

NEBRASKA ADMINISTRATIVE CODE

Title 48 - ~~Department of Banking and Finance~~ DEPARTMENT OF BANKING AND FINANCE

Chapter 10 - RECORDKEEPING BY INVESTMENT ADVISERS

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 8-1120(3) of the Securities Act of Nebraska ("Act").

001.02 The Department has determined that this Rule relating to recordkeeping by investment advisers is consistent with investor protection and is in the public interest.

001.03 The Director may, on a case-by-case basis, and with prior written notice to the affected persons, require adherence to additional standards or policies, as deemed necessary in the public interest.

001.04 The definitions in 48 NAC 2 shall apply to the provisions of this Rule, unless otherwise specified.

001.05 Federal statutes and rules of the Securities and Exchange Commission ("SEC") or the Financial Industry Regulatory Authority ("FINRA") referenced herein shall mean those statutes and rules as amended on or before the effective date of this Rule. A copy of the applicable statutes or rules referenced in this Rule is attached hereto.

002 GENERAL RECORD-KEEPING REQUIREMENTS. Every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

002.01 A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

002.02 General and auxiliary ledgers, or other comparable records, reflecting asset, liability, reserve, capital, income and expense accounts.

002.03 A memorandum of each order given by the investment adviser for the purchase or sale of any security; of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt, or delivery of a particular security; and of any modification or cancellation of any such order or instruction.

002.03A Such memorandum shall identify:

002.03A1 The terms and conditions of the order, instruction, modification or cancellation;

002.03A2 The person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and

002.03A3 The account for which entered, the date of entry, and the broker-dealer or other entity by or through whom executed, where appropriate.

002.03B The memorandum shall designate whether the orders were entered pursuant to the exercise of discretionary power.

002.04 All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

002.05 All bills or statements, (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

002.06 All trial balances, financial statements prepared in accordance with generally accepted accounting principles, and internal audit working papers relating to the investment adviser's business of the investment adviser.

002.06A For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net capital computation, as required by 48 NAC 7.008 and 48 NAC 7.009.

002.07 Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

002.07A The recommendation made or proposed to be made and the advice given or proposed to be given;

002.07B The receipt, disbursement or delivery of funds or securities; or

002.07C The placement or execution of any order to purchase or sell any security.

002.07D The investment adviser shall not be required to keep the following written communications:

002.07D1 Unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

002.07D2 A record of the names and addresses of the persons to whom the investment adviser sent any notice, circular or other advertisement offering any report, analysis, publication or other investment adviser service, which was sent to more than ten persons, except if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain a memorandum describing the list and the source thereof with the copy of such notice, circular or advertisement.

002.08 A list or other record of all accounts which identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

~~002.09~~ All A copy of all powers of attorney and other evidence evidences of the grant granting of any discretionary authority by any client to the investment adviser or to any third party, or copies thereof.

~~002.10~~ All A copy of each written agreements, or copies thereof, entered into by the investment adviser with any client, and all other written agreements otherwise relating to the investment adviser's business of such as an investment adviser.

002.11 A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, that the investment adviser circulates or distributes, directly or indirectly, including by electronic media, to ten two or more persons, other than persons affiliated connected with such investment adviser and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation shall be retained.

~~002.11A~~ If such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

~~002.11B~~ For purposes of Section 002.11, persons affiliated with an investment adviser include any officer, director, managing member, general partner, or employee of the investment adviser, and individuals registered as its investment adviser representatives.

002.12 A record of every transaction in a security in which the investment adviser or any investment adviser advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.12A Such record shall include:

002.12A1 The title and amount of the security involved;

002.12A2 The date and nature of the transaction, such as (i.e., purchase, sale or other acquisition or disposition);

002.12A3 The price at which it was effected; and

002.12A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.12B Such record may contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an

admission that the investment adviser or ~~investment adviser~~ advisory representative has any direct or indirect beneficial ownership in the security.

002.12C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.12D The investment adviser need not keep records required by ~~Section 002.12 of this Rule~~ this subsection for the following transactions:

002.12D1 Transactions effected in any account over which neither the investment adviser nor any ~~investment adviser~~ advisory representative of the investment adviser has any direct or indirect influence or control; and

002.12D2 Transactions in securities which are direct obligations of the United States.

002.12E For purposes of ~~Section 002.12 of this Rule~~ this subsection, "investment adviser advisory representative" shall mean:

002.12E1 An investment adviser as defined in the Act;

~~002.12E1~~002.12E2 Any partner, officer, director or limited liability company member of the investment adviser;

~~002.12E2~~002.12E3 Any employee ~~who makes any recommendation,~~ who participates in any way in the determination of which ~~recommendation~~ recommendations shall be made; ~~or whose functions or duties relate to the determination of which recommendation shall be made;~~

~~002.12E3~~002.12E4 Any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations ~~or of the information concerning such recommendations;~~ and

~~002.12E4~~002.12E5 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person, and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations.

002.12F For purposes of this subsection and subsection 002.13, "Control" shall ~~have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.~~ mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with

such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

002.12FG An investment adviser shall not be deemed to have violated the provisions of ~~Section 002.12 of this Rule~~ this subsection because of its failure to record securities transactions of any ~~investment adviser~~ advisory representative if the investment adviser establishes that adequate procedures were instituted and reasonable diligence was used to promptly obtain reports of all transactions required to be recorded.

002.13 Notwithstanding the provisions of Section 002.12, above, if the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any ~~investment adviser~~ advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership.

002.13A Such record shall include:

002.13A1 The title and amount of the security involved;

002.13A2 The date and nature of the transaction, such as ~~(i.e.,~~ purchase, sale or other acquisition or disposition);

002.13A3 The price at which it was effected; and

002.13A4 The name of the broker-dealer or other entity with or through whom the transaction was effected.

002.13B Such record may contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or investment adviser representative has any direct or indirect beneficial ownership in the security.

002.13C A transaction shall be recorded within ten days after the end of the calendar quarter in which the transaction was effected.

002.13D The investment adviser is not required to keep records for the following transactions:

002.13D1 Transactions effected in any account over which neither the investment adviser nor ~~any investment adviser~~ advisory representative of the investment adviser has any direct or indirect influence or control; and

002.13D2 Transactions in securities which are direct obligations of the United States.

002.13E An investment adviser is “primarily engaged in a business or businesses other than advising investment advisory clients” when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than fifty percent (50%) of its total sales and revenues, and its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

002.13F For purposes of ~~Section 002.13 of this Rule~~ this subsection, “~~investment adviser advisory representative~~,” when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means:

002.13F1 Any partner, officer, director, member or employee of the investment adviser:

~~002.13F1a~~ Who makes any recommendation;

~~002.13F1b~~-002.13F1a Who participates in any way in the determination of which recommendation shall be made; or

~~002.13F1c~~ Whose functions or duties relate to the determination of which recommendation shall be made; or

~~002.13F1d~~-002.13F1b Whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of such recommendations; ~~or of the information concerning such recommendations;~~ and

002.13F2 Any person in a control relationship to the investment adviser, any affiliated person of such controlling person and any affiliated person of such affiliated person who obtains information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations.

~~002.13F3~~ “Control” shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

002.13F3 An investment adviser representative.

002.13G An investment adviser shall not be deemed to have violated the provisions of ~~Section 002.13 of this Rule~~ this subsection because of its failure to record securities transactions of any investment adviser representative if the investment adviser establishes that it instituted

~~adequate procedures were instituted and used reasonable diligence was used to obtain reports of all transactions required to be recorded, promptly.~~

002.14 A copy of each written statement, including supplements for each investment adviser representative, and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of 48 NAC 7.010, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client. In connection with the written statement required by 48 NAC 7.010:

~~002.14A A copy of such written statement and each amendment or revision to the written statement, given or sent to any client or prospective client of the investment adviser;~~

~~002.14B Any summary of material changes that is required by, but is not contained in, the written statement;~~

~~002.14C A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or to any prospective client who subsequently becomes a client; and~~

~~002.14D A memorandum describing any legal or disciplinary event listed in Form ADV and presumed to be material, if the event involved the investment adviser or any of its supervised persons and is not disclosed in the written statements described in Section 002.14A, above. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome and must discuss the factors described in those items.~~

002.15 For each client that was obtained by the investment adviser by means of a solicitor to whom a cash fee was paid by the investment adviser:

002.15A Evidence of a written agreement to which the investment adviser is a party related to the payment of such fee;

002.15B A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and,

002.15C A copy of the solicitor's written disclosure statement.

002.15D The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

002.15E For purposes of this subsection, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

~~002.15-002.16 All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for, or demonstrate the calculation~~

of, the performance or rate of return of ~~any or all~~ managed accounts or of securities recommendations ~~contained in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including, but not limited to, electronic messages-media~~ that the investment adviser circulates or distributes, directly or indirectly, to ~~ten~~ two or more persons, other than persons affiliated with such investment adviser.

~~002.15A-002.16A~~ 002.16A With respect to the performance of managed accounts, the retention of all account statements, which reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of ~~this subsection-Section 002.15 of this Rule.~~

~~002.15B-002.16B~~ 002.16B For purposes of ~~Section 002.15 of this Rule this subsection,~~ persons affiliated with an investment adviser include any officer, director, managing member, general partner, or employee of the investment adviser, and individuals registered as its investment adviser representatives.

002.17 A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

002.18 Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

002.19 Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

002.20 A file containing a copy of each document, other than any notices of general dissemination, that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its advisory representatives as that term is defined in Section 002.12E of this Rule, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

~~002.16-002.21~~ 002.21 Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Uniform Application for Securities Industry Registration or Transfer (Form U4) ~~U-4~~ and each amendment to Disclosure Reporting Pages (DRPs ~~U-4~~) must be retained by the investment adviser, (filing on behalf of the investment adviser representative,) and must be made available for inspection upon regulatory request.

002.22 An investment adviser who inadvertently holds or obtains securities or funds of a client, and who returns such securities or funds to the client within three business days of receiving them or forwards checks drawn by clients and made payable to third parties within three business days of receipt, will not be considered as having custody but shall keep a ledger or other listing of all securities or funds held or obtained, relating to the inadvertent custody, which ledger shall include the

name of the issuer of the securities; the type of security and series; the date of issue of the securities; the denomination, interest rate and maturity date of any debt instruments; the certificate number, including alphabetical prefix or suffix; the name in which the security is registered; the date given to the adviser; the date sent to client or sender; the form of delivery to client or sender, or copy of the form of delivery to client or sender; the mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return; and the date that each check was received by the adviser.

002.23 If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under 48 NAC 7.012.02B, the adviser shall keep the following records;

002.23A A record showing the issuer or current transfer agent's name, address, telephone number and other applicable contract information pertaining to the party responsible for recording client interests in the securities; and

002.23B A copy of any legend, shareholder agreement or other agreement showing that those securities that are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

003 RECORDKEEPING BY INVESTMENT ADVISERS WITH CUSTODY OF CLIENT SECURITIES OR FUNDS. In addition to the records required by Section 002, above, an investment adviser which has custody or possession of securities or funds of any client as that term is defined in 48 NAC 7.012.04B shall be required to make and keep the following records:

003.01 A copy of any and all documents executed by the client, (including a limited power of attorney, under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

~~003.01-003.02~~ A journal or other record showing all purchases, sales, receipts and deliveries of securities, (including certificate numbers,) for ~~such~~ all accounts and all other debits and credits to ~~such~~ the accounts.

~~003.02-003.03~~ A separate ledger account for each ~~such~~ client showing all purchases, sales, receipts, and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.

~~003.03-003.04~~ Copies of confirmations of all transactions effected by or for the account of any such client.

~~003.04-003.05~~ A record for each security in which any ~~such~~ client has an interest, showing the name of each client having any interest in that security, the amount or interest of each client, and the location of that security.

003.06 A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If the investment adviser also generates a statement that is delivered to the client, the investment adviser shall also maintain copies of such statements along with the date such statements were sent to the clients.

003.07 If applicable to the investment adviser's situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

003.08 A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

003.09 If applicable, evidence of the client's designation of an independent representative.

003.10 If an investment adviser has custody because it advises a pooled investment vehicle, as defined in 48 NAC 7.012.04B1c, the investment adviser shall also keep the following records:

003.10A True, accurate and current account statements;

003.10B Where the adviser complies with 48 NAC 7.012.02D the records required to be made and kept shall include:

003.10B1 The date(s) of the audit;

003.10B2 A copy of the audited financial statements; and

003.10B3 Evidence of the mailing of the audited financial statements to all limited partners, members or other beneficial owners within one hundred twenty days of the end of its fiscal year.

004 RECORDKEEPING BY INVESTMENT ADVISERS WHICH RENDER INVESTMENT SUPERVISORY OR MANAGEMENT SERVICES. In addition to the records required by Section 002, above, an investment adviser which renders any investment supervisory or management service to any client shall, to the extent the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current the following records with respect to each portfolio being supervised or managed:

004.01 Separate records for each such client showing the securities purchased and sold, and the date, amount and price of each such purchase and sale; and

004.02 For each security in which any such client has an interest any client has a current position, records from which the investment adviser can promptly furnish the name of each such the client, and the current amount or interest of such the client.

004.03 For purposes of this Section, "investment supervisory services" means the giving of continuous advice as to investing funds based on each client's individual needs.

004.03 For purposes of this subsection, “investment supervisory services” means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and “discretionary power” shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

005 CLIENT IDENTITY. Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such the investment adviser renders investment advisory supervisory services is indicated by numerical or alphabetical code or some similar designation, ~~provided the investment adviser can identify, by name, the client represented by each code or designation upon a request by the Director.~~

006 RETENTION.

006.01 All books and records required by this Rule, except for books and records required by the provisions of ~~Sections-subsections 002.11 and 002.15~~ 002.16, above, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.

006.02 Partnership articles and any amendments, articles of incorporation, articles of organization as a limited liability corporation, ~~and any amendments thereto~~, and charters, minute books, and stock certificate books of the investment adviser, and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

006.03 Books and records required by ~~Sections-subsections 002.11 and 002.15~~ 002.16, above, shall be maintained and preserved in an easily accessible location for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication, including by electronic media.

006.04 ~~The records identified in 006.01 and 006.03 above shall be maintained and preserved in the appropriate office of the investment adviser for the first two years. Thereafter, the records may be maintained at any other location which provides the investment adviser with access to the records necessary to comply with requests for production of such records by the Director.~~ Books and records required to be made under the provisions of subsections 002.17 to 002.22, above, inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

006.05 Notwithstanding other record preservation requirements of this Rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services: (A) the records required to be preserved under Sections 002.03, 002.07 through 002.10, 002.14, 002.15, and 002.17 through 002.19, and Sections 003 and 004 inclusive, above, and (B) the records or copies required under the provision of Sections 002.11 and 002.16, above, which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or telephone number. The records shall be maintained for the period described in this subsection.

007 PERSERVATION OF BOOKS AND RECORDS. Before ceasing to conduct business as an investment adviser, an investment adviser shall arrange for and be responsible for preserving the books and records required to be maintained and preserved under ~~Section 002~~ this Rule for the remainder of the period specified therein and shall notify the Director in writing of the exact address where such books and records will be maintained during such period.

008 PRODUCTION OF BOOKS AND RECORDS. The records required to be maintained and preserved pursuant to this Rule ~~may shall~~ be immediately produced or reproduced ~~by an investment adviser~~, by photograph on film or, as provided below, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. ~~by an investment adviser.~~

~~008.01~~ If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

~~008.01A~~ Arrange the records and index the films or computer storage medium so as to provide immediate access to any particular record;

~~008.01B~~ Provide a facsimile enlargement of film, a computer printout, or copy of the computer storage medium which the Director may request;

~~008.01C~~ Store the original and one other copy of the film or computer storage medium separately for the time required;

~~008.01D~~ With respect to records stored on computer storage medium, maintain procedures to maintain, preserve, and access the records so as to reasonably safeguard the records from loss, alteration, or destruction; and

~~008.01E~~ With respect to records stored on photographic film, at all times have available for the Director's examination of its records pursuant to Section 8-1103(7) of the Act, facilities for immediate, easily readable projection of the film and for production of easily readable facsimile enlargements.

~~008.02~~ An investment adviser may maintain and preserve records on computer tape or disk or other computer storage medium if such records are created by the investment adviser on electronic media or are received by the investment adviser

~~solely on electronic media or by electronic data transmission in the ordinary course of the investment adviser's business.~~

008.01 Such records may be maintained and preserved for the required time by an investment adviser on:

008.01A Paper or hard copy form, as those records are kept in their original form; or

008.021B Micrographic media, including microfilm, microfiche, or any similar medium; or

008.031C Electronic storage media, including any digital storage medium or system that meets the terms of this section.

008.042 The investment adviser must:

008.042A Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

008.042B Provide promptly any of the following that the Director, including his or her examiners or other representatives, may request:

008.042B1 A legible, true, and complete copy of the record in the medium and format in which it is stored;

008.042B2 A legible, true, and complete printout of the record; and

008.042B3 Means to access, view, and print the records; and

008.04B42C Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

008.053 In the case of records created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

008.053A To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

008.053B To limit access to the records to properly authorized personnel and the Director, including his or her examiners and other representatives; and

008.053C To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

008.074 Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 [17 C.F.R. 240.17a-3] and 17a-4 [17 C.F.R. 240.17a-4] under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this Rule, shall be deemed to be made, kept, maintained and preserved in compliance with this Rule.

009 EXCEPTIONS. The provisions of this Rule shall not apply to any investment adviser whose principal place of business is not located in this state provided:

009.01 Such investment adviser is registered in the state in which its principal place of business is located; and

009.02 Such investment adviser is in compliance with the recordkeeping requirements established by the state in which its principal place of business is located.

009.03 For purposes of this Section, principal place of business shall mean the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 4

Date: 2015-04-01

Original Date: 2015-04-01

Title: Section 275.206(4)-3 - Cash payments for client solicitations.

Context: Title 17 - Commodity and Securities Exchanges. CHAPTER II - SECURITIES AND EXCHANGE COMMISSION (CONTINUED). PART 275 - RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940.

§ 275.206(4) Cash payments for client solicitations.

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(a) It shall be unlawful for any investment adviser required to be registered pursuant to section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1)(i) The investment adviser is registered under the Act;

(ii) The solicitor is not a person (A) subject to a Commission order issued under section 203(f) of the Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Act, or (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Act, or (D) is subject to an order, judgment or decree described in section 203(e)(4) of the Act; and

(iii) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

Note:

The investment adviser shall retain a copy of each written agreement required by this paragraph as part of the records required to be kept under § 275.204-2(a)(10) of this chapter.

(2) Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal advisory services only; or

(ii) Who is (A) a partner, officer, director or employee of such investment adviser or (B) a partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser: *Provided*, That the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

(iii) Other than a solicitor specified in paragraph (a)(2) (i) or (ii) of this section if all of the following conditions are met:

(A) The written agreement required by paragraph (a)(1)(iii) of this section: (1) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor; (2) contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder; (3) requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the

client with a current copy of the investment adviser's written disclosure statement required by § 275.204-3 of this chapter ("brochure rule") and a separate written disclosure document described in paragraph (b) of this rule.

(B) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

Note:

The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under § 275.204-2(a)(15) of this chapter.

(C) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this section shall contain the following information:

(1) The name of the solicitor;

(2) The name of the investment adviser;

(3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(c) Nothing in this section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(d) For purposes of this section,

(1) *Solicitor* means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(2) *Client* includes any prospective client.

(3) *Impersonal advisory services* means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

(e) *Special rule for solicitation of government entity clients.* Solicitation activities involving a government entity, as defined in § 275.206(4)-5, shall be subject to the additional limitations set forth in that section.

[44 FR 42130, July 18, 1979; 54 FR 32441, Aug. 8, 1989, as amended at 62 FR 28135, May 22, 1997; 63 FR 39716, July 24, 1998; 75 FR 41069, July 14, 2010]

Code of Federal Regulations

Title 17 - Commodity and Securities Exchanges

Volume: 4

Date: 2015-04-01

Original Date: 2015-04-01

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

Title 17 - Commodity and Securities Exchanges

Volume: 4

Date: 2015-04-01

Original Date: 2015-04-01

Title: Section 240.17a-4 - Records to be preserved 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-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.