuer on other than a subscription way basis. A broker or dealer operating under this section may sell securities for the account of a customer to obtain funds for the immediate reinvestment in redeemable securities of registered investment companies. A broker or dealer operating under this paragraph (a)(2)(v) must promptly transmit all funds and promptly deliver all securities received in connection with its activities as a broker or dealer, and may not otherwise hold funds or securities for, or owe money or securities to, customers.

Other Brokers or Dealers

(vi) A broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers and does not carry accounts of, or for, customers and does not engage in any of the activities described in paragraphs (a)(2) (i) through (v) of this section shall maintain net capital of not less than \$5,000. A broker or dealer operating under this paragraph may engage in the following dealer activities without being subject to the requirements of paragraph (a)(2)(iii) of this section:

(A) In the case of a buy order, prior to executing such customer's order, it purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another registered broker or dealer or

(B) In the case of a sell order, prior to executing such customer's order, it sells as principal the same number of shares or a portion thereof, which shall be cleared through another registered broker or dealer.

(3) [Reserved]

Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than \$2,500 for each security in which it makes a market (unless a security in which it makes a market has a market value of \$5 or less, in which event the amount of net capital shall be not less than \$1,000 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall it have net capital less than that required by the provisions of paragraph (a) of this section, or be required to maintain net capital of more than \$1,000,000 unless required by paragraph (a) of this section.

(5) In accordance with appendix F to this section (§ 240.15c3-1f), the Commission may grant an application by an OTC derivatives dealer when calculating net capital to use the market risk standards of appendix F as to some or all of its positions in lieu of the provisions of paragraph (c) (2)(vi) of this section and the credit risk standards of appendix F to its receivables (including counterparty net exposure) arising from transactions in eligible OTC derivative instruments in lieu of the requirements of paragraph (c)(2)(iv) of this section. An OTC derivatives dealer shall at all times maintain tentative net capital of not less than \$100 million and net capital of not less than \$20 million.

Market Makers, Specialists and Certain Other Dealers

(6)(i) A dealer who meets the conditions of paragraph (a)(6)(ii) of this section may elect to operate under this paragraph (a)(6) and thereby not apply, except to the extent required by this paragraph (a)(6), the provisions of paragraphs (c)(2)(vi) or appendix A (§ 240.15c3-1a) of this

section to market maker and specialist transactions and, in lieu thereof, apply thereto the provisions of paragraph (a)(6)(iii) of this section.

(ii) This paragraph (a)(6) shall be available to a dealer who does not effect transactions with other than brokers or dealers, who does not carry customer accounts, who does not effect transactions in options not listed on a registered national securities exchange or facility of a registered national securities association, and whose market maker or specialist transactions are effected through and carried in a market maker or specialist account cleared by another broker or dealer as provided in paragraph (a)(6)(iv) of this section.

(iii) A dealer who elects to operate pursuant to this paragraph (a)(6) shall at all times maintain a liquidating equity in respect of securities positions in his market maker or specialist account at least equal to:

(A) An amount equal to 25 percent (5 percent in the case of exempted securities) of the market value of the long positions and 30 percent of the market value of the short positions; provided, however, in the case of long or short positions in options and long or short positions in securities other than options which relate to a bona fide hedged position as defined in paragraph (c)(2)(x)(C) of this section, such amount shall equal the deductions in respect of such positions specified by appendix A (§ 240.15c3-1a).

(B) Such lesser requirement as may be approved by the Commission under specified terms and conditions upon written application of the dealer and the carrying broker or dealer.

(C) For purposes of this paragraph (a)(6)(iii), equity in such specialist or market maker account shall be computed by (1) marking all securities positions long or short in the account to their respective current market values, (2) adding (deducting in the case of a debit balance) the credit balance carried in such specialist or market maker account, and (3) adding (deducting in the case of short positions) the market value of positions long in such account.

(iv) The dealer shall obtain from the broker or dealer carrying the market maker or specialist account a written undertaking which shall be designated "Notice Pursuant to § 240.15c3-1(a)(6) of Intention to Carry Specialist or Market Maker Account." Said undertaking shall contain the representations required by paragraph (a)(6) of this section and shall be filed with the Commission's Washington, DC, Office, the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the Designated Examining Authorities of both firms prior to effecting any transactions in said account. The broker or dealer carrying such account:

(A) Shall mark the account to the market not less than daily and shall issue appropriate calls for additional equity which shall be met by noon of the following business day;

(B) Shall notify by telegraph the Commission and the Designated Examining Authorities pursuant to 17 CFR 240.17a-11, if the market maker or specialist fails to deposit any required equity within the time prescribed in paragraph (a)(6)(iv)(A) of this section; said telegraphic notice shall be received by the Commission and the Designated Examining Authorities not later than the close of business on the day said call is not met;

(C) Shall not extend further credit in the account if the equity in the account falls below that prescribed in paragraph (a)(6)(iii) of this section, and

(D) Shall take steps to liquidate promptly existing positions in the account in the event of a failure to meet a call for equity.

(v) No such carrying broker or dealer shall permit the sum of (A) the deductions required by paragraph (c)(2)(x)(A) of this section in respect of all transactions in market maker accounts guaranteed, indorsed or carried by such broker or dealer pursuant to paragraph (c)(2)(x) of this section and (B) the equity required by paragraph (iii) of this paragraph (a)(6) in respect of all transactions in the accounts of specialists of market makers in options carried by such broker or dealer pursuant to this paragraph (a)(6) to exceed 1,000 percent of such broker's or dealer's net capital as defined in paragraph (c)(2) of this section for any period exceeding five business days; *Provided*, That solely for purposes of this paragraph (a)(6)(v), deductions or equity required in a specialist or market maker account in respect of positions in fully paid securities (other than

options), which do not underlie options listed on the national securities exchange or facility of a national securities association of which the specialist or market maker is a member, need not be recognized. *Provided further*, That if at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall immediately transmit telegraphic notice of such event to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker or dealer maintains its principal place of business, and such broker's or dealer's Designated Examining Authority. *Provided further*, That if at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then such broker or dealer shall be subject to the prohibitions against withdrawal of equity capital set forth in paragraph (e) of this section, and to the prohibitions against reduction, prepayment and repayment of subordination agreements set forth in paragraph (b)(11) of § 240.15c3-1d, as if such broker or dealer's net capital were below the minimum standards specified by each of the aforementioned paragraphs.

Alternative Net Capital Computation for Broker-Dealers That Elect To Be Supervised on a Consolidated Basis

(7) In accordance with Appendix E to this section (§ 240.15c3-1e), the Commission may approve, in whole or in part, an application or an amendment to an application by a broker or dealer to calculate net capital using the market risk standards of appendix E to compute a deduction for market risk on some or all of its positions, instead of the provisions of paragraphs (c)(2)(vi) and (c)(2)(vii) of this section, and using the credit risk standards of Appendix E to compute a deduction for credit risk on certain credit exposures arising from transactions in derivatives instruments, instead of the provisions of paragraph (c)(2)(iv) of this section, subject to any conditions or limitations on the broker or dealer the Commission may require as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer that has been approved to calculate its net capital under appendix E must:

(i) At all times maintain tentative net capital of not less than \$1 billion and net capital of not less than \$500 million;

(ii) Provide notice that same day in accordance with § 240.17a-11(g) if the broker's or dealer's tentative net capital is less than \$5 billion. The Commission may, upon written application, lower the threshold at which notification is necessary under this paragraph (a)(7)(ii), either unconditionally or on specified terms and conditions, if a broker or dealer satisfies the Commission that notification at the \$5 billion threshold is unnecessary because of, among other factors, the special nature of its business, its financial position, its internal risk management system, or its compliance history; and

(iii) Comply with § 240.15c3-4 as though it were an OTC derivatives dealer with respect to all of its business activities, except that paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) of § 240.15c3-4 shall not apply.

(8) *Municipal securities brokers' brokers.* (i) A municipal securities brokers' brokers, as defined in subsection (ii) of this paragraph (a)(8), may elect not to be subject to the limitations of paragraph (c)(2)(ix) of this section provided that such brokers' broker complies with the requirements set out in paragraphs (a)(8) (iii), (iv) and (v) of this section.

(ii) The term *municipal securities brokers' broker* shall mean a municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no "customers" as defined in this rule and who does not have or maintain any municipal securities in its proprietary or other accounts.

(iii) In order to qualify to operate under this paragraph (a)(8), a brokers' broker shall at all times have and maintain net capital of not less than \$150,000.

(iv) For purposes of this paragraph (a)(8), a brokers' broker shall deduct from net worth 1% of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(v) For purposes of this paragraph (a)(8), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by Rule 15c3-1(c)(2)(iv)(E).

Certain Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements

(9) A broker or dealer shall maintain net capital in addition to the amounts required under paragraph (a) of this section in an amount equal to 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party;

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act subject to reverse repurchase agreements with any one party over 110 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party.

(b) Exemptions:

(1) The provisions of this section shall not apply to any specialist:

(i) Whose securities business, except for an occasional non-specialist related securities transaction for its own account, is limited to that of acting as an options market maker on a national securities exchange;

(ii) That is a member in good standing and subject to the capital requirements of a national securities exchange;

(iii) That does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or section 15C of the Act or a member of a national securities exchange; and

(iv) That is not a clearing member of The Options Clearing Corporation and whose securities transactions are effected through and carried in an account cleared by another broker or dealer registered with the Commission under section 15 of the Act.

(2) A member in good standing of a national securities exchange who acts as a floor broker (and whose activities do not require compliance with other provisions of this rule), may elect to comply, in lieu of the other provisions of this section, with the following financial responsibility standard: The value of the exchange membership of the member (based on the lesser of the most recent sale price or current bid price for an exchange membership) is not less than \$15,000, or an amount equal to the excess of \$15,000 over the value of the exchange membership is held by an independent agent in escrow: *Provided*, That the rules of such exchange require that the proceeds from the sale of the exchange membership of the member and the amount held in escrow pursuant to this paragraph shall be subject to the prior claims of the exchange and its clearing corporation and those arising directly from the closing out of contracts entered into on the floor of such exchanges.

(3) The Commission may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer who satisfies the Commission that, because of the special nature of its business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not

necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

(c) *Definitions.* For the purpose of this section:

Aggregate Indebtedness

(1) The term *aggregate indebtedness* shall be deemed to mean the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever and includes, among other things, money borrowed, money payable against securities loaned and securities "failed to receive," the market value of securities borrowed to the extent to which no equivalent value is paid or credited (other than the market value of margin securities borrowed from customers in accordance with the provisions of 17 CFR 240.15c3-3 and margin securities borrowed from non-customers), customers' and non-customers' free credit balances, credit balances in customers' and non-customers' accounts having short positions in securities, equities in customers' and non-customers' future commodities accounts and credit balances in customers' and non-customers' commodities accounts, but excluding:

Exclusions From Aggregate Indebtedness

(i) Indebtedness adequately collateralized by securities which are carried long by the broker or dealer and which have not been sold or by securities which collateralize a secured demand note pursuant to appendix D to this section 17 CFR 240.15c3-1d; indebtedness adequately collateralized by spot commodities which are carried long by the broker or dealer and which have not been sold; or, until October 1, 1976, indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity, where such indebtedness is incurred by a broker or dealer effecting transactions solely in municipal securities who is either registered with the Commission or temporarily exempt from such registration pursuant to 17 CFR 240.15a-1(T) or 17 CFR 240.15Ba2-3(T);

(ii) Amounts payable against securities loaned, which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c)

(iii) Amounts payable against securities failed to receive which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c3-1d) or amounts payable against securities failed to receive for which the broker or dealer also has a receivable related to securities of the same issue and quantity thereof which are either fails to deliver or securities borrowed by the broker or dealer;

(iv) Credit balances in accounts representing amounts payable for securities or money market instruments not yet received from the issuer or its agent which securities are specified in paragraph (c)(2)(vi)(E) and which amounts are outstanding in such accounts not more than three (3) business days;

(v) Equities in customers' and non-customers' accounts segregated in accordance with the provisions of the Commodity Exchange Act and the rules and regulations thereunder;

(vi) Liability reserves established and maintained for refunds of charges required by section 27(d) of the Investment Company Act of 1940, but only to the extent of amounts on deposit in a segregated trust account in accordance with 17 CFR 270.27d-1 under the Investment Company Act of 1940;

(vii) Amounts payable to the extent funds and qualified securities are required to be on deposit and are deposited in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" pursuant to 17 CFR 240.15c3-3 under the Securities Exchange Act of 1934;

(viii) Fixed liabilities adequately secured by assets acquired for use in the ordinary course of the trade or business of a broker or dealer but no other fixed liabilities secured by assets of the broker or dealer shall be so excluded unless the sole recourse of the creditor for nonpayment of such liability is to such asset;

- (ix) Liabilities on open contractual commitments;
- (x) Indebtedness subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix (D) (17 CFR 240.15c3-1d);
- (xi) Liabilities which are effectively subordinated to the claims of creditors (but which are not subject to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3-1d)) by non-customers of the broker or dealer prior to such subordination, except such subordinations by customers as may be approved by the Examining Authority for such broker or dealer;
- (xii) Credit balances in accounts of general partners;
- (xiii) Deferred tax liabilities;
- (xiv) Eighty-five percent of amounts payable to a registered investment company related to fail to deliver receivables of the same quantity arising out of purchases of shares of those registered investment companies; and
- (xv) Eighty-five percent of amounts payable against securities loaned for which the broker or dealer has receivables related to securities of the same class and issue and quantity that are securities borrowed by the broker or dealer.

Net Capital

(2) The term *net capital* shall be deemed to mean the net worth of a broker or dealer, adjusted by:

(i) *Adjustments to net worth related to unrealized profit or loss, deferred tax provisions, and certain liabilities.* (A) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker or dealer;

(B)(1) In determining net worth, all long and all short positions in listed options shall be marked to their market value and all long and all short securities and commodities positions shall be marked to their market value.

(2) In determining net worth, the value attributed to any unlisted option shall be the difference between the option's exercise value and the market value of the underlying security. In the case of an unlisted call, if the market value of the underlying security is less than the exercise value of such call it shall be given no value and in the case of an unlisted put if the market value of the underlying security is more than the exercise value of the unlisted put it shall be given no value.

(C) Adding to net worth the lesser of any deferred income tax liability related to the items in (1), (2), and (3) below, or the sum of (1), (2) and (3) below;

(1) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(2)(vi) of this section and Appendices A and B, § 240.15c3-1a and 240.15c3-1b, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

(2) Any deferred tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section;

(3) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise deducted from net worth in accordance with the provisions of this section; and,

(D) Adding, in the case of future income tax benefits arising as a result of unrealized losses, the amount of such benefits not to exceed the amount of income tax liabilities accrued on the books and records of the broker or dealer, but only to the extent such benefits could have been applied to reduce accrued tax liabilities on the date of the capital computation, had the related unrealized losses been realized on that date.

(E) Adding to net worth any actual tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section.

(F) Subtracting from net worth any liability or expense relating to the business of the broker or dealer for which a third party has assumed the responsibility, unless the broker or dealer can demonstrate that the third party has adequate resources independent of the broker or dealer to pay the liability or expense.

(G) Subtracting from net worth any contribution of capital to the broker or dealer:

(1) Under an agreement that provides the investor with the option to withdraw the capital; or

(2) That is intended to be withdrawn within a period of one year of contribution. Any withdrawal of capital made within one year of its contribution is deemed to have been intended to be withdrawn within a period of one year, unless the withdrawal has been approved in writing by the Examining Authority for the broker or dealer.

(ii) *Subordinated liabilities.* Excluding liabilities of the broker or dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in appendix (D) (17 CFR 240.15c3-1d).

(iii) *Sole proprietors.* Deducting, in the case of a broker or dealer who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a broker or dealer over assets not used in the business.

(iv) *Assets not readily convertible into cash.* Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness excluded in accordance with subdivision (c) (1)(viii) of this section) including, among other things:

(A) *Fixed assets and prepaid items.* Real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and other expenses; goodwill, organization expenses;

Certain Unsecured and Partly Secured Receivables

(B) All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in omnibus credit accounts maintained in compliance with the requirements of 12 CFR 220.7(f) of Regulation T under the Act, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to market or other required deposits that are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.8 of Regulation T under the Act for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraph (c)(2)(vi) of this section or appendix A, § 240.15c3-1a; the market value of stock loaned in excess of the value of any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of \$5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 16 business days; and any collateral deficiencies in secured demand notes as defined in appendix D, § 240.15c3-1d; a broker or dealer that participates in a loan of securities by one party to another party will be deemed a principal for the purpose of the deductions required under this section, unless the broker or dealer has fully disclosed the identity of each party to the other and each party has expressly agreed in writing that the obligations of the broker or dealer do not include a guarantee of performance by the other party and that such party's remedies in the event of a default by the other party do not include a right of setoff against obligations, if any, of the broker or dealer.

(C) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits which shall be treated as required in paragraph (c)(2)(iv)(E) of this section), mutual fund concessions receivable and management fees receivable from registered investment companies, all of which receivables are outstanding longer than thirty (30) days from the date they arise; dividends receivable outstanding longer than thirty (30) days from the payable date; good faith deposits arising in connection with a non-municipal securities underwriting, outstanding longer than eleven (11) business days from the settlement of the underwriting with the issuer; receivables due from participation in municipal securities

underwriting syndicates and municipal securities joint underwriting accounts which are outstanding longer than sixty (60) days from settlement of the underwriting with the issuer and good faith deposits arising in connection with an underwriting of municipal securities, outstanding longer than sixty (60) days from settlement of the underwriting with the issuer; and receivables due from participation in municipal securities secondary trading joint accounts, which are outstanding longer than sixty (60) days from the date all securities have been delivered by the account manager to the account members;

(D) *Insurance claims.* Insurance claims which, after seven (7) business days from the date the loss giving rise to the claim is discovered, are not covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect; insurance claims which after twenty (20) business days from the date the loss giving rise to the claim is discovered and which are accompanied by an opinion of outside counsel described above, have not been acknowledged in writing by the insurance carrier as due and payable; and insurance claims acknowledged in writing by the carrier as due and payable outstanding longer than twenty (20) business days from the date they are so acknowledged by the carrier; and,

(E) *Other deductions.* All other unsecured receivables; all assets doubtful of collection less any reserves established therefor; the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of such fails to receive; and the funds on deposit in a "segregated trust account" in accordance with 17 CFR 270.27d-1 under the Investment Company Act of 1940, but only to the extent that the amount on deposit in such segregated trust account exceeds the amount of liability reserves established and maintained for refunds of charges required by sections 27(d) and 27(f) of the Investment Company Act of 1940; *Provided*, That the following need not be deducted:

(1) Any amounts deposited in a Customer Reserve Bank Account or PAB Reserve Bank Account pursuant to § 240.15c3-3(e),

(2) Cash and securities held in a securities account at a carrying broker or dealer (except where the account has been subordinated to the claims of creditors of the carrying broker or dealer), and

(3) Clearing deposits.

(F)(1) For purposes of this paragraph:

(i) The term *reverse repurchase agreement deficit* shall mean the difference between the contract price for resale of the securities under a reverse repurchase agreement and the market value of those securities (if less than the contract price).

(ii) The term *repurchase agreement deficit* shall mean the difference between the market value of securities subject to the repurchase agreement and the contract price for repurchase of the securities (if less than the market value of the securities).

(iii) As used in paragraph (c)(2)(iv)(F)(1) of this section, the term *contract price* shall include accrued interest.

(iv) Reverse repurchase agreement deficits and the repurchase agreement deficits where the counterparty is the Federal Reserve Bank of New York shall be disregarded.

(2)(i) In the case of a reverse repurchase agreement, the deduction shall be equal to the reverse repurchase agreement deficit.

(ii) In determining the required deductions under paragraph (c)(2)(iv)(F)(2)(i) of this section, the broker or dealer may reduce the reverse repurchase agreement deficit by:

(A) Any margin or other deposits held by the broker or dealer on account of the reverse repurchase agreement;

(B) Any excess market value of the securities over the contract price for resale of those securities under any other reverse repurchase agreement with the same party;

(C) The difference between the contract price for resale and the market value of securities subject to repurchase agreements with the same party (if the market value of those securities is less than the contract price); and

(D) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less.

(3) (i) In the case of repurchase agreements, the deduction shall be:

(A) The excess of the repurchase agreement deficit over 5 percent of the contract price for resale of United States Treasury Bills, Notes and Bonds, 10 percent of the contract price for the resale of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act and 20 percent of the contract price for the resale of other securities and;

(B) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section (less any deduction taken with respect to repurchase agreements with that party under paragraph (c)(2)(iv)(F)(3)(i)(A) of this section) or, if greater;

(C) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker's or dealer's net capital before the application of paragraph (c)(2)(vi) of this section.

(ii) In determining the required deduction under paragraph (c)(2)(iv)(F)(3)(i) of this section, the broker or dealer may reduce a repurchase agreement deficit by:

(A) Any margin or other deposits held by the broker or dealer on account of a reverse repurchase agreement with the same party to the extent not otherwise used to reduce a reverse repurchase deficit;

(B) The difference between the contract price and the market value of securities subject to other repurchase agreements with the same party (if the market value of those securities is less than the contract price) not otherwise used to reduce a reverse repurchase agreement deficit; and

(C) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less to the extent not otherwise used to reduce a reverse repurchase agreement deficit.

(G) *Securities borrowed.* 1 percent of the market value of securities borrowed collateralized by an irrevocable letter of credit.

(H) Any receivable from an affiliate of the broker or dealer (not otherwise deducted from net worth) and the market value of any collateral given to an affiliate (not otherwise deducted from net worth) to secure a liability over the amount of the liability of the broker or dealer unless the books and records of the affiliate are made available for examination when requested by the representatives of the Commission or the Examining Authority for the broker or dealer in order to demonstrate the validity of the receivable or payable. The provisions of this subsection shall not apply where the affiliate is a registered broker or dealer, registered government securities broker or dealer or bank as defined in section 3(a)(6) of the Act or insurance company as defined in section 3(a)(19) of the Act or investment company registered under the Investment Company Act of 1940 or federally insured savings and loan association or futures commission merchant registered pursuant to the Commodity Exchange Act.

(v)(A) Deducting the market value of all short securities differences (which shall include securities positions reflected on the securities record which are not susceptible to either count or confirmation) unresolved after discovery in accordance with the following schedule:

Differences 1	Numbers of business days after discovery
25 percent	7
50 percent	14
75 percent	21

100 percent	28
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¹ Percentage of market value of short securities differences.

(B) Deducting the market value of any long securities differences, where such securities have been sold by the broker or dealer before they are adequately resolved, less any reserves established therefor;

(C) The designated examining authority for a broker or dealer may extend the periods in (v)(A) of this section for up to 10 business days if it finds that exceptional circumstances warrant an extension.

Securities Haircuts

(vi) Deducting the percentages specified in paragraphs (c)(2)(vi) (A) through (M) of this section (or the deductions prescribed for securities positions set forth in Appendix A (§ 240.15c3-1a) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

(A)(1) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

CATEGORY 1

- (I) LESS THAN 3 MONTHS TO MATURITY—0 PERCENT.
- (II) 3 MONTHS BUT LESS THAN 6 MONTHS TO MATURITY—1/2 OF 1 PERCENT.
- (III) 6 MONTHS BUT LESS THAN 9 MONTHS TO MATURITY—3/4 OF 1 PERCENT.
- (IV) 9 MONTHS BUT LESS THAN 12 MONTHS TO MATURITY—1 PERCENT.

CATEGORY 2

- (I) 1 YEAR BUT LESS THAN 2 YEARS TO MATURITY—1 1/2 PERCENT.
- (II) 2 YEARS BUT LESS THAN 3 YEARS TO MATURITY—2 PERCENT.

CATEGORY 3

- (I) 3 YEARS BUT LESS THAN 5 YEARS TO MATURITY—3%.
- (II) 5 YEARS BUT LESS THAN 10 YEARS TO MATURITY—4%.

CATEGORY 4

- (I) 10 YEARS BUT LESS THAN 15 YEARS TO MATURITY—4 1/2%.
- (II) 15 YEARS BUT LESS THAN 20 YEARS TO MATURITY—5%.
- (III) 20 YEARS BUT LESS THAN 25 YEARS TO MATURITY—5 1/2%.
- (IV) 25 YEARS OR MORE TO MATURITY—6%.

Brokers or dealers shall compute a deduction for each category above as follows: Compute the deductions for the net long or short positions in each subcategory above. The deduction for the category shall be the net of the aggregate deductions on the long positions and the aggregate deductions on the short positions in each category plus 50% of the lesser of the aggregate deductions on the long or short positions.

(2) A broker or dealer may elect to deduct, in lieu of the computation required under paragraph (c)(2)(vi)(A)(1) of this section, the applicable percentages of the market value of the net long or short positions in each of the subcategories specified in paragraph (c)(2)(vi)(A)(1) of this section.

(3) In computing deductions under paragraph (c)(2)(vi)(A)(1) of this section, a broker or dealer may elect to exclude the market value of a long or short security from one category and a security from another category, *Provided*, That:

(i) Such securities have maturity dates:

(A) Between 9 months and 15 months and within 3 months of one another.

(B) Between 2 years and 4 years and within 1 year of one another; or

(C) Between 8 years and 12 years and within 2 years of one another.

(ii) The net market value of the two excluded securities shall remain in the category of the security with the higher market value.

(4) In computing deductions under paragraph (c)(2)(vi)(A)(1) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(A)(1) of this section, long or short positions in securities issued by the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account. The provisions of Appendix B to Rule 15c3-1 (17 CFR 240.15c3-1b) will in any event apply to the positions in futures contracts.

(5) In the case of a Government securities dealer that reports to the Federal Reserve System, that transacts business directly with the Federal Reserve System, and that maintains at all times a minimum net capital of at least \$50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75 percent of the deduction otherwise computed under paragraph (c)(2)(vi)(A) of this section.

(B)(1) In the case of any municipal security which has a scheduled maturity at date of issue of 731 days or less and which is issued at par value and pays interest at maturity, or which is issued at a discount, and which is not traded flat or in default as to principal or interest, the applicable percentages of the market value on the greater of the long or short position in each of the categories specified below are:

(i) Less than 30 days to maturity—0%.

(ii) 30 days but less than 91 days to maturity— $\frac{1}{8}$ of 1%.

(iii) 91 days but less than 181 days to maturity— $\frac{1}{4}$ of 1%.

(iv) 181 days but less than 271 days to maturity— $\frac{3}{8}$ of 1%.

(v) 271 days but less than 366 days to maturity— $\frac{1}{2}$ of 1%.

(vi) 366 days but less than 456 days to maturity— $\frac{3}{4}$ of 1%.

(vii) 456 days but less than 732 days to maturity—1%.

(2) In the case of any municipal security, other than those specified in paragraph (c)(2)(vi)(B)(1), which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(i) Less than 1 year to maturity—1%.

(ii) 1 year but less than 2 years to maturity—2%.

(iii) 2 years but less than 3 $\frac{1}{2}$ years to maturity—3%.

(iv) 3 $\frac{1}{2}$ years but less than 5 years to maturity—4%.

(v) 5 years but less than 7 years to maturity—5%.

(vi) 7 years but less than 10 years to maturity—5 $\frac{1}{2}$ %.

(vii) 10 years but less than 15 years to maturity—6%.

(viii) 15 years but less than 20 years to maturity—6 $\frac{1}{2}$ %.

(ix) 20 years or more to maturity—7%.

(C) *Canadian Debt Obligations.* In the case of any security issued or unconditionally guaranteed as to principal and interest by the Government of Canada, the percentages of market value to be deducted shall be the same as in paragraph (A) of this section.

(D)(1) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets consist of cash or money market instruments and which is described in § 270.2a-7 of this chapter, the deduction will be 2% of the market value of the greater of the long or short position.

(2) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments of any maturity which are described in paragraph (c)(2)(vi) (A) through (C) or (E) of this section, the deduction shall be 7% of the market value of the greater of the long or short positions.

(3) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraphs (c)(2)(vi) (A) through (C) or (E) and (F) of this section, the deduction shall be 9% of the market value of the long or short position.

(E) *Commercial paper, bankers' acceptances and certificates of deposit.* In the case of any short term promissory note or evidence of indebtedness which has a fixed rate of interest or is sold at a discount, which has a maturity date at date of issuance not exceeding nine months exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited and has only a minimal amount of credit risk, or in the case of any negotiable certificates of deposit or bankers' acceptance or similar type of instrument issued or guaranteed by any bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)), the applicable percentage of the market value of the greater of the long or short position in each of the categories specified below are:

(1) Less than 30 days to maturity—0 percent.

(2) 30 days but less than 91 days to maturity $\frac{1}{8}$ of 1 percent.

(3) 91 days but less than 181 days to maturity $\frac{1}{4}$ of 1 percent.

(4) 181 days but less than 271 days to maturity $\frac{3}{8}$ of 1 percent.

(5) 271 days but less than 1 year to maturity $\frac{1}{2}$ of 1 percent; and

(6) With respect to any negotiable certificate of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank, as defined above, having 1 year or more to maturity, the deduction shall be on the greater of the long or short position and shall be the same percentage as that prescribed in paragraph (c)(2)(vi)(A) of this section.

(F)(1) *Nonconvertible debt securities.* In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date, which are not traded flat or in default as to principal or interest and which have only a minimal amount of credit risk, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(i) Less than 1 year to maturity—2%

(ii) 1 year but less than 2 years to maturity—3%

(iii) 2 years but less than 3 years to maturity—5%

(iv) 3 years but less than 5 years to maturity—6%

(v) 5 years but less than 10 years to maturity—7%

(vi) 10 years but less than 15 years to maturity— $7\frac{1}{2}$ %

(vii) 15 years but less than 20 years to maturity—8%

(viii) 20 years but less than 25 years to maturity—8½%

(ix) 25 years or more to maturity—9%

(2) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest, and which have only a minimal amount of credit risk if such securities have maturity dates:

(i) Less than five years and within 6 months of each other;

(ii) Between 5 years and 10 years and within 9 months of each other;

(iii) Between 10 years and 15 years and within 2 years of each other; or

(iv) 15 years or more and within 10 years of each other.

The broker-dealer shall deduct the amounts specified in paragraphs (c)(2)(vi)(F) (3) and (4) of this section.

(3) With respect to those positions described in paragraph (c)(2)(vi)(F)(2) of this section that include a long or short position in securities issued by the United States or any agency thereof, the broker or dealer shall exclude the hedging short or long United States or agency securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of this section. The broker or dealer shall deduct the percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(i) Less than 5 years to maturity—1½%

(ii) 5 years but less than 10 years to maturity—2½%

(iii) 10 years but less than 15 years to maturity—2¾%

(iv) 15 years or more to maturity—3%

(4) With respect to those positions described in paragraph (c)(2)(vi)(F)(2) of this section that include offsetting long and short positions in nonconvertible debt securities, the broker or dealer shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(i) Less than 5 years to maturity—1¾%

(ii) 5 years but less than 10 years to maturity—3%

(iii) 10 years but less than 15 years to maturity—3¼%

(iv) 15 years or more to maturity—3½%

(5) In computing deductions under paragraph (c)(2)(vi)(F)(3) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(F)(3) of this section, long or short positions in securities issued by the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account.

(6) The provisions of Appendix B to Rule 15c3-1 (17 CFR 240.15c3-1b) will in any event apply to the positions in futures contracts.

(G) *Convertible debt securities.* In the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deductions shall be as follows: If the market value is 100 percent or more of the principal amount, the deduction shall be determined as specified in paragraph (c)(2)(vi)(J) of this section; if the market value is less than the principal amount, the deduction shall be determined as

specified in paragraph (F) of this section; if such securities are rated as required of paragraph (F) of this section;

(H) In the case of cumulative, non-convertible preferred stock ranking prior to all other classes of stock of the same issuer, which has only a minimal amount of credit risk and which are not in arrears as to dividends, the deduction shall be 10% of the market value of the greater of the long or short position.

(I) In order to apply a deduction under paragraphs (c)(2)(vi)(E), (c)(2)(vi)(F)(1), (c)(2)(vi)(F)(2), or (c)(2)(vi)(H) of this section, the broker or dealer must assess the creditworthiness of the security or money market instrument pursuant to policies and procedures for assessing and monitoring creditworthiness that the broker or dealer establishes, documents, maintains, and enforces. The policies and procedures must be reasonably designed for the purpose of determining whether a security or money market instrument has only a minimal amount of credit risk. Policies and procedures that are reasonably designed for this purpose should result in assessments of creditworthiness that typically are consistent with market data. A broker-dealer that opts not to make an assessment of creditworthiness under this paragraph may not apply the deductions under paragraphs (c)(2)(vi)(E), (c)(2)(vi)(F)(1), (c)(2)(vi)(F)(2), or (c)(2)(vi)(H) of this section.

Note to paragraph (c)(2)(vi)(I):

For a discussion of the "minimal amount of credit risk" standard, see *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934*, Exchange Act Release No. 34-71194 (Dec. 27, 2013), at <http://www.sec.gov/rules/final.shtml>.

All Other Securities

(J) In the case of all securities or evidences of indebtedness, except those described in appendix A, § 240.15c3-1a, which are not included in any of the percentage categories enumerated in paragraphs (c)(2)(vi)(A) through (H) of this section or paragraph (c)(2)(vi)(K)(ii) of this section, the deduction shall be 15 percent of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, the percentage deduction on such excess shall be 15 percent of the market value of such excess. No deduction need be made in the case of:

(1) A security that is convertible into or exchangeable for another security within a period of 90 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable, are short in the accounts of such broker or dealer; or

(2) A security that has been called for redemption and that is redeemable within 90 days.

(K) *Securities with a limited market.* In the case of securities (other than exempted securities, nonconvertible debt securities, and cumulative nonconvertible preferred stock) which are not: (1) Traded on a national securities exchange; (2) designated as "OTC Margin Stock" pursuant to Regulation T under the Securities Exchange Act of 1934; (3) quoted on "NASDAQ"; or (4) redeemable shares of investment companies registered under the Investment Company Act of 1940, the deduction shall be as follows:

(i) In the case where there are regular quotations in an inter-dealer quotations system for the securities by three or more independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers to both buy and sell in reasonable quantities at stated prices, or where a ready market as

defined in paragraph (c)(11) (ii) is deemed to exist, the deduction shall be determined in accordance with paragraph (c)(2)(vi)(J) of this section;

(ii) In the case where there are regular quotations in an inter-dealer quotations system for the securities by only one or two independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers both to buy and sell in reasonable quantities, at stated prices, the deduction on both the long and short position shall be 40 percent.

(L) Where a broker or dealer demonstrates that there is sufficient liquidity for any securities long or short in the proprietary or other accounts of the broker or dealer which are subject to a deduction required by paragraph (c)(2)(vi)(K) of this section, such deduction, upon a proper showing to the Examining Authority for the broker or dealer, may be appropriately decreased, but in no case shall such deduction be less than that prescribed in paragraph (c)(2)(vi)(J) of this section.

Undue Concentration

(M)(1) In the case of money market instruments, or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than "exempted securities" and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), and securities underwritten (in which case the deduction provided for herein shall be applied after 11 business days), which are long or short in the proprietary or other accounts of a broker or dealer, including securities that are collateral to secured demand notes defined in appendix D, § 240.15c3-1d, and that have a market value of more than 10 percent of the "net capital" of a broker or dealer before the application of paragraph (c)(2)(vi) of this section or appendix A, § 240.15c3-1a, there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in appendix D, § 240.15c3-1d, equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c)(2)(vi) of this section or appendix A, § 240.15c3-1a, on that portion of the securities position in excess of 10 percent of the "net capital" of the broker or dealer before the application of paragraph (c)(2)(vi) of this section and appendix A, § 240.15c3-1a. In the case of securities described in paragraph (c)(2)(vi)(J), the additional deduction required by this paragraph (c)(2)(vi)(M) shall be 15 percent.

(2) This paragraph (c)(2)(vi)(M) shall apply notwithstanding any long or short position exemption provided for in paragraph (c)(2)(vi)(J) of this section (except for long or short position exemptions arising out of the first proviso to paragraph (c)(2)(vi)(J)) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section and appendix A, § 240.15c3-1a.

(3) This paragraph (c)(2)(vi)(M) shall be applied to an issue of equity securities only on the market value of such securities in excess of \$10,000 or the market value of 500 shares, whichever is greater, or \$25,000 in the case of a debt security.

(4) This paragraph (c)(2)(vi)(M) will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of \$500,000 in bonds (\$5,000,000 in notes) or 10 percent of tentative net capital, whichever is greater, and are held in position longer than 20

business days from the date the securities are received by the syndicate manager from the issuer.

(5) Any specialist that is subject to a deduction required by this paragraph (c)(2)(vi)(M), respecting its specialty stock, that can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in paragraph (c)(2)(vi)(J) of this section above be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this paragraph (c)(2)(vi)(M)(5), which shall contain a summary of the justification for the granting of the application.

(N) Any specialist that limits its securities business to that of a specialist (except for an occasional non-specialist related securities transaction for its own account), that does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or 15C of the Act or a member of a national securities exchange, and that is not a clearing member of The Options Clearing Corporation need not deduct from net worth in computing net capital those deductions, as to its specialty securities, set forth in paragraph (c)(2)(vi) of this section or appendix A to this section, except for paragraph (e) of this section limiting withdrawals of equity capital and appendix D to this section relating to satisfactory subordination agreements. As to a specialist that is solely an options specialist, in paragraph (e) the term "net capital" shall be deemed to mean "net capital before the application of paragraph (c)(2)(vi) of this section or appendix A to this section" and "excess net capital" shall be deemed to be the amount of net capital before the application of paragraph (c)(2)(vi) of this section or appendix A to this section in excess of the amount of net capital required under paragraph (a) of this section. In reports filed pursuant to § 240.17a-5 and in making the record required by § 240.17a-3(a)(11) each specialists shall include the deductions that would otherwise have been required by paragraph (c)(2)(vi) of this section or appendix A to this section in the absence of this paragraph (c)(2)(vi)(N).

(vii) *Non-marketable securities.* Deducting 100 percent of the carrying value in the case of securities or evidence of indebtedness in the proprietary or other accounts of the broker or dealer, for which there is no ready market, as defined in paragraph (c)(11) of this section, and securities, in the proprietary or other accounts of the broker or dealer, which cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions.

Open Contractual Commitments

(viii) Deducting, in the case of a broker or dealer that has open contractual commitments (other than those option positions subject to appendix A, § 240.15c3-1a), the respective deductions as specified in paragraph (c)(2)(vi) of this section or appendix B, § 240.15c3-1b, from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer.

(A) The deduction for contractual commitments in those securities that are treated in paragraph (c)(2)(vi)(J) of this section shall be 30 percent unless the class and issue of the securities subject to the open contractual commitment deduction are listed for trading on a national securities exchange or are designated as NASDAQ National Market System Securities.

(B) A broker or dealer that maintains in excess of \$250,000 of net capital may add back to net worth up to \$150,000 of any deduction computed under this paragraph (c)(2)(viii)(B).

(C) The deduction with respect to any single commitment shall be reduced by the unrealized profit in such commitment, in an amount not greater than the deduction provided for by this paragraph (or increased by the unrealized loss), in such commitment, and in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) Deducting from the contract value of each failed to deliver contract that is outstanding five business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security that would be required by application of the deduction required by paragraph (c)(2)(vi) of this section. Such deduction, however, shall be increased by any excess of the contract price of the failed to deliver contract over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the failed to deliver contract, but not to exceed the amount of such deduction. The designated examining authority for the broker or dealer may, upon application of the broker or dealer, extend for a period up to 5 business days, any period herein specified when it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period of up to 5 business days, any period herein specified when it is satisfied that the extension is warranted.

Brokers or Dealers Carrying Accounts of Listed Options Specialists

(x)(A) With respect to any transaction of a specialist in listed options, who is either not otherwise subject to the provisions of this section or is described in paragraph (c)(2)(vi)(N) of this section, for whose specialist account a broker or dealer acts as a guarantor, endorser, or carrying broker or dealer, such broker or dealer shall adjust its net worth by deducting as of noon of each business day the amounts computed as of the prior business day pursuant to § 240.15c3-1a. The required deductions may be reduced by any liquidating equity that exists in such specialist's market-maker account as of that time and shall be increased to the extent of any liquidating deficit in such account. Noon shall be determined according to the local time where the broker or dealer is headquartered. In no event shall excess equity in the specialist's market-maker account result in an increase of the net capital of any such guarantor, endorser, or carrying broker or dealer.

(B) *Definitions.* (1) The term *listed option* shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.

(2) For purposes of this section, the equity in an individual specialist's market-maker account shall be computed by:

(i) Marking all securities positions long or short in the account to their respective current market values;

(ii) Adding (deducting in the case of a debit balance) the credit balance carried in such specialist's market-maker account; and

(iii) Adding (deducting in the case of short positions) the market value of positions long in such account.

(C) No guarantor, endorser, or carrying broker or dealer shall permit the sum of the deductions required pursuant to § 240.15c3-1a in respect of all transactions in specialists' market-maker accounts guaranteed, endorsed, or carried by such broker or dealer to exceed 1,000 percent of such broker's or

dealer's net capital as defined in § 240.15c3-1(c)(2) for any period exceeding three business days. If at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall:

(1) Immediately transmit telegraphic or facsimile notice of such event to the Division of Market Regulation in the headquarters office of the Commission in Washington, DC, to the regional office of the Commission for the region in which the broker or dealer maintains its principal place of business, and to its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) ("Designated Examining Authority"); and

(2) Be subject to the prohibitions against withdrawal of equity capital set forth in § 240.15c3-1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(11) of § 240.15c3-1d, as if such broker or dealer's net capital were below the minimum standards specified by each of those paragraphs.

(D) If at any time there is a liquidating deficit in a specialist's market-maker account, then the broker or dealer guaranteeing, endorsing, or carrying listed options transactions in such specialist's market-maker account may not extend any further credit in that account, and shall take steps to liquidate promptly existing positions in the account. This paragraph shall not prevent the broker or dealer from, upon approval by the broker's or dealer's Designated Examining Authority, entering into hedging positions in the specialist's market-maker account. The broker or dealer also shall transmit telegraphic or facsimile notice of the deficit and its amount by the close of business of the following business day to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own.

(E) Upon written application to the Commission by the specialist and the broker or dealer guaranteeing, endorsing, or carrying options transactions in such specialist's market-maker account, the Commission may approve upon specified terms and conditions lesser adjustments to net worth than those specified in § 240.15c3-1a.

(xi) *Brokers or dealers carrying specialists or market makers accounts.* With respect to a broker or dealer who carries a market maker or specialist account, or with respect to any transaction in options listed on a registered national securities exchange for which a broker or dealer acts as a guarantor or endorser of options written by a specialist in a specialist account, the broker or dealer shall deduct, for each account carried or for each class or series of options guaranteed or endorsed, any deficiency in collateral required by paragraph (a)(6) of this section.

(xii) *Deduction from net worth for certain undermargined accounts.* Deducting the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the Examining Authority for the broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less.

(xiii) *Deduction from net worth for indebtedness collateralized by exempted securities.* Deducting, at the option of the broker or dealer, in lieu of including such amounts in aggregate indebtedness, 4 percent of the amount of any indebtedness secured by exempted securities or municipal securities if such indebtedness would otherwise be includable in aggregate indebtedness.

(xiv) *Deduction from net worth for excess deductible amounts related to fidelity bond coverage.* Deducting the amount specified by rule of the Examining Authority for the broker or dealer with respect to a requirement to maintain fidelity bond coverage.

Exempted Securities

(3) The term *exempted securities* shall mean those securities deemed exempted securities by section 3(a)(12) of the Securities Exchange Act of 1934 and rules thereunder.

Contractual Commitments

(4) The term *contractual commitments* shall include underwriting, when issued, when distributed and delayed delivery contracts, the writing or endorsement of puts and calls and combinations thereof, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures. A series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

Adequately Secured

(5) Indebtedness shall be deemed to be adequately secured within the meaning of this section when the excess of the market value of the collateral over the amount of the indebtedness is sufficient to make the loan acceptable as a fully secured loan to banks regularly making secured loans to brokers or dealers.

Customer

(6) The term *customer* shall mean any person from whom, or on whose behalf, a broker or dealer has received, acquired or holds funds or securities for the account of such person, but shall not include a broker or dealer or a registered municipal securities dealer, or a general, special or limited partner or director or officer of the broker or dealer, or any person to the extent that such person has a claim for property or funds which by contract, agreement, or understanding, or by operation of law, is part of the capital of the broker or dealer. *Provided, however,* That the term "customer" shall also include a broker or dealer, but only insofar as such broker or dealer maintains a special omnibus account carried with another broker or dealer in compliance with 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934.

Non-Customer

(7) The term *non-customer* means a broker or dealer, registered municipal securities dealer, general partner, limited partner, officer, director and persons to the extent their claims are subordinated to the claims of creditors of the broker or dealer.

Market Maker

(8) The term *market maker* shall mean a dealer who, with respect to a particular security, (i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and, (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.

Promptly Transmit and Deliver

(9) A broker or dealer is deemed to "promptly transmit" all funds and to "promptly deliver" all securities within the meaning of paragraphs (a)(2)(i) and (a)(2)(v) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities; provided, however, that such prompt transmission or delivery shall not be required to be effected prior to the settlement date for such transaction.

Promptly Forward

(10) A broker or dealer is deemed to "promptly forward" funds or securities within the meaning of paragraph (a)(2)(i) of this section only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

Ready Market

(11)(i) The term *ready market* shall include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

(ii) A *ready market* shall also be deemed to exist where securities have been accepted as collateral for a loan by a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934 and where the broker or dealer demonstrates to its Examining Authority that such securities adequately secure such loans as that term is defined in paragraph (c)(5) of this section.

Examining Authority

(12) The term *Examining Authority* of a broker or dealer shall mean for the purposes of 17 CFR 240.15c3-1 and 240.15c3-1a-d the national securities exchange or national securities association of which the broker or dealer is a member or, if the broker or dealer is a member of more than one such self-regulatory organization, the organization designated by the Commission as the Examining Authority for such broker or dealer, or if the broker or dealer is not a member of any such self-regulatory organization, the Regional Office of the Commission where such broker or dealer has its principal place of business.

Entities That Have a Principal Regulator

(13)(i) For purposes of § 240.15c3-1e and § 240.15c3-1g, the term *entity that has a principal regulator* shall mean a person (other than a natural person) that is not a registered broker or dealer (other than a broker or dealer registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), provided that the person is:

- (A) An insured depository institution as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2));
- (B) Registered as a futures commission merchant or an introducing broker with the Commodity Futures Trading Commission;
- (C) Registered with or licensed by a State insurance regulator and issues any insurance, endowment, or annuity policy or contract;
- (D) A foreign bank as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)) that has its headquarters in a jurisdiction for which any foreign bank has been approved by the Board of Governors of the Federal Reserve System to conduct business pursuant to the standards set forth in 12 CFR 211.24(c), provided such foreign bank represents to the Commission that it is subject to the same supervisory regime as the foreign bank previously approved by the Board of Governors of the Federal Reserve System;
- (E) Not primarily in the securities business, and the person is:

(1) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 through 633); or

(2) A corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act (12 U.S.C. 601 through 604a); or

(F) A person that the Commission finds is another entity that is subject to comprehensive supervision, has in place appropriate arrangements so that information that the person provides to the Commission is sufficiently reliable for the purposes of determining compliance with § 240.15c3-1e and § 240.15c3-1g, and it is appropriate to consider the person to be an entity that has a principal regulator considering all relevant circumstances, including the person's mix of business.

(ii) For purposes of §§ 240.15c3-1e, 240.15c3-1g, 240.17h-1T, and 240.17h-2T, the term *ultimate holding company that has a principal regulator* shall mean a person (other than a natural person) that:

(A) Is a financial holding company or a company that is treated as a financial holding company under the Bank Holding Company Act of 1956 (12 U.S.C. 1840 *et seq.*), or

(B) The Commission determines to be an ultimate holding company that has a principal regulator, if that person is subject to consolidated, comprehensive supervision; there are in place appropriate arrangements so that information that the person provides to the Commission is sufficiently reliable for the purposes of determining compliance with § 240.15c3-1e and § 240.15c3-1g; and it is appropriate to consider the person to be an ultimate holding company that has a principal regulator in view of all relevant circumstances, including the person's mix of business.

(14) The term *municipal securities* shall mean those securities included within the definition of "municipal securities" in section 3(a)(29) of the Securities Exchange Act of 1934.

(15) The term *tentative net capital* shall mean the net capital of a broker or dealer before deducting the securities haircuts computed pursuant to paragraph (c)(2)(vi) of this section and the charges on inventory computed pursuant to appendix B to this section (§ 240.15c3-1b). However, for purposes of paragraph (a)(5) of this section, the term *tentative net capital* means the net capital of an OTC derivatives dealer before deducting the charges for market and credit risk as computed pursuant to appendix F to this section (§ 240.15c3-1f) or paragraph (c)(2)(vi) of this section, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in eligible OTC derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of this section. For purposes of paragraph (a)(7) of this section, the term *tentative net capital* means the net capital of the broker or dealer before deductions for market and credit risk computed pursuant to § 240.15c3-1e or paragraph (c)(2)(vi) of this section, if applicable, and increased by the balance sheet value (including counterparty net exposure) resulting from transactions in derivative instruments which would otherwise be deducted by virtue of paragraph (c)(2)(iv) of this section. Tentative net capital shall include securities for which there is no ready market, as defined in paragraph (c)(11) of this section, if the use of mathematical models has been approved for purposes of calculating deductions from net capital for those securities pursuant to § 240.15c3-1e.

Insolvent

(16) For the purposes of this section, a broker or dealer is insolvent if the broker or dealer:

(i) Is the subject of any bankruptcy, equity receivership proceeding or any other proceeding to reorganize, conserve, or liquidate such broker or dealer or its property or is applying for the appointment or election of a receiver, trustee, or liquidator or similar official for such broker or dealer or its property;

(ii) Has made a general assignment for the benefit of creditors;

(iii) Is insolvent within the meaning of section 101 of title 11 of the United States Code, or is unable to meet its obligations as they mature, and has made an admission to such effect in writing or in any court or before any agency of the United States or any State; or

(iv) Is unable to make such computations as may be necessary to establish compliance with this section or with § 240.15c3-3.

(d) *Debt-equity requirements.* No broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements (other than such agreements which qualify under this paragraph (d) as equity capital) to exceed 70 percent of its debt-equity total, as hereinafter defined, for a period in excess of 90 days or for such longer period which the Commission may, upon application of the broker or dealer, grant in the public interest or for the protection of investors. In the case of a corporation, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss or other capital accounts. In the case of a partnership, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of partners (exclusive of such partners' securities accounts) subject to the provisions of paragraph (e) of this section, and unrealized profit and loss. In the case of a sole proprietorship, the debt-equity total shall include the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of the sole proprietorship and unrealized profit and loss. *Provided, however,* That a satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least three years and has a remaining term of not less than 12 months shall be considered equity for the purposes of this paragraph (d) if:

(1) It does not have any of the provisions for accelerated maturity provided for by paragraphs (b)(9)(i), (10)(i) or (10)(ii) of Appendix (D) (17 CFR 240.15c3-1d) and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section or

(2) The partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3-1d) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section.

(e)(1) *Notice provisions relating to limitations on the withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3-1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without written notice given in accordance with paragraph (e)(1)(iv) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the broker or dealer's excess net

capital. A broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the broker or dealer's excess net capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its Examining Authority. Where a broker or dealer makes a withdrawal with the consent of its Examining Authority, it shall in any event comply with paragraph (e)(1)(ii) of this section; or

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the broker or dealer's excess net capital.

(iii) This paragraph (e)(1) does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a broker or dealer and an affiliate where the broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any thirty calendar day period, on a net basis, equal \$500,000 or less.

(iv) Each required notice shall be effective when received by the Commission in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the broker or dealer's Examining Authority and the Commodity Futures Trading Commission if such broker or dealer is registered with that Commission.

(2) *Limitations on Withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3-1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate, if after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in appendix D (17 CFR 240.15c3-1d)) under satisfactory subordination agreements which are scheduled to occur within 180 days following such withdrawal, advance or loan if:

(i) The broker or dealer's net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a) of this section;

(ii) The broker-dealer is registered as a futures commission merchant, its net capital would be less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account);

(iii) The broker-dealer's net capital would be less than 25 percent of deductions from net worth in computing net capital required by paragraphs (c)(2)(vi), (f) and appendix A, of this section, unless the broker or dealer has the prior approval of the Commission to make such withdrawal;

(iv) The total outstanding principal amounts of satisfactory subordination agreements of the broker or dealer and any subsidiaries or affiliates consolidated pursuant to appendix C (17 CFR 240.15c3-1c) (other than such agreements which qualify as equity under paragraph (d) of this section)

would exceed 70% of the debt-equity total as defined in paragraph (d) of this section;

(v) The broker or dealer is subject to the aggregate indebtedness limitations of paragraph (a) of this section, the aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital; or

(vi) The broker or dealer is subject to the alternative net capital requirement of paragraph (f) of this section, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3-3a.

(3)(i) *Temporary restrictions on withdrawal of net capital.* The Commission may by order restrict, for a period of up to twenty business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, member, employee or affiliate under such terms and conditions as the Commission deems necessary or appropriate in the public interest or consistent with the protection of investors if the Commission, based on the information available, concludes that such withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act of 1970.

(ii) An order temporarily prohibiting the withdrawal of capital shall be rescinded if the Commission determines that the restriction on capital withdrawal should not remain in effect. A hearing on an order temporarily prohibiting the withdrawal of capital will be held within two business days from the date of the request in writing by the broker or dealer.

(4)(i) *Miscellaneous provisions.* Excess net capital is that amount in excess of the amount required under paragraph (a) of this section. For the purposes of paragraphs (e)(1) and (e)(2) of this section, a broker or dealer may use the amount of excess net capital and deductions required under paragraphs (c)(2)(vi), (f) and appendix A of this section reported in its most recently required filed Form X-17A-5 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess net capital or deductions. The broker or dealer must assure itself that the excess net capital or the deductions reported on the most recently required filed Form X-17A-5 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (e)(1) and (e)(2) of this section shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances, or loans for purposes of paragraphs (e)(1) and (e)(2) of this section.

(iv) For the purpose of this paragraph (e) of this section, any transaction between a broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the broker or dealer's net capital shall be deemed to be an advance or loan of net capital.

[40 FR 29799, July 16, 1975]

Editorial Note: For **Federal Register** citations affecting § 240.15c3-1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

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Title: Section 240.17a-11 - Notification provisions for brokers and dealers.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934. Subpart A - Rules and Regulations Under the Securities Exchange Act of 1934. - Preservation of Records and Reports of Certain Stabilizing Activities.

§ 240.17a-11 Notification provisions for brokers and dealers.

(a) This section shall apply to every broker or dealer registered with the Commission pursuant to section 15 of the Act.

(b)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3-1, or is insolvent as that term is defined in § 240.15c3-1(c)(16), must give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3-1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a-11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3-1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer or broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e shall also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3-1. The notice shall specify the tentative net capital requirements, and current amount of net capital and tentative net capital, of the OTC derivatives dealer or the broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e.

(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4) or (c)(5) of this section in accordance with paragraph (g) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3-1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3-1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3-3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3-1 shows that its total net capital is less than 120 percent of the broker's or dealer's required minimum net capital, or if a computation made by an OTC derivatives dealer pursuant to § 240.15c3-1 shows that its total tentative net capital is less than 120 percent of the dealer's required minimum tentative net capital.

(4) The occurrence of the fourth and each subsequent backtesting exception under § 240.15c3-1f(e)(1)(iv) during any 250 business day measurement period.

(5) If a computation made by a broker or dealer pursuant to § 240.15c3-1 shows that the total amount of money payable against all securities loaned or subject to a repurchase agreement or the total contract value of all securities borrowed or subject to a reverse repurchase agreement is in excess of 2500 percent of its tentative net capital; *provided*, however, that for purposes of this leverage test transactions involving government securities, as defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), must be excluded from the calculation; *provided* further, however, that a broker or dealer will not be required to send the notice required by this paragraph (c)(5) if it reports monthly its securities lending and borrowing and repurchase and reverse repurchase activity (including the total amount of money payable against securities loaned or subject to a repurchase agreement and the total contract value of securities borrowed or subject to a reverse repurchase agreement) to its designated examining authority in a form acceptable to its designated examining authority.

(d) Every broker or dealer who fails to make and keep current the books and records required by § 240.17a-3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-12(i)(2), of the existence of any material inadequacy as defined in § 240.17a-12(h)(2), or whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-5(h), of the existence of any material weakness as defined in § 240.17a-5(d)(3)(iii), the broker or dealer must:

(1) Give notice, in accordance with paragraph (g) of this section, of the material inadequacy or material weakness within 24 hours of the discovery or notification of the material inadequacy or the material weakness; and

(2) Transmit a report, in accordance with paragraph (g) of this section, within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(f) Every national securities exchange or national securities association that learns that a member broker or dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

(g) Every notice or report required to be given or transmitted by this section shall be given or transmitted to the principal office of the Commission in Washington, D.C., the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, "notice" shall be given or transmitted by telegraphic notice or facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3-1(a)(6)(iv)(B), § 240.15c3-1(a)(6)(v), § 240.15c3-1(a)(7)(ii), § 240.15c3-1(a)(7)(iii), § 240.15c3-1(c)(2)(x)(B)(1), § 240.15c3-1(c)(2)(x)(F)(3), § 240.15c3-1(e), § 240.15c3-1d(c)(2), § 240.15c3-3(i), § 240.17a-5(h) and § 240.17a-12(i)(2).

(i) The provisions of this section shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

[58 FR 37657, July 13, 1993, as amended at 59 FR 5945, Feb. 9, 1994; 63 FR 59401, Nov. 3, 1998; 67 FR 58300, Sept. 13, 2002; 69 FR 34472, June 21, 2004; 73 FR 32228, June 5, 2008; 78 FR 51907, Aug. 21, 2013; 78 FR 51933, Aug. 21, 2013]