

**NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS**  
**SEA Rule 15c3-1**

(a) **NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS**

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

/001 **Moment to Moment Net Capital**

Broker-dealers must maintain sufficient net capital at all times prior to, during and after purchasing or selling proprietary securities. Broker-dealers must have at all times (including intraday) sufficient net capital to meet the haircut requirements of the Capital Rule before taking on any new proprietary positions, even if the intention of the firm is to liquidate or cover the positions before the end of the same day. Broker-dealers are expected to be able to demonstrate moment to moment compliance with the Capital Rule.

(SEC Staff to NYSE) (No. 99-8, August 1999)

/01 **Additional Net Capital Requirement**

The net capital requirement is increased by one percent of accrued liabilities that are excluded from aggregate indebtedness under the provisions specified in interpretation 15c3-1(c)(2)(iv)(C)/095.

(SEC Letter to NASD, July 24, 1984) (No. 87-6, May 1987)  
 (SEC Staff to FINRA) (FINRA Regulatory Notice 21-27)

(a) NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS (continued)

/02 Consolidations, Minimum Net Capital Requirement

The minimum net capital requirement of the consolidated entity is determined by adding the amount of net capital required for compliance by each consolidated subsidiary subject to the Rule to the minimum dollar net capital requirement of the parent broker-dealer.

See Appendix C interpretation 15c3-1c(c)/022.

(SEC Staff to NYSE)

/03 Inactive Exchange Members

An inactive Exchange member is not subject to a net capital requirement so long as he is not conducting or engaged in the securities business.

(SEC Staff to NYSE)

/04 Registered Traders

A registered Trader (other than a registered trader in options) is subject to a net capital requirement if he trades for his own account. This is so even if he is associated with another broker-dealer. If he trades only for the account of the broker-dealer he is associated with, he is not individually subject to a requirement.

(SEC Staff to NYSE)

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(a) MINIMUM REQUIREMENTS (continued)

(5) OTC DERIVATIVES DEALERS

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

(ii) An OTC derivatives dealer that is also registered as a security-based swap dealer under section 15F of the Act (15 U.S.C. 78o-10) is subject to the capital requirements in §§ 240.18a-1, 240.18a-1a, 240.18a-1b, 240.18a-1c and 240.18a-1d instead of the capital requirements of this section and its appendices.

(a) MINIMUM REQUIREMENTS (continued)(7) ALTERNATIVE NET CAPITAL COMPUTATION FOR BROKER-DEALERS  
AUTHORIZED TO USE MODELS

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

(i)(A) At all times maintain tentative net capital of not less than \$5 billion and net capital of not less than the greater of \$1 billion or the sum of the ratio requirement under paragraph (a)(1) of this section and:

(1) Two percent of the risk margin amount; or

(2) Four percent or less of the risk margin amount if the Commission issues an order raising the requirement to four percent or less on or after the third anniversary of this section's compliance date; or

(3) Eight percent or less of the risk margin amount if the Commission issues an order raising the requirement to eight percent or less on or after the fifth anniversary of this section's compliance date and the Commission had previously issued an order raising the requirement under paragraph (a)(7)(i)(B) of this section;

(B) If, after considering the capital and leverage levels of brokers or dealers subject to paragraph (a)(7) of this section, as well as the risks of their security-based swap positions, the Commission determines that it may be appropriate to change the percentage pursuant to paragraph (a)(7)(i)(A)(2) or (3) of this section, the Commission will publish a notice of the potential change and subsequently will issue an order regarding any such change.

(a)(7) MINIMUM REQUIREMENTS; ALTERNATIVE NET CAPITAL COMPUTATION  
FOR BROKER-DEALERS AUTHORIZED TO USE MODELS (continued)

(ii) Provide notice that same day in accordance with § 240.17a-11(g) if the broker's or dealer's tentative net capital is less than \$6 billion. The Commission may, upon written application, lower the threshold at which notification is necessary under this paragraph (a)(7)(ii), either unconditionally or on specified terms and conditions, if a broker or dealer satisfies the Commission that notification at the \$6 billion threshold is unnecessary because of, among other factors, the special nature of its business, its financial position, its internal risk management system, or its compliance history; and

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

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SEA Rule 15c3-1(a)(7)(iii)

(a) MINIMUM REQUIREMENTS (continued)

(9) CERTAIN ADDITIONAL CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS ENGAGING IN REVERSE REPURCHASE AGREEMENTS

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

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

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

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

(a) MINIMUM REQUIREMENTS (continued)(10) BROKER-DEALERS REGISTERED AS SECURITY-BASED SWAP DEALERS

A broker or dealer registered with the Commission as a security-based swap dealer, other than a broker or dealer subject to the provisions of paragraph (a)(7) of this section, must:

(i)(A) At all times maintain net capital of not less than the greater of \$20 million or the sum of the ratio requirement under paragraph (a)(1) of this section and:

(1) Two percent of the risk margin amount; or

(2) Four percent or less of the risk margin amount if the Commission issues an order raising the requirement to four percent or less on or after the third anniversary of this section's compliance date; or

(3) Eight percent or less of the risk margin amount if the Commission issues an order raising the requirement to eight percent or less on or after the fifth anniversary of this section's compliance date and the Commission had previously issued an order raising the requirement under paragraph (a)(10)(i)(B) of this section;

(B) If, after considering the capital and leverage levels of brokers or dealers subject to paragraph (a)(10) of this section, as well as the risks of their security-based swap positions, the Commission determines that it may be appropriate to change the percentage pursuant to paragraph (a)(10)(i)(A)(2) or (3) of this section, the Commission will publish a notice of the potential change and subsequently will issue an order regarding any such change; and

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

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(c)(2)(iv) DEFINITIONS; NET CAPITAL: ASSETS NOT READILY CONVERTIBLE INTO CASH (continued)

(E) OTHER DEDUCTIONS

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

(1) Any amounts deposited in a Customer Reserve Bank Account or PAB Reserve Bank Account pursuant to § 240.15c3-3(e) or in the “special reserve account for the exclusive benefit of security-based swap customers” established pursuant to § 240.15c3-3(p)(3),

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

(3) Clearing deposits.

/01 Fails to Receive Outstanding More Than 30 Calendar Days

The amount by which the market value of fails to receive outstanding longer than 30 calendar days exceeds the contract value is computed on a contract-by-contract basis.

(SEC Letter to Oppenheim, Appel, Dixon & Co., May 7, 1979)  
(No. 79-10, December 1979)

/011 Syndicate Receivables

Syndicate profits receivable must be deducted (see SEA Rule 15c3-1(c)(2)(iv)(C)) unless the asset:

1. Adequately secures (see definition at SEA Rule 15c3-1(c)(5)) a fixed liability and are the sole recourse of the creditor for nonpayment of the liability, and
2. The loan agreement has been submitted to and found acceptable by the Exchange.

(SEC Staff to NYSE) (No. 88-14, August 1988)



(c)(2)(vi)(N) DEFINITIONS; NET CAPITAL: SECURITIES HAIRCUTS (continued)

/02 Servicing Family Accounts

A specialist member organization who services the customer accounts of members of its partners' (or stockholders') families shall not remain subject to this paragraph.

(SEC Staff to NYSE)

/021 Servicing Partners Accounts

A specialist member organization who services the individual accounts of its partners' or stockholders' shall not remain subject to this paragraph.

(SEC Staff to NYSE) (No. 89-6, June 1989)

/03 Joint Trading and Investment Account

A specialist in stocks may carry a joint specialist trading and investment account in which he participates and remain subject to this paragraph.

(SEC Staff to NYSE)

/04 Exchange Specialist Trading in Futures

A specialist under this paragraph may trade in commodity futures.

(ASE Circular No. 78-72, October 26, 1978)

(SEC Staff to NYSE) (No. 83-5, November 1983)

/05 Exchange Specialist Trading in Options

An exchange specialist trading in listed options transactions that are directly related to the specialist activities, shall remain subject to this paragraph.

(SEC Staff to NYSE) (No. 83-5, November 1983)

(c)(2)(vi) DEFINITIONS; NET CAPITAL: SECURITIES HAIRCUTS (continued)

(O) CLEARED SECURITY-BASED SWAPS

In the case of a cleared security-based swap held in a proprietary account of the broker or dealer, deducting the amount of the applicable margin requirement of the clearing agency or, if the security-based swap references an equity security, the broker or dealer may take a deduction using the method specified in § 240.15c3-1a.

(c)(2)(vi) DEFINITIONS; NET CAPITAL: SECURITIES HAIRCUTS (continued)(P) NON-CLEARED SECURITY-BASED SWAPS(1) *Credit default swaps*

(i) *Short positions (selling protection).* In the case of a non-cleared security-based swap that is a short credit default swap, deducting the percentage of the notional amount based upon the current basis point spread of the credit default swap and the maturity of the credit default swap in accordance with table 1 to § 240.15c3-1(c)(2)(vi)(P)(I)(i):

**Table 1 to § 240.15c3-1(c)(2)(vi)(P)(I)(i)**

<b>Length of Time to Maturity of Credit Default Swap Contract</b>	<b>Basis Point Spread</b>					
	<b>100 or less</b>	<b>101-300</b>	<b>301-400</b>	<b>401-500</b>	<b>501-699</b>	<b>700 or more</b>
Less than 12 months	1.00%	2.00%	5.00%	7.50%	10.00%	15.00%
12 months but less than 24 months	1.50%	3.50%	7.50%	10.00%	12.50%	17.50%
24 months but less than 36 months	2.00%	5.00%	10.00%	12.50%	15.00%	20.00%
36 months but less than 48 months	3.00%	6.00%	12.50%	15.00%	17.50%	22.50%
48 months but less than 60 months	4.00%	7.00%	15.00%	17.50%	20.00%	25.00%
60 months but less than 72 months	5.50%	8.50%	17.50%	20.00%	22.50%	27.50%
72 months but less than 84 months	7.00%	10.00%	20.00%	22.50%	25.00%	30.00%
84 months but less than 120 months	8.50%	15.00%	22.50%	25.00%	27.50%	40.00%
120 months and longer	10.00%	20.00%	25.00%	27.50%	30.00%	50.00%

SEA Rule 15c3-1(c)(2)(vi)(P)(I)(i)

(c)(2)(vi)(P)(I) DEFINITIONS; NET CAPITAL: SECURITIES HAIRCUTS (continued)

(ii) *Long positions (purchasing protection).* In the case of a non-cleared security-based swap that is a long credit default swap, deducting 50 percent of the deduction that would be required by paragraph (c)(2)(vi)(P)(I)(i) of this section if the non-cleared security-based swap was a short credit default swap, each such deduction not to exceed the current market value of the long position.

(iii) *Long and short credit default swaps.* In the case of non-cleared security-based swaps that are long and short credit default swaps referencing the same entity (in the case of non-cleared credit default swap security-based swaps referencing a corporate entity) or obligation (in the case of non-cleared credit default swap security-based swaps referencing an asset-backed security), that have the same credit events which would trigger payment by the seller of protection, that have the same basket of obligations which would determine the amount of payment by the seller of protection upon the occurrence of a credit event, that are in the same or adjacent spread category, and that are in the same or adjacent maturity category and have a maturity date within three months of the other maturity category, deducting the percentage of the notional amount specified in the higher maturity category under paragraph (c)(2)(vi)(P)(I)(i) or (ii) on the excess of the long or short position. In the case of non-cleared security-based swaps that are long and short credit default swaps referencing corporate entities in the same industry sector and the same spread and maturity categories prescribed in paragraph (c)(2)(vi)(P)(I)(i) of this section, deducting 50 percent of the amount required by paragraph (c)(2)(vi)(P)(I)(i) of this section on the short position plus the deduction required by paragraph (c)(2)(vi)(P)(I)(ii) of this section on the excess long position, if any. For the purposes of this section, the broker or dealer must use an industry sector classification system that is reasonable in terms of grouping types of companies with similar business activities and risk characteristics and the broker or dealer must document the industry sector classification system used pursuant to this section.

(iv) *Long security and long credit default swap.* In the case of a non-cleared security-based swap that is a long credit default swap referencing a debt security and the broker or dealer is long the same debt security, deducting 50 percent of the amount specified in paragraph (c)(2)(vi) or (vii) of this section for the debt security, provided that the broker or dealer can deliver the debt security to satisfy the obligation of the broker or dealer on the credit default swap.

(v) *Short security and short credit default swap.* In the case of a non-cleared security-based swap that is a short credit default swap referencing a debt security or a corporate entity, and the broker or dealer is short the debt security or a debt security issued by the corporate entity, deducting the amount specified in paragraph (c)(2)(vi) or (vii) of this section for the debt security. In the case of a non-cleared security-based swap that is a short credit default swap referencing an asset-backed security and the broker or dealer is short the asset-backed security, deducting the amount specified in paragraph (c)(2)(vi) or (vii) of this section for the asset-backed security.

(c)(2)(vi)(P) DEFINITIONS; NET CAPITAL: SECURITIES HAIRCUTS (continued)

(2) *Non-cleared security-based swaps that are not credit default swaps.* In the case of a non-cleared security-based swap that is not a credit default swap, deducting the amount calculated by multiplying the notional amount of the security-based swap and the percentage specified in paragraph (c)(2)(vi) of this section applicable to the reference security. A broker or dealer may reduce the deduction under this paragraph (c)(2)(vi)(P)(2) by an amount equal to any reduction recognized for a comparable long or short position in the reference security under paragraph (c)(2)(vi) of this section and, in the case of a security-based swap referencing an equity security, the method specified in § 240.15c3-1a.

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(c)(2) DEFINITIONS; NET CAPITAL (continued)(xii) DEDUCTION FROM NET WORTH FOR CERTAIN UNDERMARGINED ACCOUNTS

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

/01 Reverse Repurchase Agreements – Rescinded (No. 06-5, June 2006)/011 Reverse Repurchase Agreements

On reverse repurchase agreement transactions, the greater of the cash margin deficiency based on the margin requirements of the Designated Examining Authority described herein or the amount required by subparagraph (c)(2)(iv)(F) of SEA Rule 15c3-1 shall be deducted.

Cash reverse repurchase transactions in “exempted securities” as defined in Section 3(a)(12) of the Securities and Exchange Act of 1934, and cash reverse repurchase transactions in mortgage related securities as defined in Section 3(a)(41) of the Securities and Exchange Act of 1934, as well as certain non-equity securities described in NYSE Rule 431(a)(9) through 431(a)(11), may be maintained in a special account subject to the provisions of NYSE Rule 431(e)(2)(F), which provides that broker-dealers entering into transactions with “exempt accounts”, as defined in NYSE Rule 431(a)(13), need not collect margin from such “exempt accounts”, however are subject to the Exchange's capital requirements described in NYSE Rule 431(e)(2)(F), (G) and (H).

All other non-exempt accounts entering into cash reverse repurchase transactions are subject to the following minimum margin requirements:

- 1% to 6% of the current market value of U. S. Government obligations (See NYSE Rule 431(e)(2)(A));
- 7% of the current market value of all other exempted securities other than obligations of the United States (See NYSE Rule 431(e)(2)(B));
- 10% of the current market value in the case of investment grade debt securities (See NYSE Rule 431(e)(2)(C)(i)); and
- 20% of the current market value or 7% of the principal amount, whichever amount is greater, in the case of all other listed non-equity securities, and all other marginable non-equity securities as defined in NYSE Rule 431(a)(16) (See NYSE Rule 431(e)(2)(C)(ii)).

(SEC Staff to NYSE) (No. 06-5, June 2006)

SEA Rule 15c3-1(c)(2)(xii)(A)/011

(c)(2)(xii)(A) DEFINITIONS; NET CAPITAL: DEDUCTION FROM NET WORTH FOR CERTAIN UNDERMARGINED ACCOUNTS (continued)

/02 Government National Mortgage Association (GNMA)

See Interpretation Handbook for treatment under NYSE Rule 431(e)(2)(F)/04 through /047.

(No. 88-15, September 1988)

/03 Regulation T Calls for Margin

Only calls for margin, which are outstanding five business days or less, may be applied in computing cash margin deficiencies under this provision.

(SEC Staff to NYSE) (No. 81-9, December 1981)

(SEC Staff to NYSE) (No. 06-5, June 2006)

/04 Non-Purpose Loans Collateralized by Certificates of Deposit

See interpretation 15c3-1(c)(2)(iv)(B)/10.

(c)(2)(xii)(A) DEFINITIONS; NET CAPITAL: DEDUCTION FROM NET WORTH FOR CERTAIN UNDERMARGINED ACCOUNTS (continued)

/05 Credit Extended Upon Exercise of Employee Stock Option

When a broker-dealer exercises an employee stock option for a customer, it must have acknowledgement from the issuer that a freely transferable, readily salable and marketable security in negotiable form will be promptly delivered to the broker-dealer within 13 business days after exercise notice is given to the issuer (when acknowledgment is given by telephone, the condition should be restated in the transmittal to the issuer). The exercise shall be subject to the following:

1. When the security to be received from the exercise has been sold and is not received from the issuer within 13 business days after notice of exercise has been given, the position shall be subject to a cash margin deficiency charge computed without allowing any value for the security not received (and is subject to the buy-in provisions under SEA Rule 15c3-3(m) unless an extension of time is requested and approved under paragraph (n) of that rule);
2. When the security to be received from the exercise has not been sold and is not received within 13 business days after notice of exercise has been given, any related debit balance shall be treated as an unsecured debit for net capital purposes. (See interpretation 15c3-1(c)(2)(iv)(B)/12.)

(SEC Staff to NYSE) (No. 88-15, September 1988) (No. 97-6, October 1997)

/06 Credit Extended to Customers on Control or Restricted Stock

Credit extended to customers on control or restricted stock shall be subject to maintenance margin requirements of NYSE Rule 431(e)(8). Any resulting cash margin deficiencies should be charged pursuant this provision.

(SEC Staff to NYSE) (No. 92-1, January 1992)

/061 Customers Foreign Currency Options Collateralized by Letters of Credit

See interpretation 15c3-1(c)(2)(iv)(B)/013.



(c)(2)(xii)(A) DEFINITIONS; NET CAPITAL: DEDUCTION FROM NET WORTH FOR CERTAIN UNDERMARGINED ACCOUNTS (continued)

/07 Maintenance Requirement for Proprietary Accounts Carried for Joint Back Office Broker-Dealers

Broker-dealers operating joint back offices and carrying proprietary accounts of other broker-dealers that are participants in the joint back office must maintain equity in such accounts at least equal to the haircut percentages provided under SEA Rule 15c3-1 subparagraphs (c)(2)(vi) (excluding subparagraph (c)(2)(vi)(M)) or Appendix A as appropriate. If the equity in the account is not equal to or greater than the total haircuts computed for the positions carried in the participant's account, the carrying broker-dealer must obtain additional allowable collateral or charge its own capital for the deficiency. No benefit may be taken by the carrying broker-dealer if equity in such accounts exceeds the required haircuts. If the participant's account liquidates to a deficit, the charge to the carrying broker will be for the sum of the deficit and the applicable haircuts.

(SEC Staff to NYSE) (No. 92-12, December 1992)  
(No. 96-4, November 1996) (No. 97-5, September 1997)

(B) Deducting the amount of cash required in the account of each security-based swap and swap customer to meet the margin requirements of a clearing agency, Examining Authority, the Commission, derivatives clearing organization, or the Commodity Futures Trading Commission, as applicable, after application of calls for margin, marks to the market, or other required deposits which are outstanding within the required time frame to collect the margin, mark to the market, or other required deposits.

(c)(2) DEFINITIONS; NET CAPITAL (continued)(xiii) DEDUCTION FROM NET WORTH FOR INDEBTEDNESS  
COLLATERALIZED BY EXEMPTED SECURITIES

Deducting, at the option of the broker or dealer, in lieu of including such amounts in aggregate indebtedness, 4 percent of the amount of any indebtedness secured by exempted securities or municipal securities, if such indebtedness would otherwise be includable in aggregate indebtedness.

/01 Optional Treatment of Liabilities vs Municipal Collateral

The optional deduction applies to bank loans, fail to receive, securities loaned or other such liabilities includable in aggregate indebtedness which are collateralized by exempted or municipal securities.

(SEC Staff to NYSE) (No. 77-4, November 1977)

(xiv) DEDUCTION FROM NET WORTH FOR EXCESS DEDUCTIBLE AMOUNTS  
RELATED TO FIDELITY BOND COVERAGE

Deducting the amount specified by rule of the Examining Authority for the broker or dealer with respect to a requirement to maintain fidelity bond coverage.

(c)(2) DEFINITIONS; NET CAPITAL (continued)(xv) DEDUCTION FROM NET WORTH IN LIEU OF COLLECTING COLLATERAL FOR NON-CLEARED SECURITY-BASED SWAP AND SWAP TRANSACTIONS

(A) *Security-based swaps.* Deducting the initial margin amount calculated pursuant to § 240.18a-3(c)(1)(i)(B) for the account of a counterparty at the broker or dealer that is subject to a margin exception set forth in § 240.18a-3(c)(1)(iii), less the margin value of collateral held in the account.

(B) *Swaps.* Deducting the initial margin amount calculated pursuant to the margin rules of the Commodity Futures Trading Commission in the account of a counterparty at the broker or dealer that is subject to a margin exception in those rules, less the margin value of collateral held in the account.

(C) *Treatment of collateral held at a third-party custodian.* For the purposes of the deductions required pursuant to paragraphs (c)(2)(xv)(A) and (B) of this section, collateral held by an independent third-party custodian as initial margin may be treated as collateral held in the account of the counterparty at the broker or dealer if:

(1) The independent third-party custodian is a bank as defined in section 3(a)(6) of the Act or a registered U.S. clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies;

(2) The broker or dealer, the independent third-party custodian, and the counterparty that delivered the collateral to the custodian have executed an account control agreement governing the terms under which the custodian holds and releases collateral pledged by the counterparty as initial margin that is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding of any of the parties to the agreement, and that provides the broker or dealer with the right to access the collateral to satisfy the counterparty's obligations to the broker or dealer arising from transactions in the account of the counterparty; and

(3) The broker or dealer maintains written documentation of its analysis that in the event of a legal challenge the relevant court or administrative authorities would find the account control agreement to be legal, valid, binding, and enforceable under the applicable law, including in the event of the receivership, conservatorship, insolvency, liquidation, or a similar proceeding of any of the parties to the agreement.

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SEA Rule 15c3-1(c)(2)(xv)(C)(3)

(c) DEFINITIONS (continued)

(16) INSOLVENT

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

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

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

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

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

(17) RISK MARGIN AMOUNT

The term *risk margin amount* means the sum of:

(i) The total initial margin required to be maintained by the broker or dealer at each clearing agency with respect to security-based swap transactions cleared for security-based swap customers; and

(ii) The total initial margin amount calculated by the broker or dealer with respect to non-cleared security-based swaps pursuant to § 240.18a-3(c)(1)(i)(B).

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**OPTIONS**  
**SEA Rule 15c3-1a (Appendix A)**

(a) **DEFINITIONS**

(1) The term *unlisted option* shall mean any option not included in the definition of listed option provided in paragraph (c)(2)(x) of §240.15c3-1.

(2) The term *option series* refers to listed option contracts of the same type (either a call or a put) and exercise style, covering the same underlying security with the same exercise price, expiration date, and number of underlying units.

(3) The term *related instrument* within an option class or product group refers to futures contracts, options on futures contracts, security-based swaps on a narrow-based security index, and swaps covering the same underlying instrument. In relation to options on foreign currencies, a related instrument within an option class also shall include forward contracts on the same underlying currency.

(4) The term *underlying instrument* refers to long and short positions, as appropriate, covering the same foreign currency, the same security, security future, or security-based swap other than a security-based swap on a narrow-based security index, or a security which is exchangeable for or convertible into the underlying security within a period of 90 days. If the exchange or conversion requires the payment of money or results in a loss upon conversion at the time when the security is deemed an underlying instrument for purposes of this section, the broker or dealer will deduct from net worth the full amount of the conversion loss. The term underlying instrument shall not be deemed to include securities options, futures contracts, options on futures contracts, security-based swaps on a narrow-based security index, qualified stock baskets, unlisted instruments, or swaps.

(5) The term *options class* refers to all options contracts covering the same underlying instrument.

(6) The term *product group* refers to two or more option classes, related instruments, underlying instruments, and qualified stock baskets in the same portfolio type (see paragraph (b)(1)(ii) of this section) for which it has been determined that a percentage of offsetting profits may be applied to losses at the same valuation point.

(b)(1)(v)(B)(2) THEORETICAL PRICING CHARGES (continued)

(ii) Among positions involving different non-high-capitalization diversified index option classes within the same product group, 75% of the gain in a non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(iii) Among positions involving different narrow-based index option classes within the same product group, 90% of the gain in a narrow-based market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another narrow-based market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(iv) No qualified stock basket should offset another qualified stock basket; and

(3) Third, a broker-dealer is allowed the following offsets between product groups: Among positions involving different diversified index product groups within the same market group, 50% of the gain in a diversified market index option, a related instrument, or a qualified stock basket within that index option's product group shall offset the loss at the same valuation point in another product group;

(C) For each portfolio type, the total deduction shall be the larger of:

(1) The amount for any of the 10 equidistant valuation points representing the largest theoretical loss after applying the offsets provided in paragraph (b)(1)(v)(B) if this section; or

(2) A minimum charge equal to 25% times the multiplier for each equity and index option contract and each related instrument within the option's class or product group, or \$25 for each option on a major market foreign currency with the minimum charge for futures contracts and options on futures contracts adjusted for contract size differentials, not to exceed market value in the case of long positions in options and options on futures contracts; plus

(3) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 5 percent of the market value of the qualified stock basket for high-capitalization diversified and narrow-based indexes;

(4) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 7 1/2 percent of the market value of the qualified stock basket for non-high-capitalization diversified indexes; and

(5) In the case of portfolio types involving security futures and equity options on the same underlying instrument and positions in that underlying instrument, there will be a minimum charge of 25 percent times the multiplier for each security future and equity option.

**(NEXT PAGE IS 1021)**

SEA Rule 15c3-1a(b)(1)(v)(C)(5)

(a) NET CAPITAL

(3) In computing net capital as defined in paragraph (c)(2) of this section, the net worth of a broker or dealer shall be adjusted as follows with respect to commodity-related transactions:

(i) Unrealized Profit or Loss For Certain Commodities Transactions

(A) Unrealized profits shall be added and unrealized losses shall be deducted in the commodities accounts of the broker or dealer, including unrealized profits and losses on fixed price commitments and forward contracts; and

(B) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the physical commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

(ii) Deduct any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: Provided, however, Deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits need not be deducted until the close of business on the business day following the date on which such deficit or debit ledger balance originated;

## (iii) Deduct all unsecured receivables, advances and loans except for:

(A) Management fees receivable from commodity pools outstanding no longer than thirty (30) days from the date they are due;

(B) Receivables from foreign clearing organizations;

(C) Receivables from registered futures commission merchants or brokers, resulting from cleared swap transactions or, commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B. In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker.

(a)(3) NET CAPITAL (continued)

(xv) In the case of a broker or dealer which is a purchaser of a commodity option which is traded on a contract market the deduction shall be the same safety factor as if the broker or dealer were the grantor of such option in accordance with paragraph (a)(3)(xiv), but in no event shall the safety factor be greater than the market value attributed to such option.

(xvi) In the case of a broker or dealer which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase net capital, the deduction is ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option.

(xvii) Deduct 5% of all unsecured receivables includable under paragraph (a)(3)(iii)(C) of this Appendix B used by the broker or dealer in computing “net capital” and which are not receivable from (A) a futures commission merchant registered as such with the Commodity Futures Trading Commission, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xviii) A loan or advance or any other form of receivable shall not be considered “secured” for the purposes of paragraph (a)(3) of this Appendix B unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash: Provided, however, That the receivable will be considered secured only to the extent of the market value of such collateral after application of the percentage deductions specified in paragraph (a)(3)(ix) of this Appendix B; and

(B)(1) The readily marketable collateral is in the possession or control of the broker or dealer; or

(2) The broker or dealer has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(xix) The term “cover” for purposes of this Appendix B shall mean cover as defined in 17 CFR 1.17(j).

(xx) The term “customer” for purposes of this Appendix B shall mean customer as defined in 17 CFR 1.17(b)(2). The term “non-customer” for purposes of this Appendix B shall mean non-customer as defined in 17 CFR 1.17(b)(4).

**(NEXT PAGE IS 1151)**



NET CAPITAL (continued)

(b) Every broker or dealer in computing net capital pursuant to § 240.15c3-1 must comply with the following:

(1) *Cleared swaps.* In the case of a cleared swap held in a proprietary account of the broker or dealer, deducting the amount of the applicable margin requirement of the derivatives clearing organization or, if the swap references an equity security index, the broker or dealer may take a deduction using the method specified in § 240.15c3-1a.

(b) NET CAPITAL (continued)(2) *Non-cleared swaps*

(i) *Credit default swaps referencing broad-based security indices.* In the case of a non-cleared credit default swap for which the deductions in § 240.15c3-1e do not apply:

(A) *Short positions (selling protection).* In the case of a non-cleared swap that is a short credit default swap referencing a broad-based security index, deducting the percentage of the notional amount based upon the current basis point spread of the credit default swap and the maturity of the credit default swap in accordance table 1 to § 240.15c3-1a(b)(2)(i)(A):

**Table 1 to § 240.15c3-1a(b)(2)(i)(A)**

<b>Length of Time to Maturity of Credit Default Swap Contract</b>	<b>Basis Point Spread</b>					
	<b>100 or less</b>	<b>101-300</b>	<b>301-400</b>	<b>401-500</b>	<b>501-699</b>	<b>700 or more</b>
Less than 12 months	0.67%	1.33%	3.33%	5.00%	6.67%	10.00%
12 months but less than 24 months	1.00%	2.33%	5.00%	6.67%	8.33%	11.67%
24 months but less than 36 months	1.33%	3.33%	6.67%	8.33%	10.00%	13.33%
36 months but less than 48 months	2.00%	4.00%	8.33%	10.00%	11.67%	15.00%
48 months but less than 60 months	2.67%	4.67%	10.00%	11.67%	13.33%	16.67%
60 months but less than 72 months	3.67%	5.67%	11.67%	13.33%	15.00%	18.33%
72 months but less than 84 months	4.67%	6.67%	13.33%	15.00%	16.67%	20.00%
84 months but less than 120 months	5.67%	10.00%	15.00%	16.67%	18.33%	26.67%
120 months and longer	6.67%	13.33%	16.67%	18.33%	20.00%	33.33%

SEA Rule 15c3-1b(b)(2)(i)(A)

(b)(2)(i) NET CAPITAL (continued)

(B) *Long positions (purchasing protection).* In the case of a non-cleared swap that is a long credit default swap referencing a broad-based security index, deducting 50 percent of the deduction that would be required by paragraph (b)(2)(i)(A) of this section if the non-cleared swap was a short credit default swap, each such deduction not to exceed the current market value of the long position.

(C) *Long and short credit default swaps.* In the case of non-cleared swaps that are long and short credit default swaps referencing the same broad-based security index, have the same credit events which would trigger payment by the seller of protection, have the same basket of obligations which would determine the amount of payment by the seller of protection upon the occurrence of a credit event, that are in the same or adjacent spread category, and that are in the same or adjacent maturity category and have a maturity date within three months of the other maturity category, deducting the percentage of the notional amount specified in the higher maturity category under paragraph (b)(2)(i)(A) or (B) of this section on the excess of the long or short position.

(D) *Long basket of obligors and long credit default swap.* In the case of a non-cleared swap that is a long credit default swap referencing a broad-based security index and the broker or dealer is long a basket of debt securities comprising all of the components of the security index, deducting 50 percent of the amount specified in § 240.15c3-1(c)(2)(vi) for the component securities, provided the broker or dealer can deliver the component securities to satisfy the obligation of the broker or dealer on the credit default swap.

(E) *Short basket of obligors and short credit default swap.* In the case of a non-cleared swap that is a short credit default swap referencing a broad-based security index and the broker or dealer is short a basket of debt securities comprising all of the components of the security index, deducting the amount specified in § 240.15c3-1(c)(2)(vi) for the component securities.

(b)(2) NET CAPITAL (continued)

(ii) *All other swaps.*

(A) In the case of a non-cleared swap that is not a credit default swap for which the deductions in § 240.15c3-1e do not apply, deducting the amount calculated by multiplying the notional value of the swap by the percentage specified in:

(1) Section 240.15c3-1 applicable to the reference asset if § 240.15c3-1 specifies a percentage deduction for the type of asset;

(2) 17 CFR 1.17 applicable to the reference asset if 17 CFR 1.17 specifies a percentage deduction for the type of asset and § 240.15c3-1 does not specify a percentage deduction for the type of asset; or

(3) In the case of non-cleared interest rate swap, § 240.15c3-1(c)(2)(vi)(A) based on the maturity of the swap, provided that the percentage deduction must be no less than one eighth of 1 percent of the amount of a long position that is netted against a short position in the case of a non-cleared swap with a maturity of three months or more.

(B) A broker or dealer may reduce the deduction under paragraph (b)(2)(ii)(A) by an amount equal to any reduction recognized for a comparable long or short position in the reference asset or interest rate under § 240.15c3-1 or 17 CFR 1.17.

**(NEXT PAGE IS 1201)**

(b)(6) MINIMUM REQUIREMENTS FOR SUBORDINATION AGREEMENTS (continued)/02 Limited Partnership Interests

While such partnerships have been registered as securities under the Securities Exchange Act of 1933, they are not good collateral because a ready market does not exist.

(SEC Staff to NYSE) (No. 83-2, April 1983)

/03 Reverse-Repurchase Agreement Securities

Securities acquired under a reverse-repurchase agreement may not be used as collateral for a Secured Demand Note.

(SEC Staff to NYSE) (No. 90-4, June 1990)

(7) Permissive Prepayments

A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements that comply with the provisions of paragraph (c)(5) of this section. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1 or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(1)(ii), its net capital would be less than 5 percent of its aggregate debit items computed in accordance with § 240.15c3-3a, or if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1(a)(1)(ii), or if, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(10), its net capital would be less than 120 percent of its minimum requirement.

(b) MINIMUM REQUIREMENTS FOR SUBORDINATION AGREEMENTS (continued)

(8) Suspended Repayment

(i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding that are scheduled to mature on or before such Payment Obligation) either:

(A) The aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital, or in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(1)(ii), its net capital would be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(10), its net capital would be less than 120 percent of its minimum requirement; or

(B) Its net capital would be less than 120 percent of the minimum dollar amount required by §240.15c3-1 including paragraph (a)(1)(ii), if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of §§ 240.15c3-1 and 240.15c3-1d.

(ii) [Reserved]

(b)(10) MINIMUM REQUIREMENTS FOR SUBORDINATION AGREEMENTS (continued)

(ii) Notwithstanding the provisions of paragraph (b)(8) of this appendix, a subordination agreement may provide that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commenced, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. Any subordination agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the broker or dealer has not already commenced, be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Default which may be included in a subordination agreement shall be limited to:

(A) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the broker or dealer are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the broker or dealer to obtain the dismissal of such application within 30 days;

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer that has elected to operate under § 240.15c3-1(a)(1)(ii), its net capital computed in accordance therewith is less than two percent of its aggregate debit items computed in accordance with § 240.15c3-3a or, if registered as a futures commission merchant, four percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(10), its net capital is less than its minimum requirement, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

(c)(1) MISCELLANEOUS PROVISIONS (continued)/011 Extensions - Minimum Time Period

Under either of the methods for extending the maturity date of satisfactory subordination agreements, it must be extended for a period of not less than one year.

(SEC Staff to NYSE) (No. 90-4, June 1990)

/02 Principal Amount Increases

Parties wishing to increase the principal amount of a subordination agreement should subject the incremental amount to a new agreement conforming in all respects to Appendix D. Filing under SEA Rule 15c3-1d(c)(6) is required for the new subordination.

(SEC Letter to NYSE, November 11, 1976) (No. 77-2, June 1977)

(2) Notice of Maturity or Accelerated Maturity

Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding that are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3-1, or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(1)(ii), its net capital would be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by § 240.15c3-1(a)(1)(ii), or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(10), its net capital would be less than 120 percent of its minimum requirement.

(3) Certain Legends

If all the provisions of a satisfactory subordination agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

SEA Rule 15c3-1d(c)(3)



(c)(5)(i) MISCELLANEOUS PROVISIONS (continued)

(A) The aggregate indebtedness of the broker or dealer exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by § 240.15c3-1, or

(B) In the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(1)(ii), its net capital is less than 5 percent of aggregate debits computed in accordance with § 240.15c3-1, or, if registered as a futures commission merchant, less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section, or, in the case of a broker or dealer operating pursuant to § 240.15c3-1(a)(10), its net capital would be less than 120 percent of its minimum requirement, or

(C) The amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of § 240.15c3-1. Such temporary subordination agreement shall be subject to all other provisions of this Appendix D.

/01 Underwriting Participation

Temporary subordinations are for the purpose of enabling a broker-dealer to participate in an underwriting or in other extraordinary activities. In this regard, the term "extraordinary activities" is defined narrowly.

(SEC Staff to NYSE)

/02 Equity Requirement

A broker-dealer may enter into temporary subordinations even if it creates an excess of debt over equity requirements as specified in paragraph (d) of the rule so long as such condition did not already exist.

(SEC Staff to NYSE)

(ii) A broker or dealer shall be permitted to enter into a revolving subordinated loan agreement which provides for prepayment within less than one year of all or any portion of the Payment Obligation thereunder at the option of the broker or dealer upon the prior written approval of the Examining Authority for the broker or dealer. The Examining Authority, however, shall not approve any prepayment if:

/01 Qualified Lenders for Revolving Subordinated Loan Agreements

See interpretations 15c3-1(c)(2)/015 and 15c3-1d(a)(2)(v)(F)/01.

(SEC Staff to NYSE) (No. 01-4, April 2001)

SEA Rule 15c3-1d(c)(5)(ii)/01

**DEDUCTIONS FOR MARKET AND CREDIT RISK**  
**FOR CERTAIN BROKERS OR DEALERS**  
**SEA Rule 15c3-1e (Appendix E)**

Sections 240.15c3-1e and 240.15c3-1g set forth a program that allows a broker or dealer to use an alternative approach to computing net capital deductions, subject to the conditions described in §§ 240.15c3-1e and 240.15c3-1g, including supervision of the broker's or dealer's ultimate holding company under the program. The program is designed to reduce the likelihood that financial and operational weakness in the holding company will destabilize the broker or dealer, or the broader financial system. The focus of this supervision of the ultimate holding company is its financial and operational condition and its risk management controls and methodologies.

**APPLICATION**

(a) A broker or dealer may apply to the Commission for authorization to compute deductions for market risk pursuant to this section in lieu of computing deductions pursuant to §§ 240.15c3-1(c)(2)(vi) and (vii) and 240.15c3-1b, and to compute deductions for credit risk pursuant to this section on credit exposures arising from transactions in derivatives instruments (if this section is used to calculate deductions for market risk on these instruments) in lieu of computing deductions pursuant to § 240.15c3-1(c)(2)(iv) and (c)(2)(xv)(A) and (B):

(1) A broker-dealer shall submit the following information to the Commission with its application:

(i) An executive summary of the information provided to the Commission with its application and an identification of the ultimate holding company of the broker or dealer;

(ii) A comprehensive description of the internal risk management control system of the broker or dealer and how that system satisfies the requirements set forth in §240.15c3-4;

(iii) A list of the categories of positions that the broker or dealer holds in its proprietary accounts and a brief description of the methods that the broker or dealer will use to calculate deductions for market and credit risk on those categories of positions;

(a) APPLICATION (continued)

(4) The application of the broker or dealer shall be supplemented by other information relating to the internal risk management control system, mathematical models, and financial position of the broker or dealer or the ultimate holding company of the broker or dealer that the Commission may request to complete its review of the application;

(5) The application shall be considered filed when received at the Commission's principal office in Washington, DC. A person who files an application pursuant to this section for which it seeks confidential treatment may clearly mark each page or segregable portion of each page with the words "Confidential Treatment Requested." All information submitted in connection with the application will be accorded confidential treatment, to the extent permitted by law;

(6) If any of the information filed with the Commission as part of the application of the broker or dealer is found to be or becomes inaccurate before the Commission approves the application, the broker or dealer must notify the Commission promptly and provide the Commission with a description of the circumstances in which the information was found to be or has become inaccurate along with updated, accurate information;

(a) APPLICATION (continued)

(7)(i) The Commission may approve the application or an amendment to the application, in whole or in part, subject to any conditions or limitations the Commission may require, if the Commission finds the approval to be necessary or appropriate in the public interest or for the protection of investors, after determining, among other things, whether the broker or dealer has met the requirements of this Appendix E and is in compliance with other applicable rules promulgated under the Act and by self-regulatory organizations, and whether the ultimate holding company of the broker or dealer is in compliance with the terms of its undertakings, as provided to the Commission;

(ii) The Commission may approve the temporary use of a provisional model in whole or in part, subject to any conditions or limitations the Commission may require, if:

(A) The broker or dealer has a complete application pending under this section;

(B) The use of the provisional model has been approved by:

(1) A prudential regulator;

(2) The Commodity Futures Trading Commission or a futures association registered with the Commodity Futures Trading Commission under section 17 of the Commodity Exchange Act;

(3) A foreign financial regulatory authority that administers a foreign financial regulatory system with capital requirements that the Commission has found are eligible for substituted compliance under § 240.3a71-6 if the provisional model is used for the purposes of calculating net capital;

(4) A foreign financial regulatory authority that administers a foreign financial regulatory system with margin requirements that the Commission has found are eligible for substituted compliance under § 240.3a71-6 if the provisional model is used for the purposes of calculating initial margin pursuant to § 240.18a-3; or

(5) Any other foreign supervisory authority that the Commission finds has approved and monitored the use of the provisional model through a process comparable to the process set forth in this section.

(a) APPLICATION (continued)

(8) A broker or dealer shall amend its application to calculate certain deductions for market and credit risk under this Appendix E and submit the amendment to the Commission for approval before it may change materially a mathematical model used to calculate market or credit risk or before it may change materially its internal risk management control system;

(9) As a condition to the broker's or dealer's calculation of deductions for market and credit risk under this Appendix E, an ultimate holding company that does not have a principal regulator shall submit to the Commission, as an amendment to the broker's or dealer's application, any material changes to a mathematical model or other methods used to calculate allowances for market, credit, and operational risk, and any material changes to the internal risk management control system for the affiliate group. The ultimate holding company must submit these material changes to the Commission before making them;

(10) As a condition for the broker or dealer to compute deductions for market and credit risk under this Appendix E, the broker or dealer agrees that:

(i) It will notify the Commission 45 days before it ceases to compute deductions for market and credit risk under this Appendix E; and

(ii) The Commission may determine by order that the notice will become effective after a shorter or longer period of time if the broker or dealer consents or if the Commission determines that a shorter or longer period of time is necessary or appropriate in the public interest or for the protection of investors; and

(11) Notwithstanding paragraph (a)(10) of this section, the Commission, by order, may revoke a broker's or dealer's exemption that allows it to use the market risk standards of this Appendix E to calculate deductions for market risk, instead of the provisions of § 240.15c3-1(c)(2)(vi) and (c)(2)(vii), and the exemption to use the credit risk standards of this Appendix E to calculate deductions for credit risk on certain credit exposures arising from transactions in derivatives instruments, instead of the provisions of § 240.15c3-1(c)(2)(iv), if the Commission finds that such exemption is no longer necessary or appropriate in the public interest or for the protection of investors. In making its finding, the Commission will consider the compliance history of the broker or dealer related to its use of models, the financial and operational strength of the broker or dealer and its ultimate holding company, the broker's or dealer's compliance with its internal risk management controls, and the ultimate holding company's compliance with its undertakings.

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(c) CREDIT RISK

A broker or dealer whose application, including amendments, has been approved under paragraph (a) of this Appendix E shall compute a deduction for credit risk on transactions in derivative instruments (if this Appendix E is used to calculate a deduction for market risk on those instruments) in an amount equal to the sum of the following:

- (1) A counterparty exposure charge in an amount equal to the sum of the following:
  - (i) The net replacement value in the account of each counterparty that is insolvent, or in bankruptcy, or that has senior unsecured long-term debt in default; and
  - (ii) For a counterparty not otherwise described in paragraph (c)(1)(i) of this Appendix E, the credit equivalent amount of the broker's or dealer's exposure to the counterparty, as defined in paragraph (c)(4)(i) of this Appendix E, multiplied by the credit risk weight of the counterparty, as defined in paragraph (c)(4)(vi) of this Appendix E, multiplied by 8%;
- (2) A concentration charge by counterparty in an amount equal to the sum of the following:
  - (i) For each counterparty with a credit risk weight of 20% or less, 5% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer;
  - (ii) For each counterparty with a credit risk weight of greater than 20% but less than 50%, 20% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and
  - (iii) For each counterparty with a credit risk weight of greater than 50%, 50% of the amount of the current exposure to the counterparty in excess of 5% of the tentative net capital of the broker or dealer; and
- (3) A portfolio concentration charge of 100 percent of the amount of the broker's or dealer's aggregate current exposure for all counterparties in excess of 10 percent of the tentative net capital of the broker or dealer;

(c)(4) CREDIT RISK; TERMS (continued)

(v) *Collateral*. When calculating maximum potential exposure and current exposure to a counterparty, the fair market value of collateral pledged and held may be taken into account provided:

(A) The collateral is marked to market each day and is subject to a daily margin maintenance requirement;

(B) The collateral is subject to the broker's or dealer's physical possession or control;

(I) The collateral is subject to the broker's or dealer's physical possession or control and may be liquidated promptly by the firm without intervention by any other party; or

(2) The collateral is held by an independent third-party custodian that is a bank as defined in section 3(a)(6) of the Act or a registered U.S. clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies;

(C) The collateral is liquid and transferable;

(D) The collateral agreement is legally enforceable by the broker or dealer against the counterparty and any other parties to the agreement;

(E) The collateral does not consist of securities issued by the counterparty or a party related to the broker or dealer or to the counterparty;

(F) The Commission has approved the broker's or dealer's use of a VaR model to calculate deductions for market risk for the type of collateral in accordance with this Appendix E; and

(G) The collateral is not used in determining the credit rating of the counterparty;

(e) ADDITIONAL CONDITIONS

As a condition for the broker or dealer to use this Appendix E to calculate certain of its capital charges, the Commission may impose additional conditions on the broker or dealer, which may include, but are not limited to restricting the broker's or dealer's business on a product-specific, category-specific, or general basis; submitting to the Commission a plan to increase the broker's or dealer's net capital or tentative net capital; filing more frequent reports with the Commission; modifying the broker's or dealer's internal risk management control procedures; or computing the broker's or dealer's deductions for market and credit risk in accordance with § 240.15c3-1(c)(2)(iv), (vi), and (vii), (c)(2)(xv)(A) and (B), as appropriate, and § 240.15c-1b, as appropriate. If it is not an ultimate holding company that has a principal regulator, the Commission also may require, as a condition of continuation of the exemption, the ultimate holding company of the broker or dealer to file more frequent reports or to modify its group-wide internal risk management control procedures. If the Commission finds it is necessary or appropriate in the public interest or for the protection of investors, the Commission may impose additional conditions on either the broker-dealer, or the ultimate holding company, if it is an ultimate holding company that does not have a principal regulator, if:

- (1) The broker or dealer is required by § 240.15c3-1(a)(7)(ii) to provide notice to the Commission that the broker's or dealer's tentative net capital is less than \$6 billion;
- (2) The broker or dealer or the ultimate holding company of the broker or dealer fails to meet the reporting requirements set forth in § 240.17a-5 or 240.15c3-1g(b), as applicable;
- (3) Any event specified in § 240.17a-11 occurs;
- (4) There is a material deficiency in the internal risk management control system or in the mathematical models used to price securities or to calculate deductions for market and credit risk or allowances for market and credit risk, as applicable, of the broker or dealer or the ultimate holding company of the broker or dealer;
- (5) The ultimate holding company of the broker or dealer fails to comply with its undertakings that the broker or dealer has filed with its application pursuant to paragraph (a)(1)(viii) or (a)(1)(ix) of this Appendix E;
- (6) The broker or dealer fails to comply with this Appendix E; or
- (7) The Commission finds that imposition of other conditions is necessary or appropriate in the public interest or for the protection of investors.

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**CUSTOMER PROTECTION – RESERVES AND CUSTODY OF SECURITIES**  
**SEA Rule 15c3-3**

Except where otherwise noted, § 240.15c3-3 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer also registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o-10(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the requirements under § 240.18a-4.

(a) **DEFINITIONS**

For the purpose of this section:

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

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

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

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

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

SEA Rule 15c3-3(a)(1)(iv)

(o) SECURITY FUTURES PRODUCTS (continued)

(3) CHANGES IN ACCOUNT TYPE

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

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

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

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

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

SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS

(p) *Segregation requirements for security-based swaps.* The following requirements apply to the security-based swap activities of a broker or dealer.

(1) *Definitions.* For the purposes of this paragraph:

(i) The term *cleared security-based swap* means a security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered with the Commission pursuant to section 17A of the Act (15 U.S.C. 78q-1);

(ii) The term *excess securities collateral* means securities and money market instruments carried for the account of a security-based swap customer that have a market value in excess of the current exposure of the broker or dealer (after reducing the current exposure by the amount of cash in the account) to the security-based swap customer, excluding:

(A) Securities and money market instruments held in a qualified clearing agency account but only to the extent the securities and money market instruments are being used to meet a margin requirement of the clearing agency resulting from a security-based swap transaction of the security-based swap customer; and

(B) Securities and money market instruments held in a qualified registered security-based swap dealer account or in a third-party custodial account but only to the extent the securities and money market instruments are being used to meet a regulatory margin requirement of a security-based swap dealer resulting from the broker or dealer entering into a non-cleared security-based swap transaction with the security-based swap dealer to offset the risk of a non-cleared security-based swap transaction between the broker or dealer and the security-based swap customer;

(p)(1) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(iii) The term *qualified clearing agency account* means an account of a broker or dealer at a clearing agency registered with the Commission pursuant to section 17A of the Act (15 U.S.C. 78q-1) that holds funds and other property in order to margin, guarantee, or secure cleared security-based swap transactions for the security-based swap customers of the broker or dealer that meets the following conditions:

(A) The account is designated “Special Clearing Account for the Exclusive Benefit of the Cleared Security-Based Swap Customers of [name of broker or dealer]”;

(B) The clearing agency has acknowledged in a written notice provided to and retained by the broker or dealer that the funds and other property in the account are being held by the clearing agency for the exclusive benefit of the security-based swap customers of the broker or dealer in accordance with the regulations of the Commission and are being kept separate from any other accounts maintained by the broker or dealer with the clearing agency; and

(C) The account is subject to a written contract between the broker or dealer and the clearing agency which provides that the funds and other property in the account shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the clearing agency or any person claiming through the clearing agency, except a right, charge, security interest, lien, or claim resulting from a cleared security-based swap transaction effected in the account.

(iv) The term *qualified registered security-based swap dealer account* means an account at a security-based swap dealer that is registered with the Commission pursuant to section 15F of the Act that meets the following conditions:

(A) The account is designated “Special Reserve Account for the Exclusive Benefit of the Security-Based Swap Customers of [name of broker or dealer]”;

(B) The security-based swap dealer has acknowledged in a written notice provided to and retained by the broker or dealer that the funds and other property held in the account are being held by the security-based swap dealer for the exclusive benefit of the security-based swap customers of the broker or dealer in accordance with the regulations of the Commission and are being kept separate from any other accounts maintained by the broker or dealer with the security-based swap dealer;

(C) The account is subject to a written contract between the broker or dealer and the security-based swap dealer which provides that the funds and other property in the account shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the security-based swap dealer or any person claiming through the security-based swap dealer, except a right, charge, security interest, lien, or claim resulting from a non-cleared security-based swap transaction effected in the account; and

(D) The account and the assets in the account are not subject to any type of subordination agreement between the broker or dealer and the security-based swap dealer.

(p)(1) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(v) The term *qualified security* means:

- (A) Obligations of the United States;
- (B) Obligations fully guaranteed as to principal and interest by the United States; and
- (C) General obligations of any State or a political subdivision of a State that:
  - (1) Are not traded flat and are not in default;
  - (2) Were part of an initial offering of \$500 million or greater; and
  - (3) Were issued by an issuer that has published audited financial statements within 120 days of its most recent fiscal year end.

(vi) The term *security-based swap customer* means any person from whom or on whose behalf the broker or dealer has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. The term does not include a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or, in the case of an affiliate of the broker or dealer, is subordinated to all claims of customers (including PAB customers) and security-based swap customers of the broker or dealer.

(vii) The term *special reserve account for the exclusive benefit of security-based swap customers* means an account at a bank that meets the following conditions:

(A) The account is designated “Special Reserve Account for the Exclusive Benefit of the Security-Based Swap Customers of [name of broker or dealer]”;

(B) The account is subject to a written acknowledgement by the bank provided to and retained by the broker or dealer that the funds and other property held in the account are being held by the bank for the exclusive benefit of the security-based swap customers of the broker or dealer in accordance with the regulations of the Commission and are being kept separate from any other accounts maintained by the broker or dealer with the bank; and

(C) The account is subject to a written contract between the broker or dealer and the bank which provides that the funds and other property in the account shall at no time be used directly or indirectly as security for a loan or other extension of credit to the broker or dealer by the bank and, shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank.

(p)(1) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(viii) The term *third-party custodial account* means an account carried by an independent third-party custodian that meets the following conditions:

(A) The account is established for the purposes of meeting regulatory margin requirements of another security-based swap dealer;

(B) The account is carried by a bank as defined in section 3(a)(6) of the Act or a registered U.S. clearing organization or depository or, if the collateral to be held in the account consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that customarily maintains custody of such foreign securities or currencies;

(C) The account is designated for and on behalf of the broker or dealer for the benefit of its security-based swap customers and the account is subject to a written acknowledgement by the bank, clearing organization, or depository provided to and retained by the broker or dealer that the funds and other property held in the account are being held by the bank, clearing organization, or depository for the exclusive benefit of the security-based swap customers of the broker or dealer and are being kept separate from any other accounts maintained by the broker or dealer with the bank, clearing organization, or depository; and

(D) The account is subject to a written contract between the broker or dealer and the bank, clearing organization, or depository which provides that the funds and other property in the account shall at no time be used directly or indirectly as security for a loan or other extension of credit to the security-based swap dealer by the bank, clearing organization, or depository and, shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank, clearing organization, or depository or any person claiming through the bank, clearing organization, or depository.

(p) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)(2) *Physical possession or control of excess securities collateral.*

(i) A broker or dealer must promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the security-based swap accounts of security-based swap customers.

(ii) A broker or dealer has control of excess securities collateral only if the securities and money market instruments:

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

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

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

(D)(I) Are held in or are in transit between offices of the broker or dealer; or

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

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

(p)(2) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(iii) Each business day the broker or dealer must determine from its books and records the quantity of excess securities collateral in its possession or control as of the close of the previous business day and the quantity of excess securities collateral not in its possession or control as of the previous business day. If the broker or dealer did not obtain possession or control of all excess securities collateral on the previous business day as required by this section and there are securities or money market instruments of the same issue and class in any of the following non-control locations:

(A) Securities or money market instruments subject to a lien securing an obligation of the broker or dealer, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments from the lien and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(B) Securities or money market instruments held in a qualified clearing agency account, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments by the clearing agency and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(C) Securities or money market instruments held in a qualified registered security-based swap dealer account maintained by another security-based swap dealer or in a third-party custodial account, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments by the security-based swap dealer or the third-party custodian and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(D) Securities or money market instruments loaned by the broker or dealer, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the return of the loaned securities or money market instruments and must obtain physical possession or control of the securities or money market instruments within five business days following the date of the instructions;



(p)(2)(iii) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(E) Securities or money market instruments failed to receive more than 30 calendar days, then the broker or dealer, not later than the next business day on which the determination is made, must take prompt steps to obtain physical possession or control of the securities or money market instruments through a buy-in procedure or otherwise;

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

(G) Securities or money market instruments included on the broker's or dealer's books or records that allocate to a short position of the broker or dealer or a short position for another person, for more than 30 calendar days, then the broker or dealer must, not later than the business day following the day on which the determination is made, take prompt steps to obtain physical possession or control of such securities or money market instruments.

(p) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(3) *Deposit requirement for special reserve account for the exclusive benefit of security-based swap customers.*

(i) A broker or dealer must maintain a special reserve account for the exclusive benefit of security-based swap customers that is separate from any other bank account of the broker or dealer. The broker or dealer must at all times maintain in the special reserve account for the exclusive benefit of security-based swap customers, through deposits into the account, cash and/or qualified securities in amounts computed in accordance with the formula set forth in § 240.15c3-3b. In determining the amount maintained in a special reserve account for the exclusive benefit of security-based swap customers, the broker or dealer must deduct:

(A) The percentage of the value of a general obligation of a State or a political subdivision of a State specified in § 240.15c3-1(c)(2)(vi);

(B) The aggregate value of general obligations of a State or a political subdivision of a State to the extent the amount of the obligations of a single issuer (after applying the deduction in paragraph (p)(3)(i)(A) of this section) exceeds two percent of the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers;

(C) The aggregate value of all general obligations of States or political subdivisions of States to the extent the amount of the obligations (after applying the deduction in paragraph (p)(3)(i)(A) of this section) exceeds 10 percent of the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers;

(D) The amount of cash deposited with a single non-affiliated bank to the extent the amount exceeds 15 percent of the equity capital of the bank as reported by the bank in its most recent Call Report or any successor form the bank is required to file by its appropriate federal banking agency (as defined by section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); and

(E) The total amount of cash deposited with an affiliated bank.

(p)(3) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)

(ii) A broker or dealer must not accept or use credits identified in the items of the formula set forth in § 240.15c3-3b except for the specified purposes indicated under items comprising Total Debits under the formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof must be maintained in the Special Reserve Account pursuant to paragraph (p)(3)(i) of this section.

(iii)(A) The computations necessary to determine the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers must be made weekly as of the close of the last business day of the week and any deposit required to be made into the account must be made no later than one hour after the opening of banking business on the second following business day. The broker or dealer may make a withdrawal from the special reserve account for the exclusive benefit of security-based swap customers only if the amount remaining in the account after the withdrawal is equal to or exceeds the amount required to be maintained in the account pursuant to paragraph (p)(3) of this section.

(B) Computations in addition to the computations required pursuant to paragraph (p)(3)(iii)(A) of this section may be made as of the close of any business day, and deposits so computed must be made no later than one hour after the open of banking business on the second following business day.

(iv) A broker or dealer must promptly deposit into a special reserve account for the exclusive benefit of security-based swap customers cash and/or qualified securities of the broker or dealer if the amount of cash and/or qualified securities in one or more special reserve accounts for the exclusive benefit of security-based swap customers falls below the amount required to be maintained pursuant to this section.

(p) SEGREGATION REQUIREMENTS FOR SECURITY-BASED SWAPS (continued)(4) *Requirements for non-cleared security-based swaps*

(i) *Notice.* A broker or dealer registered under section 15F(b) of the Act (15 U.S.C. 78o-10(b)) as a security-based swap dealer or major security-based swap participant must provide the notice required pursuant to section 3E(f)(1)(A) of the Act (15 U.S.C. 78c-5(f)) in writing to a duly authorized individual prior to the execution of the first non-cleared security-based swap transaction with the counterparty occurring after the compliance date of this section.

(ii) *Subordination*

(A) *Counterparty that elects to have individual segregation at an independent third-party custodian.* A broker or dealer must obtain an agreement from a counterparty whose funds or other property to meet a margin requirement of the broker or dealer are held at a third-party custodian in which the counterparty agrees to subordinate its claims against the broker or dealer for the funds or other property held at the third-party custodian to the claims of customers (including PAB customers) and security-based swap customers of the broker or dealer but only to the extent that funds or other property provided by the counterparty to the independent third-party custodian are not treated as *customer property* as that term is defined in 11 U.S.C. 741 or *customer property* as defined in 15 U.S.C. 78lll(4) in a liquidation of the broker or dealer.

(B) *Counterparty that elects to have no segregation.* A broker or dealer registered under section 15F(b) of the Act as a security-based swap dealer must obtain an agreement from a counterparty that is an affiliate of the broker or dealer that affirmatively chooses not to require segregation of funds or other property pursuant to section 3E(f) of the Act (15 U.S.C. 78c-5(f)) in which the counterparty agrees to subordinate all of its claims against the broker or dealer to the claims of customers (including PAB customers) and security-based swap customers of the broker or dealer.

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RESERVE FORMULA (EXHIBIT A - ITEM 14); MARGIN RELATED TO SECURITY FUTURES PRODUCTS

/01 Margin Related to Security Futures Products Deposited with a Clearing Agency or a Derivative Clearing Organization

The provisions of the interpretations under SEA Rule 15c3-3 (Exhibit A – Item 13) related to the margin required and on deposit with the OCC for all option contracts written or purchased in customer accounts can be applied to the margin required and on deposit with a clearing agency or a derivatives clearing organization for all security futures products written, purchased or sold in customer security accounts under the provisions of SEA Rule 15c3-3 (Exhibit A - Note G) for purposes of the reserve formula.

(SEC Staff to NYSE) (No. 05-8, April 2005)

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SEA Rule 15c3-3(Exhibit A - Item 14)/01

FORMULA FOR DETERMINATION OF SECURITY-BASED SWAP CUSTOMER  
RESERVE REQUIREMENTS OF BROKERS AND DEALERS UNDER § 240.15c3-3

	<u>CREDITS</u>	<u>DEBITS</u>
1. Free credit balances and other credit balances in the accounts carried for security-based swap customers (See Note A)	\$ XXX	
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (See Note B)	XXX	
3. Monies payable against security-based swap customers' securities loaned (See Note C)	XXX	
4. Security-based swap customers' securities failed to receive (See Note D)	XXX	
5. Credit balances in firm accounts which are attributable to principal sales to security-based swap customers	XXX	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	XXX	
7. Market value of short security count differences over 30 calendar days old	XXX	
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	XXX	
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	XXX	

FORMULA FOR DETERMINATION OF SECURITY-BASED SWAP CUSTOMER  
RESERVE REQUIREMENTS OF BROKERS AND DEALERS UNDER § 240.15c3-3

	<u>CREDITS</u>	<u>DEBITS</u>
10. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (See Note E)		\$ XXX
11. Securities borrowed to effectuate short sales by security-based swap customers and securities borrowed to make delivery on security-based swap customers' securities failed to deliver		XXX
12. Failed to deliver of security-based swap customers' securities not older than 30 calendar days		XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in accounts carried for security-based swap customers (See Note F)		XXX
14. Margin related to security futures products written, purchased or sold in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (See Note G)		XXX
15. Margin related to cleared security-based swap transactions in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission pursuant to section 17A of the Act (15 U.S.C. 78q-1)		XXX
16. Margin related to non-cleared security-based swap transactions in accounts carried for security-based swap customers required and held in a qualified registered security-based swap dealer account at a security-based swap dealer or at a third-party custodial account		XXX
TOTAL CREDITS	<u>\$ XXX</u>	
TOTAL DEBITS		<u>\$ XXX</u>
EXCESS OF CREDITS OVER DEBITS	<u>\$ XXX</u>	

SEA Rule 15c3-3(Exhibit B)

NOTES REGARDING THE SECURITY-BASED SWAP CUSTOMER RESERVE BANK  
ACCOUNT COMPUTATION

Note A

Item 1 must include all outstanding drafts payable to security-based swap customers which have been applied against free credit balances or other credit balances and must also include checks drawn in excess of bank balances per the records of the broker or dealer.

Note B

Item 2 must include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by security-based swap customers' securities, to the extent of the member's margin requirement at the registered clearing agency or derivatives clearing organization.

Note C

Item 3 must include in addition to monies payable against security-based swap customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D

Item 4 must include in addition to security-based swap customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E

(1) Debit balances in accounts carried for security-based swap customers must be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin requirements exceeds in aggregate value 15 percent of the aggregate value of all securities which collateralize all accounts receivable; provided, however, the required reduction must not be in excess of the amount of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for an account only to the extent it is not an excess margin security.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of section 4(b) of Regulation T under the Act (12 CFR 220.4(b)) or similar accounts carried on behalf of a security-based swap dealer, must be reduced by any deficits in such accounts (or if a credit, such credit must be increased) less any calls for margin, marks to the market, or other required deposits which are outstanding 5 business days or less.

SEA Rule 15c3-3(Exhibit B – Note E(2))



NOTES REGARDING THE SECURITY-BASED SWAP CUSTOMER RESERVE BANK  
ACCOUNT COMPUTATION (continued)

(3) Debit balances in security-based swap customers' accounts included in the formula under item 10 must be reduced by an amount equal to 1 percent of their aggregate value.

(4) Debit balances in accounts of household members and other persons related to principals of a broker or dealer and debit balances in accounts of affiliated persons of a broker or dealer must be excluded from the reserve formula, unless the broker or dealer can demonstrate that such debit balances are directly related to credit items in the formula.

(5) Debit balances in accounts (other than omnibus accounts) must be reduced by the amount by which any single security-based swap customer's debit balance exceeds 25 percent (to the extent such amount is greater than \$50,000) of the broker's or dealer's tentative net capital (i.e., net capital prior to securities haircuts) unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) will be deemed to be a single security-based swap customer's account for purposes of this provision. If the registered national securities exchange or the registered national securities association having responsibility for examining the broker or dealer ("designated examining authority") is satisfied, after taking into account the circumstances of the concentrated account including the quality, diversity, and marketability of the collateral securing the debit balances in accounts subject to this provision, that the concentration of debit balances is appropriate, then such designated examining authority may, by order, grant a partial or plenary exception from this provision. The debit balance may be included in the reserve formula computation for five business days from the day the request is made.

(6) Debit balances of joint accounts, custodian accounts, participations in hedge funds or limited partnerships or similar type accounts or arrangements that include both assets of a person who would be excluded from the definition of security-based swap customer ("non-security-based swap customer") and assets of a person or persons includible in the definition of security-based swap customer must be included in the Reserve Formula in the following manner: if the percentage ownership of the non-security-based swap customer is less than 5 percent then the entire debit balance shall be included in the formula; if such percentage ownership is between 5 percent and 50 percent then the portion of the debit balance attributable to the non-security-based swap customer must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula; if such percentage ownership is greater than 50 percent, then the entire debit balance must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula.

Note F

Item 13 must include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by security-based swap customers' securities.

SEA Rule 15c3-3(Exhibit B – Note F)

NOTES REGARDING THE SECURITY-BASED SWAP CUSTOMER RESERVE BANK  
ACCOUNT COMPUTATION (continued)

Note G

(a) Item 14 must include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) for security-based swap customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by security-based swap customers' securities.

(b) Item 14 will apply only if the broker or dealer has the margin related to security futures products on deposit with:

(1) A registered clearing agency or derivatives clearing organization that:

(i) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least \$2 billion, at least \$500 million of which must be in the form of security deposits. For purposes of this Note G, the term "security deposits" refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization;

(ii) Maintains at least \$3 billion in margin deposits; or

(iii) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(ii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and

SEA Rule 15c3-3(Exhibit B – Note G(b)(1)(iii))

NOTES REGARDING THE SECURITY-BASED SWAP CUSTOMER RESERVE BANK  
ACCOUNT COMPUTATION (continued)

(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification will state that all funds and/or securities deposited with the bank as margin (including security-based swap customer security futures products margin), or held by the bank and pledged to such registered clearing agency or derivatives clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also will provide that such funds and/or securities will at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and will be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. This provision, however, will not prohibit a registered clearing agency or derivatives clearing organization from pledging security-based swap customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and

(3) A registered clearing agency or derivatives clearing organization that establishes, documents, and maintains:

- (i) Safeguards in the handling, transfer, and delivery of cash and securities;
- (ii) Fidelity bond coverage for its employees and agents who handle security-based swap customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and
- (iii) Provisions for periodic examination by independent public accountants; and

(4) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and settlement of the security-based swap customer security futures products of the broker or dealer, the derivatives clearing organization will permit the Commission to examine the books and records of the derivatives clearing organization for compliance with the requirements set forth in § 240.15c3–3a, Note G. (b)(1) through (3).

(c) Item 14 will apply only if a broker or dealer determines, at least annually, that the registered clearing agency or derivatives clearing organization with which the broker or dealer has on deposit margin related to security futures products meets the conditions of this Note G.

**(NEXT PAGE IS 2901)**

SEA Rule 15c3-3(Exhibit B – Note G(c))

(d) INTERNAL RISK MANAGEMENT CONTROL SYSTEMS FOR OTC DERIVATIVES DEALERS (continued)

(5) Procedures are in place to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(6) Procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;

(7) Procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;

(8) Procedures are in place to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a-1;

(9) Procedures are in place to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a-1(c) and § 240.15a-1(d), including procedures to determine whether a counterparty is acting in the capacity of principal or agent;

(10) Procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(11) Personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and

(12) Procedures are in place for the periodic internal and external review of the risk monitoring and risk management functions.

**(NEXT PAGE IS 2951)**

SEA Rule 15c3-4(d)(12)

**DEFINITIONS**  
**SEA Rule 15Fi-1**

For the purposes of §240.15Fi-1 through §240.15Fi-5:

(a) The term *bilateral portfolio compression exercise* means an exercise by which two security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(b) The term *business day* means any day other than a Saturday, Sunday, or legal holiday.

(c) Solely for purposes of §240.15Fi-2, the term *clearing agency* means a clearing agency as defined in section 3(a)(23) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(23)) that is registered pursuant to section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q-1) and provides central counterparty services for security-based swap transactions.

(d) The term *clearing transaction* means a security-based swap that has a clearing agency as a direct counterparty.

(e) The term *day of execution* means the calendar day of the counterparty to the security-based swap transaction that ends the latest, provided that if a security-based swap transaction is:

(1) Entered into after 4:00 p.m. in the place of a counterparty; or

(2) Entered into on a day that is not a business day in the place of a counterparty, then such security-based swap transaction shall be deemed to have been entered into by that counterparty on the immediately succeeding business day of that counterparty, and the day of execution shall be determined with reference to such business day.

(f) The term *execution* means the point at which the counterparties become irrevocably bound to a transaction under applicable law.

DEFINITIONS (continued)

(g) The term *financial counterparty* means a counterparty that is not a security-based swap dealer or a major security-based swap participant and that is one of the following:

- (1) A swap dealer;
- (2) A major swap participant;
- (3) A commodity pool as defined in section 1a(10) of the Commodity Exchange Act (7 U.S.C. 1a(10));
- (4) A private fund as defined in section 202(a)(29) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a));
- (5) An employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002); and
- (6) A person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843k).

(h) The term *fully offsetting security-based swaps* means security-based swaps of equivalent terms where no net cash flow would be owed to either counterparty after the offset of payment obligations thereunder.

(i) The term *material terms* means each term that is required to be reported to a registered security-based swap data repository or the Commission pursuant to §242.901 of this chapter; provided, however, that such definition does not include any term that is not relevant to the ongoing rights and obligations of the parties and the valuation of the security-based swap.

(j) The term *multilateral portfolio compression exercise* means an exercise by which multiple security-based swap counterparties wholly terminate or change the notional value of some or all of the security-based swaps submitted by the counterparties for inclusion in the portfolio compression exercise and, depending on the methodology employed, replace the terminated security-based swaps with other security-based swaps whose combined notional value (or some other measure of risk) is less than the combined notional value (or some other measure of risk) of the terminated security-based swaps in the exercise.

(k) The term *national securities exchange* means an exchange as defined in section 3(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(1)) that is registered pursuant to section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f).

DEFINITIONS (continued)

(l) The term *portfolio reconciliation* means any process by which the counterparties to one or more security-based swaps:

(1) Exchange the material terms of all security-based swaps in the security-based swap portfolio between the counterparties;

(2) Exchange each counterparty's valuation of each security-based swap in the security-based swap portfolio between the counterparties as of the close of business on the immediately preceding business day; and

(3) Resolve any discrepancy in valuations or material terms.

(m) The term *prudential regulator* has the meaning given to the term in section 3(a)(74) of the Act (15 U.S.C. 78c(a)(74)) and includes the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Association, and the Federal Housing Finance Agency, as applicable to the security-based swap dealer or major security-based swap participant.

(n) The term *security-based swap execution facility* means a security-based swap execution facility as defined in section 3(a)(77) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(77)) that is registered pursuant to section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c-4).

(o) The term *security-based swap portfolio* means all security-based swaps currently in effect between a particular security-based swap dealer or major security-based swap participant and a particular counterparty.

(p) The term *trade acknowledgment* means a written or electronic record of a security-based swap transaction sent by one counterparty of the security-based swap transaction to the other.

(q) The term *valuation* means the current market value or net present value of a security-based swap.

(r) The term *verification* means the process by which a trade acknowledgment has been manually, electronically, or by some other legally equivalent means, signed by the receiving counterparty.

**(NEXT PAGE IS 2961)**

SEA Rule 15Fi-1(r)

**ACKNOWLEDGMENT AND VERIFICATION OF**  
**SECURITY-BASED SWAP TRANSACTIONS**  
**SEA Rule 15Fi-2**

(a) *Trade acknowledgment requirement.* In any transaction in which a security-based swap dealer or major security-based swap participant purchases from or sells to any counterparty a security-based swap, a trade acknowledgment must be provided by:

(1) The security-based swap dealer, if the transaction is between a security-based swap dealer and a major security-based swap participant;

(2) The security-based swap dealer or major security-based swap participant, if only one counterparty in the transaction is a security-based swap dealer or major security-based swap participant; or

(3) The counterparty that the counterparties have agreed will provide the trade acknowledgment in any transaction other than one described by paragraph (a)(1) or (a)(2) of this section.

(b) *Prescribed time.* Any trade acknowledgment required by paragraph (a) of this section must be provided promptly, but in any event by the end of the first business day following the day of execution.

(c) *Form and content of trade acknowledgment.* Any trade acknowledgment required by paragraph (a) of this section must be provided through electronic means that provide reasonable assurance of delivery and a record of transmittal, and must disclose all the terms of the security-based swap transaction.

(d) *Trade verification*

(1) A security-based swap dealer or major security-based swap participant must establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of a trade acknowledgment provided pursuant to paragraph (a) of this section.

(2) A security-based swap dealer or major security-based swap participant must promptly verify the accuracy of, or dispute with its counterparty, the terms of a trade acknowledgment it receives pursuant to paragraph (a) of this section.

(e) *Exception for clearing transactions.* A security-based swap dealer or major security-based swap participant is excepted from the requirements of this section with respect to any clearing transaction.

SEA Rule 15Fi-2(e)



ACKNOWLEDGMENT AND VERIFICATION OF SECURITY-BASED SWAP  
TRANSACTIONS (continued)

(f) *Exception for transactions executed on a security-based swap execution facility or national securities exchange or accepted for clearing by a clearing agency.*

(1) A security-based swap dealer or major security-based swap participant is excepted from the requirements of this subsection with respect to any security-based swap transaction executed on a security-based swap execution facility or national securities exchange, provided that the rules, procedures or processes of the security-based swap execution facility or national securities exchange provide for the acknowledgment and verification of all terms of the security-based swap transaction no later than the time required by paragraphs (b) and (d)(2) of this section.

(2) A security-based swap dealer or major security-based swap participant is excepted from the requirements of this subsection with respect to any security-based swap transaction that is submitted for clearing to a clearing agency, provided that:

(i) The security-based swap transaction is submitted for clearing as soon as technologically practicable, but in any event no later than the time established for providing a trade acknowledgment under paragraph (b) of this section; and

(ii) The rules, procedures or processes of the clearing agency provide for the acknowledgment and verification of all terms of the security-based swap transaction prior to or at the same time that the security-based swap transaction is accepted for clearing.

(3) If a security-based swap dealer or major security-based swap participant receives notice that a security-based swap transaction has not been acknowledged and verified pursuant to the rules, procedures or processes of a security-based swap execution facility or a national securities exchange, or accepted for clearing by a clearing agency, the security-based swap dealer or major security-based swap participant shall comply with the requirements of this section with respect to such security-based swap transaction as if such security-based swap transaction were executed at the time the security-based swap dealer or major security-based swap participant receives such notice.

(g) *Exemption from § 240.10b-10.* A security-based swap dealer or major security-based swap participant that is also a broker or dealer, is purchasing from or selling to any counterparty, and that complies with paragraph (a) or (d)(2) of this section with respect to the security-based swap transaction, is exempt from the requirements of § 240.10b-10 with respect to the security-based swap transaction.

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**SECURITY-BASED SWAP PORTFOLIO RECONCILIATION**  
**SEA Rule 15Fi-3**

(a) *Security-based swaps with security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall engage in portfolio reconciliation as follows for all security-based swaps in which its counterparty is also a security-based swap dealer or major security-based swap participant.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the portfolio reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by a third party selected by the counterparties in accordance with paragraph (a)(1) of this section.

(3) The portfolio reconciliation shall be performed no less frequently than:

(i) Once each business day for each security-based swap portfolio that includes 500 or more security-based swaps;

(ii) Once each week for each security-based swap portfolio that includes more than 50 but fewer than 500 security-based swaps on any business day during the week; and

(iii) Once each calendar quarter for each security-based swap portfolio that includes no more than 50 security-based swaps at any time during the calendar quarter.

(4) Each security-based swap dealer and major security-based swap participant shall resolve immediately any discrepancy in a material term of a security-based swap identified as part of a portfolio reconciliation or otherwise.

(5) Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to resolve any discrepancy in a valuation identified as part of a portfolio reconciliation or otherwise as soon as possible, but in any event within five business days after the date on which the discrepancy is first identified, provided that the security-based swap dealer and major security-based swap participant establishes, maintains, and follows written policies and procedures reasonably designed to identify how the security-based swap dealer or major security-based swap participant will comply with any variation margin requirements under section 15F(e) of the Act (15 U.S.C. 78o-10(e)) and § 240.18a-3 (and any subsequent regulations promulgated pursuant to section 15F(e) of the Act (15 U.S.C. 78o-10(e))) pending resolution of the discrepancy in valuation. For purposes of this paragraph (a)(5), a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

SEA Rule 15Fi-3(a)(5)

SECURITY-BASED SWAP PORTFOLIO RECONCILIATION (continued)

(b) *Security-based swaps with entities other than security-based swap dealers or major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that it engages in portfolio reconciliation for all security-based swaps in which its counterparty is neither a security-based swap dealer nor a major security-based swap participant as follows.

(1) Each security-based swap dealer or major security-based swap participant shall agree in writing with each of its counterparties on the terms of the portfolio reconciliation including, if applicable, agreement on the selection of any third party service provider who may be performing the reconciliation.

(2) The portfolio reconciliation may be performed on a bilateral basis by the counterparties or by one or more third parties selected by the counterparties in accordance with paragraph (b)(1) of this section.

(3) The portfolio reconciliation will be required to be performed no less frequently than:

(i) Once each calendar quarter for each security-based swap portfolio that includes more than 100 security-based swaps at any time during the calendar quarter; and

(ii) Once annually for each security-based swap portfolio that includes no more than 100 security-based swaps at any time during the calendar year.

(4) Each security-based swap dealer or major security-based swap participant shall establish, maintain, and follow written procedures reasonably designed to resolve any discrepancies in the valuation or material terms of each security-based swap identified as part of a portfolio reconciliation or otherwise with a counterparty that is neither a security-based swap dealer nor major security-based swap participant in a timely fashion. For purposes of this paragraph (b)(4), a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation need not be deemed a discrepancy.

SECURITY-BASED SWAP PORTFOLIO RECONCILIATION (continued)(c) *Reporting of Security-Based Swap Valuation Disputes*

(1) *Notice requirement.* Each security-based swap dealer and major security-based swap participant shall promptly notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator of any security-based swap valuation dispute in excess of \$20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level, if not resolved within:

(i) Three business days, if the dispute is with a counterparty that is a security-based swap dealer or major security-based swap participant; or

(ii) Five business days, if the dispute is with a counterparty that is not a security-based swap dealer or major security-based swap participant.

(2) *Amendments.* Each security-based swap dealer and major security-based swap participant shall notify the Commission, in a form and manner acceptable to the Commission, and any applicable prudential regulator, if the amount of any security-based swap valuation dispute that was the subject of a previous notice made pursuant to paragraph (c)(1) of this section increases or decreases by more than \$20,000,000 (or its equivalent in any other currency), at either the transaction or portfolio level. Such amended notice shall be provided to the Commission and any applicable prudential regulator no later than the last business day of the calendar month in which the applicable security-based swap valuation dispute increases or decreases by the applicable dispute amount.

(d) *Reconciliation of cleared security-based swaps.* Nothing in this section shall apply to any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q-1).

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**SECURITY-BASED SWAP PORTFOLIO COMPRESSION**  
**SEA Rule 15Fi-4**

(a) *Portfolio compression with security-based swap dealers and major security-based swap participants*

(1) *Bilateral offset.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for terminating each fully offsetting security-based swap between a security-based swap dealer or major security-based swap participant and another security-based swap dealer or major security-based swap participant in a timely fashion, when appropriate.

(2) *Bilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in bilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the evaluation of bilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(3) *Multilateral compression.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically engaging in multilateral portfolio compression exercises, when appropriate, with each counterparty that is also a security-based swap dealer or major security-based swap participant. Such policies and procedures shall address, among other things, the evaluation of multilateral portfolio compression exercises that are initiated, offered, or sponsored by any third party.

(b) *Portfolio compression with counterparties other than security-based swap dealers and major security-based swap participants.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures for periodically terminating fully offsetting security-based swaps and for engaging in bilateral or multilateral portfolio compression exercises with respect to security-based swaps in which its counterparty is an entity other than a security-based swap dealer or major security-based swap participant, when appropriate and to the extent requested by any such counterparty.

(c) *Portfolio compression of cleared security-based swaps.* Nothing in this section shall apply to any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q-1).

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SEA Rule 15Fi-4(c)

**SECURITY-BASED SWAP TRADING RELATIONSHIP DOCUMENTATION**  
**SEA Rule 15Fi-5**

(a)(1) *Applicability.* The requirements of this section shall not apply to:

(i) Security-based swaps executed prior to the date on which a security-based swap dealer or major security-based swap participant is required to be in compliance with this section;

(ii) Any security-based swap that is, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q-1); and

(iii) Security-based swaps executed anonymously on a national securities exchange or a security-based swap execution facility, *Provided that*:

(A) Such security-based swaps are intended to be cleared and are actually submitted for clearing to a clearing agency;

(B) All terms of such security-based swaps conform to the rules of the clearing agency; and

(C) Upon acceptance of such security-based swap by the clearing agency:

(1) The original security-based swap is extinguished;

(2) The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

(3) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency's rules; and *Provided further*, That if a security-based swap dealer or major security-based swap participant receives notice that a security-based swap transaction has not been accepted for clearing by a clearing agency, the security-based swap dealer or major security-based swap participant shall be required to comply with the requirements of this section in all respects promptly after receipt of such notice.

(2) *Policies and procedures.* Each security-based swap dealer and major security-based swap participant shall establish, maintain, and follow written policies and procedures reasonably designed to ensure that the security-based swap dealer or major security-based swap participant executes written security-based swap trading relationship documentation with its counterparty that complies with the requirements of this section. The policies and procedures shall be approved in writing by a senior officer of the security-based swap dealer or major security-based swap participant, and a record of the approval shall be retained. Other than trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi-2, the security-based swap trading relationship documentation shall be executed prior to, or contemporaneously with, executing a security-based swap with any counterparty.

SEA Rule 15Fi-5(a)(2)

SECURITY-BASED SWAP TRADING RELATIONSHIP DOCUMENTATION  
(continued)

(b) *Security-based swap trading relationship documentation*

(1) The security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer or major security-based swap participant and its counterparty, including, without limitation, terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution.

(2) The security-based swap trading relationship documentation shall include all trade acknowledgements and verifications of security-based swap transactions under § 240.15Fi-2.

(3) The security-based swap trading relationship documentation shall include credit support arrangements, which shall contain, in accordance with applicable requirements under Commission regulations or regulations adopted by prudential regulators and without limitation, the following:

- (i) Initial and variation margin requirements, if any;
- (ii) Types of assets that may be used as margin and asset valuation haircuts, if any;
- (iii) Investment and re-hypothecation terms for assets used as margin for uncleared security-based swaps, if any; and
- (iv) Custodial arrangements for margin assets, including whether margin assets are to be segregated with an independent third party, in accordance with the notice requirement in section 3E(f)(1)(A) of the Act (15 U.S.C. 78c-5(f)(1)(A)) (and either § 240.15c3-3(p)(4)(i) or § 240.18a-4(d)(1) thereunder, as applicable), if any.

(b) SECURITY-BASED SWAP TRADING RELATIONSHIP DOCUMENTATION  
(continued)

(4)(i) The security-based swap trading relationship documentation between security-based swap dealers, between major security-based swap participants, between a security-based swap dealer and major security-based swap participant, between a security-based swap dealer or major security-based swap participant and a financial counterparty, and, if requested by any other counterparty, between a security-based swap dealer or major security-based swap participant and such counterparty, shall include written documentation in which the parties agree on the process, which may include any agreed upon methods, procedures, rules, and inputs, for determining the value of each security-based swap at any time from execution to the termination, maturity, or expiration of such security-based swap for the purposes of complying with the margin requirements under section 15F(e) of the Act (15 U.S.C. 78o-10(e)) and § 240.18a-3 (and any subsequent regulations promulgated pursuant to section 15F(e) of the Act (15 U.S.C. 78o-10(e))), and the risk management requirements under section 15F(j) of the Act (15 U.S.C. 78o-10(j)) of the Act and § 240.15Fh-3(h)(2)(iii)(I) (and any subsequent regulations promulgated pursuant to section 15F(j) of the Act (15 U.S.C. 78o-10(j))). To the maximum extent practicable, the valuation of each security-based swap shall be based on recently executed transactions, valuations provided by independent third parties, or other objective criteria.

(ii) Such documentation shall include either:

(A) Alternative methods for determining the value of the security-based swap for the purposes of complying with this paragraph (b)(4) in the event of the unavailability or other failure of any input required to value the security-based swap for such purposes; or

(B) A valuation dispute resolution process by which the value of the security-based swap shall be determined for the purposes of complying with this paragraph (b)(4).

(iii) A security-based swap dealer or major security-based swap participant is not required to disclose to the counterparty confidential, proprietary information about any model it may use to value a security-based swap.

(iv) The parties may agree on changes or procedures for modifying or amending the documentation at any time.



(b) SECURITY-BASED SWAP TRADING RELATIONSHIP DOCUMENTATION  
(continued)

(5) The security-based swap trading relationship documentation of a security-based swap dealer or major security-based swap participant shall include the following:

(i) A statement of whether the security-based swap dealer or major security-based swap participant is an insured depository institution (as defined in 12 U.S.C. 1813) or a financial company (as defined in section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. 5381(a)(11));

(ii) A statement of whether the counterparty is an insured depository institution or financial company;

(iii) A statement that in the event either the security-based swap dealer or major security-based swap participant or its counterparty becomes a covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5381(a)(8)) or is an insured depository institution for which the Federal Deposit Insurance Corporation (FDIC) has been appointed as a receiver (the “covered party”), certain limitations under Title II of the Dodd-Frank Act or the Federal Deposit Insurance Act may apply to the right of the non-covered party to terminate, liquidate, or net any security-based swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the parties in the security-based swap trading relationship documentation, and that the FDIC may have certain rights to transfer security-based swaps of the covered party under section 210(c)(9)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5390(c)(9)(A), or 12 U.S.C. 1821(e)(9)(A); and

(iv) An agreement between the security-based swap dealer or major security-based swap participant and its counterparty to provide notice if either it or its counterparty becomes or ceases to be an insured depository institution or a financial company.

(6) The security-based swap trading relationship documentation of each security-based swap dealer and major security-based swap participant shall contain a notice that, upon acceptance of a security-based swap by a clearing agency:

(i) The original security-based swap is extinguished;

(ii) The original security-based swap is replaced by equal and opposite security-based swaps with the clearing agency; and

(iii) All terms of the security-based swap shall conform to the product specifications of the cleared security-based swap established under the clearing agency’s rules.

SECURITY-BASED SWAP TRADING RELATIONSHIP DOCUMENTATION  
(continued)

(c) *Audit of security-based swap trading relationship documentation.* Each security-based swap dealer and major security-based swap participant shall have an independent auditor conduct periodic audits sufficient to identify any material weakness in its documentation policies and procedures required by this section. A record of the results of each audit shall be retained.

**(NEXT PAGE IS 3001)**

**RECORDS TO BE MADE BY CERTAIN EXCHANGE MEMBERS,**  
**BROKERS AND DEALERS**  
**SEA Rule 17a-3**

This section applies to the following types of entities: A member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.18a-5 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) Every member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange, 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 Act (15 U.S.C. 78o) must make and keep current the following books and records relating to its business:

(a) RECORDS TO BE MADE (continued)/01 Definition of “Make and Keep Current”

The following are general guidelines for the requirements of SEA Rule 17a-3 to “make and keep current” books and records prescribed by the Rule. In subparagraphs (a)(1) through (a)(12) the term “current” shall mean:

- (a)(1), (3), (5), and (10) - books and records should be posted no later than the first business day following the transaction.
- (a)(2) - records of original entry should be maintained not only daily but in a form which will facilitate posting of the general ledger as frequently as necessary to ascertain compliance with the Net Capital Rule and the Customer Protection Rule.
- (a)(4) - subsidiary ledgers relating to securities transactions, dividends, interest and securities borrowed and loaned should be posted no later than two business days following the date of the securities or money movement. Transactions between brokers not completed on settlement date should be posted to the fail ledger no later than the first business day following settlement date.
- (a)(6) and (7) - order tickets should be prepared at the time of the transaction.
- (a)(8) - confirmations should be prepared and mailed on the day of the transaction or the following business day.
- (a)(9) - account records should be prepared prior to the transaction.
- (a)(11) - books and records should be prepared no later than 10 business days after the end of the accounting period.
- (a)(12) - records should be prepared at or prior to commencement of employment.

(SEC Release 34-10756, April 26, 1974) (No. 94-6, December 1994)

/02 Definition of “Customer”

The term “customer” should be construed broadly in order to effectuate the purpose of SEA Rule 17a-3, which is to ensure that the Commission has access to certain basic information about securities transactions and firms subject to its regulatory supervision to enable it to police adequately the U.S. securities markets. Broker-dealers which operate under the laws of multiple jurisdictions (including secrecy provisions) are required to be aware of the need to conduct their operations in a manner which will ensure compliance with U.S. securities laws.

(SEC Release 34-29243, May 29, 1991) (No. 94-6, December 1994)

SEA Rule 17a-3(a)/02

(a) RECORDS TO BE MADE (continued)

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show the account for which each such purchase or sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any (including the financial terms for security-based swaps), the trade date, and the name or other designation of the person from whom such securities were purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each transaction, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

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

/01 Accrual Method of Accounting

All registered broker-dealers are required to use the accrual method of accounting in order to ensure a proper matching of revenues and expenses and to provide an accurate reflection of a broker-dealer's financial condition.

(SEC Release No. 34-18737, May 13, 1982) (No. 94-6, December 1994)  
 (SEC Letter to Abiel Bolles Securities, Inc., January 19, 1984)  
 (No. 94-6, December 1994)

(3) Ledger accounts (or other records) itemizing separately as to each cash, margin, or security-based swap account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account, and all other debits and credits to such account; and, in addition, for a security-based swap, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code.

(a) RECORDS TO BE MADE (continued)

- (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, 240.17a-13, and 240.18a-7, as applicable (by date of examination, count, verification, and comparison showing for each security the number of long or short count differences); and
  - (vii) Repurchase and reverse repurchase agreements.

(a) RECORDS TO BE MADE (continued)

(5) A securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, 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.

/01 OCC Daily Position Report in Lieu of Securities Position Record

A broker-dealer who trades solely for his own account and carries no customers, may use the OCC Daily Position Report as its securities position record for purposes of SEA Rule 17a-3(a)(5), provided that the OCC Daily Position Report is verified against the broker-dealer’s own internal records as the report pertains to the prior day’s activity and the total position in each series and class of option.

(SEC Letter to Icahn & Co., January 2, 1980) (No. 94-6, December 1994)

/02 Loanet Reports in Lieu of Stock Record

A broker-dealer whose business is limited to a securities loaned and borrowed business may utilize the Loanet reports in lieu of a stock record provided that all borrows and loans are with full Loanet participants and no other clearing or carrying functions are performed.

(SEC Staff to NYSE) (No. 94-6, December 1994)

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the counterparty’s unique identification code, whether it is a “bought” or “sold” position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

**(NEXT PAGE IS 3011)**

(a) RECORDS TO BE MADE (continued)

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security, except for the purchase or sale of a security-based swap, whether executed or unexecuted.

(A) The memorandum must 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 must 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, must be so designated. The term *instruction* must include instructions between partners and employees of a member, broker or dealer. The term *time of entry* means the time when the member, broker or dealer transmits the order or instruction for execution.

(B) The 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 or non-customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(ii) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum must 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 cancellation, if applicable. The memorandum also must include the type of the security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.



(a) RECORDS TO BE MADE (continued)

(7)(i) A memorandum of each purchase or sale of a security, other than for the purchase or sale of a security-based swap, 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 the circumstance in the preceding sentence, the member, broker or dealer must produce upon request by a representative of a securities regulatory authority a separate record that 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, must be so designated.

(ii) A memorandum of each purchase or sale of a security-based swap for the account of the member, broker or dealer showing the price; 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 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 must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the scheduled termination date, the notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed, the unique transaction identifier, and the counterparty's unique identification code. An order entered pursuant to the exercise of discretionary authority must be so designated.

(a) RECORDS TO BE MADE (continued)

(8)(i) With respect to a security other than a security-based swap, 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.

/01 DTC Institutional Delivery (ID) System Confirmations

A broker-dealer may substitute the ID System confirmation in lieu of sending out its own confirmations to ID System customers, provided that the ID System confirmation satisfies all of the requirements of SEA Rule 10b-10.

(SEC Letter to The Depository Trust Company, March 3, 1977)  
(No. 94-6, December 1994)

(ii) With respect to a security-based swap, copies of the security-based swap trade acknowledgment and verification made in compliance with § 240.15Fi-2.

(9) A record with respect to each cash, margin, and security-based swap account with such member, broker or dealer indicating, as applicable:

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

(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;

(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; and

(iv) For each security-based swap account, a record of the unique identification code of such counterparty, the name and address of such counterparty, and a record of the authorization of each person the counterparty has granted authority to transact business in the security-based swap account.

(a) RECORDS TO BE MADE (continued)

(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 member, 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 must 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 or § 240.18a-1, as applicable. The computation need not be made by any member, broker or dealer unconditionally exempt from § 240.15c3-1 pursuant to § 240.15c3-1(b)(1) or (3). Such trial balances and computations must be prepared currently at least once a month.

/01 Electronic Record For Theoretical Options Pricing Methodology

Broker-dealers using the theoretical options pricing methodology to determine haircut charges pursuant to SEA Rule 15c3-1a(b)(1) are required to save and be able to provide an electronic record of their proprietary positions used in computing net capital requirements. In addition, brokers or dealers which carry accounts of listed options specialists or market makers must save and be able to provide an electronic record of the positions to support the margin requirement on these accounts and any appropriate charges. The electronic record must be maintained in a format used by an approved model.

The Options Clearing Corporation (OCC) model is currently the only approved model. The OCC format for this electronic record must be in the same format as stated in the OCC Theoretically Based Capital Charges User Guide.

(SEC Staff to NYSE) (No. 98-8, July 1998)

**(NEXT PAGE IS 3021)**

(a) RECORDS TO BE MADE (continued)

(12)(i) A questionnaire or application for employment executed by each *associated person* as that term is defined in paragraph (g)(4) of this section of the member, broker or dealer, which questionnaire or application must be approved in writing by an authorized representative of the member, broker or dealer and must 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, dealer, security-based swap dealer or major security-based swap participant 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 or 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; and

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

(I) 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 a registered national securities association or a registered national securities exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval will be deemed to satisfy the requirements of this paragraph (a)(12)(i).

SEA Rule 17a-3(a)(12)(i)(I)

(a)(12) RECORDS TO BE MADE (continued)

(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.

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(a) RECORDS TO BE MADE (continued)

(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).

(a)(16) RECORDS TO BE MADE (continued)

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

(A) *Internal broker-dealer system* means 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* means 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.

(a) RECORDS TO BE MADE (continued)

(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 must 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 must 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 must 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.

SEA Rule 17a-3(a)(17)(i)(B)(3)



(a)(17)(i) RECORDS TO BE MADE (continued)

(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 will 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 will 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 will 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.

**(NEXT PAGE IS 3041)**

(a) RECORDS TO BE MADE (continued)

(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 must 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 must 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.

(a) RECORDS TO BE MADE (continued)

(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.

(24) A record of the date that each Form CRS was provided to each retail investor, including any Form CRS provided before such retail investor opens an account.

(25) A record of the daily calculation of the current exposure and, if applicable, the initial margin amount for each account of a counterparty required under § 240.18a-3(c).

(26) A record of compliance with possession or control requirements under § 240.15c3-3(p)(2).

(27) A record of the reserve computation required under § 240.15c3-3(p)(3).

(28) A record of each security-based swap transaction that is not verified under § 240.15Fi-2 within five business days of execution that includes, at a minimum, the unique transaction identifier and the counterparty's unique identification code.

(a) RECORDS TO BE MADE (continued)

(29) A record documenting that the broker or dealer has complied with the business conduct standards as required under § 240.15Fh-6.

(30) A record documenting that the broker or dealer has complied with the business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-5 and 240.15Fk-1.

(31)(i) A record of each security-based swap portfolio reconciliation, whether conducted pursuant to § 240.15Fi-3 or otherwise, including the dates of the security-based swap portfolio reconciliation, the number of portfolio reconciliation discrepancies, the number of security-based swap valuation disputes (including the time-to-resolution of each valuation dispute and the age of outstanding valuation disputes, categorized by transaction and counterparty), and the name of the third-party entity performing the security-based swap portfolio reconciliation, if any.

(ii) A copy of each notification required to be provided to the Commission pursuant to § 240.15Fi-3(c). (iii) A record of each bilateral offset and each bilateral portfolio compression exercise or multilateral portfolio compression exercise in which it participates, whether conducted pursuant to § 240.15Fi-4 or otherwise, including the dates of the offset or compression, the security-based swaps included in the offset or compression, the identity of the counterparties participating in the offset or compression, the results of the compression, and the name of the third-party entity performing the offset or compression, if any.

(32) – (34) [Reserved]

(35) For each retail customer to whom a recommendation of any securities transaction or investment strategy involving securities is or will be provided:

(i) A record of all information collected from and provided to the retail customer pursuant to § 240.15l-1, as well as the identity of each natural person who is an associated person, if any, responsible for the account.

(ii) For purposes of this paragraph (a)(35), the neglect, refusal, or inability of the retail customer to provide or update any information described in paragraph (a)(35)(i) of this section shall excuse the broker, dealer, or associated person from obtaining that required information.

**(NEXT PAGE IS 3051)**

RECORDS TO BE MADE (continued)

(b) A broker or dealer may comply with the recordkeeping requirements of the Commodity Exchange Act and chapter I of this title applicable to swap dealers and major swap participants in lieu of complying with paragraphs (a)(1), (3), and (5) of this section solely with respect to required information regarding security-based swap transactions and positions if:

(1) The broker or dealer is registered as a security-based swap dealer or major security-based swap participant pursuant to section 15F of the Act (15 U.S.C. 78o-10);

(2) The broker or dealer is registered as a swap dealer or major swap participant pursuant to section 4s of the Commodity Exchange Act and chapter I of this title;

(3) The broker or dealer is subject to 17 CFR 23.201, 23.202, 23.402, and 23.501 with respect to its swap-related books and records;

(4) The broker or dealer preserves all of the data elements necessary to create the records required by paragraphs (a)(1), (3), and (5) of this section as they pertain to security-based swap and swap transactions and positions;

(5) The broker or dealer upon request furnishes promptly to representatives of the Commission the records required by paragraphs (a)(1), (3), and (5) of this section as well as the records required by 17 CFR 23.201, 23.202, 23.402, and 23.501 as they pertain to security-based swap and swap transactions and positions in the format applicable to that category of record as set forth in this section; and

(6) The broker or dealer provides notice of its intent to utilize this paragraph (b) by notifying in writing the Commission, both at the principal office of the Commission in Washington, DC, and at the regional office of the Commission for the region in which the registrant has its principal place of business, as well as by notifying in writing the registrant's designated examining authority.

**(NEXT PAGE IS 3061)**

RECORDS TO BE MADE (continued)

(c) A member of a national securities exchange, or a broker or dealer registered pursuant to section 15 of the Act (15 U.S.C. 78o), that introduces accounts on a fully-disclosed basis, is not required to make or keep such records of transactions cleared for such member, broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of this section and § 240.17a-4. Nothing in this paragraph (c) will 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 this section and § 240.17a-4.

/01 Floor Broker Requirements

A floor broker has a responsibility to maintain the appropriate records described in SEA Rules 17a-3(a)(1), (2), (6), (7), (11), and (12).

(NYSE Information Memo 78-40, June 9, 1978) (No. 94-6, December 1994)

/02 Exchange Market Maker's Using Clearance Account as Books and Records

An exchange market maker who processes all transactions as a broker-dealer through his clearance account, may utilize the clearance account records to satisfy his SEA Rule 17a-3 record keeping requirements, provided that the clearing firm complies with the provisions of SEA Rules 17a-4(i).

(SEC Letter to NYSE, July 18, 1985) (No. 94-6, December 1994)  
(SEC Staff to FINRA) (FINRA Regulatory Notice 21-45)

(d) 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 or any successor rule will be deemed to be in compliance with this section.

(e) The provisions of this section will 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.

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

RECORDS TO BE MADE (continued)

(g) 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 a “person associated with a broker or dealer” or “person associated with a security-based swap dealer or major security-based swap participant” as defined in sections 3(a)(18) and (70) of the Act (15 U.S.C. 78c(a)(18) and (70)) respectively, but does not include persons whose functions are solely clerical or ministerial.

**(NEXT PAGE IS 3101)**

**RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS,**  
**BROKERS AND DEALERS**  
**SEA Rule 17a-4**

This section applies to the following types of entities: A member of a national securities exchange who transacts a business in securities directly with others than members of a national securities exchange; a broker or dealer who transacts a business in securities through the medium of a member of a national securities exchange; a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10) that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act. Section 240.18a-6 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) Every member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than 6 years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.17a-3(a)(1) through (3), (5), and (21) and (22), and analogous records created pursuant to § 240.17a-3(e).

/01 Records Maintained at Branches

Records that have originated in a branch office and are required to be maintained in “an easily accessible place,” may be maintained at a branch office, provided the broker-dealer agrees to transmit to its main office at the request of the Commission or other examining authorities the original or copies of the records within 36 hours. Records maintained at foreign branches are subject to the same requirements. The laws of the foreign country in which the branch is domiciled shall not in any way encumber the requirement that records be kept in “an easily accessible place” pursuant to this paragraph.

(SEC Letter to NASD, November 2, 1983) (No. 94-6, December 1994)  
 (SEC Release 34-29243, May 29, 1991) (No. 94-6, December 1994)



RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(b) Every member, broker or dealer subject to § 240.17a-3 must 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), (6) through (11), (16), (18) through (20), and (25) through (31), and analogous records created pursuant to § 240.17a-3(e).

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

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the member, broker or dealer's business 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 and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o-10(g)(1)).

(b) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(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 member, broker or dealer's business as such.

/01 15c3-3 Reserve Computations

All reserve computations and supporting documentation made pursuant to SEA Rules 15c3-3(e)(3) and 15c3-3(p)(3) shall be preserved pursuant to this paragraph.

(SEC Staff to NYSE) (No. 94-6, December 1994)  
(SEC Staff to FINRA) (FINRA Regulatory Notice 21-45)

(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. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's security-based swaps must be maintained with the customer's or non-customer's account records.

(b) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(8) Records which contain the following information in support of amounts included in the report prepared as of the fiscal year end on Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, and in the annual financial statements filed with the Commission required by § 240.17a-5(d), § 240.17a-12(b), or § 240.18a-7(c), as applicable:

(i) Money balance and 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 or swaps, 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 or swaps, 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, and swap position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap 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;

(b)(8) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(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 or § 240.18a-1, as applicable;

(xiii) Detail relating to information for possession or control requirements under § 240.15c3-3 or § 240.18a-4, as applicable and reported in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable;

(xiv) Detail relating to information for security-based swap possession or control requirements under § 240.15c3-3 or § 240.18a-4, as applicable, and reported in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter);

(xv) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.15c3-1 or § 240.18a-1, as applicable, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences, and insurance claims receivable;

(xvi) Detail relating to the calculation of the risk margin amount pursuant to § 240.15c3-1(c)(17) or § 240.18a-1(c)(6), as applicable; and

(xvii) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by §§ 240.17a-5, 240.17a-12, and 240.18a-7, as applicable.

(b) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(9) The records required to be made pursuant to § 240.15c3-3(d)(5) and (o) or § 240.18a-4, as applicable.

(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, must 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) or § 240.18a-1(e)(2)(iii)(F)(2), as applicable.

(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) and (2), and (c)(2)(vi)(H) or § 240.18a-1(c)(1)(vi)(2), as applicable.

(14) A copy of information required to be reported under §§ 242.901 through 242.909 of this chapter (Regulation SBSR).

(15) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under §§ 240.15Fh-1 through 240.15Fh-6 and 240.15Fk-1.

(16) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, the investment or financing objectives of the special entity as required under section 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o-10(h)(4)(C) and (5)(A)).

**(NEXT PAGE IS 3111)**

RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(c) Every member, broker or dealer subject to § 240.17a-3 must 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 or dealer subject to § 240.17a-3 must 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 Forms SBSE-BD (§ 249.1600b of this chapter), all Forms SBSE-C (§ 249.1600c of this chapter), all Forms SBSE-W (§ 249.1601 of this chapter), all amendments to these forms, and all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority or the Commodity Futures Trading Commission.

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

(1) All records required under § 240.17a-3(a)(12) 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 § 240.17a-3(a)(13) until at least three years after the termination of employment or association of those persons required by § 240.17f-2 to be fingerprinted.

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

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

(5) All account record information required pursuant to § 240.17a-3(a)(17) and all records required pursuant to § 240.17a-3(a)(35), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.

(6) Each report which a securities regulatory authority or the Commodity Futures Trading Commission 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, Commodity Futures Trading Commission, or prudential regulator examination report until three years after the date of the report.

(e) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(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 must 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.

(10) All records required pursuant to §240.17a-3(a)(24), as well as a copy of each Form CRS, until at least six years after such record or Form CRS is created.

(11) The written policies and procedures required pursuant to §§ 240.15Fi-3, 240.15Fi-4, and 240.15Fi-5 until three years after termination of the use of the policies and procedures.

(12)(i) Each written agreement with counterparties on the terms of portfolio reconciliation with those counterparties as required to be created under § 240.15Fi-3(a)(1) and (b)(1) until three years after the termination of the agreement and all transactions governed thereby.

(ii) Security-based swap trading relationship documentation with counterparties required to be created under § 240.15Fi-5 until three years after the termination of such documentation and all transactions governed thereby.

(iii) A record of the results of each audit required to be performed pursuant to § 240.15Fi-5(c) until three years after the conclusion of the audit.

**(NEXT PAGE IS 3121)**

SEA Rule 17a-4(e)(12)(iii)

RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(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 section 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 must 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.

SEA Rule 17a-4(f)(2)(ii)(D)



(f) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

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

(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 the 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.

(f)(3) RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS AND DEALERS (continued)

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or any self-regulatory organization 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, must 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 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 member's, broker's or dealer's electronic storage media to any medium acceptable under § 240.17a-4. Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the member's, 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 member, broker or dealer pursuant to §§ 240.17a-3 and 240.17a-4 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 member, 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.*

RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(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 Act (15 U.S.C. 78o) such person must, for the remainder of the periods of time specified in this section, continue to preserve the records which it 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 or any successor rule will be deemed to be compliance with this section.

(i)(1) 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 must 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.*

/01 Exchange Market Maker's Using Clearance Account as Books and Records

An exchange market maker who processes all transactions as a broker-dealer through his clearance account, may utilize the clearance account records to satisfy his SEA Rule 17a-3 record keeping requirements, provided that the clearing firm complies with the provisions of SEA Rules 17a-4(i).

(SEC Letter to NYSE, July 18, 1985) (No. 94-6, December 1994)  
(SEC Staff to FINRA) (FINRA Regulatory Notice 21-45)

(2) Agreement with an outside entity will 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.

**(NEXT PAGE IS 3131)**

SEA Rule 17a-4(i)(2)

RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(j) Every member, broker and dealer subject to this section must 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 must 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 must 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.

RECORDS TO BE PRESERVED BY CERTAIN EXCHANGE MEMBERS, BROKERS  
AND DEALERS (continued)

(l) Records for the most recent two year period required to be made pursuant to § 240.17a-3(f) 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* has the meaning set forth in § 240.17a-3(g)(1).
- (2) The term *principal* has the meaning set forth in § 240.17a-3(g)(2).
- (3) The term *securities regulatory authority* has the meaning set forth in § 240.17a-3(g)(3).
- (4) The term *associated person* has the meaning set forth in § 240.17a-3(g)(4).
- (5) The term *business as such* includes security-based swap activity.

**(NEXT PAGE IS 3201)**

**REPORTS TO BE MADE BY CERTAIN BROKERS AND DEALERS**  
**SEA Rule 17a-5**

This section applies to the following types of entities: Except as provided in this introductory text, a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12 registered pursuant to section 15 of the Act (15 U.S.C. 78o); a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a-7 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a) *Monthly and quarterly reports*

(1)(i) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts must file with the Commission Part I of Form X-17A-5 (§ 249.617 of this chapter) within 10 business days after the end of each month.

/01 NYSE Monthly Part II Requirement

The NYSE requires monthly filing of Part II of Form X-17A-5 report for all members and member organizations required to file Part I of Form X-17A-5.

(NYSE Information Memo No. 92-42, December 1992) (No. 94-6, December 1994)

/02 NYSE Requirements for Guaranteed Subsidiary/Associated Partnership

Members and member organizations are required to file Part II or IIA of Form X-17A-5 on a quarterly basis for registered broker-dealers that are either guaranteed subsidiaries or from whom flow through capital benefits are received. Members and member organizations that guarantee or receive flow through capital benefits from another person must submit the forms required by NYSE Information Memo 93-54.

A broker-dealer, whether organized as a sole proprietor, partnership or corporation, that is a general partner of another partnership is in effect guaranteeing all the liabilities of that partnership and must submit the forms required by NYSE Information Memo 93-54.

(NYSE Information Memo No. 76-17, April 1992)

(NYSE Information Memo No. 93-54, December 1993) (No. 94-6, December 1994)

SEA Rule 17a-5(a)(1)(i)/02

(a)(1)(i) MONTHLY AND QUARTERLY REPORTS (continued)/03 Retroactive Application of Changes in Accounting Principles

Broker-dealers that are required to adopt a new accounting principle on a retroactive basis need not restate or re-file their previously filed FOCUS Reports or recalculate net capital or other computations that were previously filed or calculated, as long as such FOCUS Reports and net capital or other computations were prepared in accordance with generally accepted accounting principles and SEA Rules in effect at the time they were originally prepared and/or filed.

Note: Any adjustments to retained earnings caused by a new accounting principle that is applied on a retroactive basis should be reported on either line 4260 (Additions) or 4270 (Deductions) in the Statement of Changes in Ownership Equity of the FOCUS Report during the period that the adjustment is comprehended by the broker-dealer. Such adjustments should no longer be included in line 4225 (Cumulative effect of changes in accounting principles) under the Statement of Income (Loss).

(SEC Staff to FINRA) (FINRA Regulatory Notice 13-44)

(a)(1) MONTHLY AND QUARTERLY REPORTS (continued)

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts and every broker or dealer that is registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o-10) must file with the Commission an executed Part II of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. Certain of such brokers or dealers must file with the Commission an executed Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X-17A-5 (§ 249.617 of this chapter).

/01 NYSE FOCUS Filing Due Dates

The NYSE requires their member and member organizations, who have chosen to file their FOCUS Part II as of a date other than the last calendar day of a month or quarter, to file their FOCUS Report 17 business days from their month-end closing date.

(NYSE Information Memo 99-22, May 1999) (No. 99-9, August 1999)

(iii) Every broker or dealer that neither clears transactions nor carries customer accounts and that is not registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o-10) must file with the Commission an executed Part IIA of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter.

/01 NYSE FOCUS Filing Due Dates

The NYSE requires their member and member organizations, who have chosen to file their FOCUS Part IIA as of a date other than the last calendar day of a month or quarter, to file their FOCUS Report 17 business days from their month-end closing date.

(NYSE Information Memo 99-22, May 1999) (No. 99-9, August 1999)

(iv) Upon receiving written notice from the Commission or the examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (“designated examining authority”), a broker or dealer who receives such notice must file with the Commission on a monthly basis, or at such times as will be specified, an executed Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), and such other financial or operational information as will be required by the Commission or the designated examining authority.



(a) MONTHLY AND QUARTERLY REPORTS (continued)

(2) The reports provided for in this paragraph (a) that must be filed with the Commission will be considered filed when received at the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business. All reports filed pursuant to this paragraph (a) will be deemed to be confidential.

(3) The provisions of paragraph (a)(1) of this section will not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by Part I, Part II, or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as to such member, and transmits to the Commission a copy of the applicable parts of Form X-17A-5 (§ 249.617 of this chapter) as to such member, pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one specified national securities exchange or registered national securities association. For the purposes of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association will not become effective unless the Commission, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties and responsibilities under the Act.

(4) Every broker or dealer subject to this paragraph (a) must file Form Custody (§ 249.639 of this chapter) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. The designated examining authority must maintain the information obtained through the filing of Form Custody and must promptly transmit that information to the Commission at such time as it transmits the applicable part of Form X-17A-5 (§ 249.617 of this chapter) as required in paragraph (a)(2) of this section.

(a) MONTHLY AND QUARTERLY REPORTS (continued)

(5) Broker-dealers that have been authorized by the Commission to compute net capital pursuant to § 240.15c3-1e must file the following additional reports with the Commission:

(i) For each product for which the broker or dealer calculates a deduction for market risk other than in accordance with § 240.15c3-1e(b)(1) or (3), the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month value at risk within 17 business days after the end of the month;

(iii) The aggregate value at risk for the broker or dealer within 17 business days after the end of the month;

(iv) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on derivatives exposures within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(a)(5) MONTHLY AND QUARTERLY REPORTS (continued)

(vi) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application, within 17 business days after the end of the month;

(vii) [Reserved]

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of the calendar quarter.

(a) MONTHLY AND QUARTERLY REPORTS (continued)

(6) Upon written application by a broker or dealer to its designated examining authority, the designated examining authority may extend the time for filing the information required by this paragraph (a). The designated examining authority for the broker or dealer will maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

/01 FOCUS Extension Request

Members and member organizations for which the Exchange is the DEA should use the procedures outlined below when requesting extensions. Members and member organizations for which the Exchange is not the DEA should submit extension requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting an extension for a FOCUS Report should notify their Finance Coordinator by telephone and follow-up with a written request to the Exchange signed by the Chief Financial Officer (CFO) or, if the CFO is unable to sign, another senior officer or partner. An extension request should be made at least three (3) business days prior to the FOCUS Report due date and no extension request will be accepted after the due date. The written request should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) the extension is being requested and details on the steps being taken to resolve any problems which led to the request. FOCUS Report extensions as of the annual audit date will not be granted unless extreme hardship can be demonstrated;
3. A statement that the books and records are current, that the organization is in compliance with SEA Rules 15c3-1 and 15c3-3, CFTC Regulations 1.20 and 30.7 and that there are no operational problems at the organization; and
4. A pro forma capital position that includes net worth, net capital, excess net capital, aggregate debit items/aggregate indebtedness, current month's net profit or loss and NYSE Rule 326 capital percentage/ratio.

(NYSE Information Memo 93-45, October 1993) (No. 94-6, December 1994)

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(b) REPORT FILED UPON TERMINATION OF MEMBERSHIP INTEREST

(1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such broker or dealer must, within two business days after such event, file with the Commission Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(1)(ii) through (iv) of this section as of the date of such event. The report must be filed at the Commission's principal office in Washington, DC, and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business; *provided, however*, that such report need not be made or filed if the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirement; *provided, further*, that the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

/01 Extension Request on Filing Final FOCUS Report Upon Termination of Membership

Members and member organizations of the New York Stock Exchange ("NYSE") should use the procedures outlined below when requesting an extension for filing the final FOCUS Report upon termination of its NYSE membership. Members and member organizations terminating its membership with other Self-Regulatory Organizations ("SRO") should contact the respective SRO regarding their procedures for requesting an extension.

A member or member organization of the NYSE requesting an extension for filing the final FOCUS Report upon termination of its NYSE membership should notify their Finance Coordinator by telephone and follow-up with a written request to the NYSE, signed by the Chief Financial Officer ("CFO") or, if the CFO is unable to sign, another authorized senior officer or partner. An extension request should be made prior to the termination of membership date.

The written request to the NYSE should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) for which the extension is being requested and details on the steps being taken to resolve any problems which led to the request; and
3. A statement that the member or member organization is not in violation of the applicable requirements specified in SEA Rules 15c3-1 and 15c3-3 under the Exchange Act, is not experiencing any significant financial, operational or record keeping problems, and is in compliance with the other applicable rules of the Commission and each self-regulatory organization of which it is a member.

(SEC Staff to NYSE) (No. 04-3, June 2004)

SEA Rule 17a-5(b)(1)/01

(b) REPORT FILED UPON TERMINATION OF MEMBERSHIP INTEREST (continued)

(2) The broker or dealer must attach to the report required by paragraph (b)(1) of this section an oath or affirmation that to the best knowledge and belief of the person making the oath or affirmation the information contained in the report is true and correct. The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(3) For the purposes of this paragraph (b), “membership interest” will include the following: full membership, allied membership, associated membership, floor privileges, and any other interest that entitles a broker or dealer to the exercise of any privilege on an exchange or with an association.

(4) For the purposes of this paragraph (b), any broker or dealer will be deemed to have ceased to be a member in good standing of such exchange or association when the broker or dealer has resigned, withdrawn, or been suspended or expelled from a membership interest in such exchange or association, or has directly or through any associated person sold or entered into an agreement for the sale of a membership interest which would on consummation thereof result in the termination of the broker’s or dealer’s membership interest in such exchange or association.

(5) Whenever any national securities exchange or registered national securities association takes any action which causes any broker or dealer which is a member of such exchange or association to cease to be a member in good standing of such exchange or association or when such exchange or association learns of any action by such member or any other person which causes such broker or dealer to cease to be a member in good standing of such exchange or association, such exchange or association will report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event, and will send a copy of such notification to the broker or dealer and notify such broker or dealer of its responsibilities under this paragraph (b).

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(c) CUSTOMER STATEMENTS

(1) WHO MUST FURNISH THE STATEMENTS

Every broker or dealer must file with the Commission at its principal office in Washington, DC, with the regional office of the Commission for the region in which the broker or dealer has its principal place of business, and with each national securities exchange and registered national securities association of which it is a member, and must send to its customers the statements prescribed by paragraphs (c)(2) and (3) of this section, except as provided in paragraph (c)(5) of this section or if the activities of such broker or dealer are limited to any one or combination of the following and are conducted in the manner prescribed herein:

(i) As introducing broker or dealer, the forwarding of all the transactions of customers of the introducing broker or dealer to a clearing broker or dealer on a fully disclosed basis: *Provided*, That such clearing broker or dealer reflects such transactions on its books and records in accounts it carries in the names of such customers and that the introducing broker or dealer does not hold funds or securities for, or owe funds or securities to, customers other than funds and securities promptly forwarded to the clearing broker or dealer or to customers;

(ii) The prompt forwarding of subscriptions for securities to the issuer, underwriter or other distributor of such securities and of receiving checks, drafts, notes, or other evidences of indebtedness payable solely to the issuer, underwriter or other distributor who delivers the security directly to the subscriber or to a custodian bank, if the broker or dealer does not otherwise hold funds or securities for, or owe money or securities to, customers;

(iii) The sale and redemption of redeemable shares of registered investment companies or the solicitation of share accounts of savings and loan associations and otherwise qualified to maintain net capital of no less than what is required under § 240.15c3-1(a)(2)(iv) or the offering to extend any credit to or participate in arranging a loan for a customer to purchase insurance in connection with the sale of redeemable shares of registered investment companies; or

(iv) Conduct which would exempt the broker or dealer from the provisions of § 240.17a-13 by reason of the provisions of paragraph (a) of that section.

(c) CUSTOMER STATEMENTS (continued)(2) AUDITED STATEMENTS TO BE FURNISHED

Audited statements must be furnished within 105 days after the end of the fiscal year of the broker or dealer. The statements may be furnished 30 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with §240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The audited statements must include the following:

(i) A Statement of Financial Condition with appropriate notes prepared in accordance with U.S. generally accepted accounting principles which must be audited if the financial statements furnished in accordance with paragraph (d) of this section are required to be certified;

(ii) A footnote containing a statement of the amount of the broker's or dealer's net capital and its required net capital, computed in accordance with § 240.15c3-1. Such statement must include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3-1, where material, and the effect thereof on the net capital and required net capital of the broker or dealer;

(iii) A statement indicating that the Statement of Financial Condition of the most recent financial report of the broker or dealer under paragraph (d)(1)(i)(A) of this section is available for examination at the principal office of the broker or dealer and at the regional office of the Commission for the region in which the broker or dealer has its principal place of business; and

(iv) If, in connection with the most recent annual reports required under paragraph (d) of this section, the report of the independent public accountant required under paragraph (d)(1)(i)(C) of this section covering the report of the broker or dealer required under paragraph (d)(1)(i)(B)(I) of this section identifies one or more *material weaknesses*, a statement by the broker or dealer that one or more *material weaknesses* have been identified and that a copy of the report of the independent public accountant required under paragraph (d)(1)(i)(C) of this section is currently available for the customer's inspection at the principal office of the Commission in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

/01 Additional Time on Sending Audited and Unaudited Statements to Customers – Rescinded (FINRA Regulatory Notice 14-25)



(c) CUSTOMER STATEMENTS (continued)(3) UNAUDITED STATEMENTS TO BE FURNISHED

Unaudited statements dated 6 months after the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section must be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements must contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

/01 Requirement to Furnish Unaudited Statements to Customers – (Rescinded, No. 02-3)/02 Furnishing of “Customer Statements”

The term “customer” includes not only those persons for or with whom the broker-dealer effected a transaction in a particular month but also any person for whom the broker-dealer holds securities for safekeeping or as collateral or for whom the broker-dealer carries a free credit balance in that particular month.

The broker-dealer may choose to send statements to customers (defined in SEA Rule 17a-5(c)(4)) of record during any of the following time periods:

1. The month of the balance sheet date (i.e. financial statement date), if it is at month-end;
2. If the balance sheet is not at month end, the 30 day period preceding the balance sheet date;
3. Any month following the balance sheet date if that month is the month in which the statements are mailed, if it is at month end;
4. If the date the statements are mailed is not at month-end, the 30 day period preceding the date on which the statements are mailed.

(SEC Letter to Cahill Gordon & Reindel, August 23, 1983)  
(No. 94-6, December 1994)

(c) CUSTOMER STATEMENTS (continued)

(4) DEFINITION OF “CUSTOMER”

For purposes of this paragraph (c), the term *customer* includes any person other than:

- (i) Another broker or dealer who is exempted by subparagraph (c)(1) of this section;
- (ii) A general, special or limited partner or director or officer of a broker or dealer; or
- (iii) Any person to the extent that such person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer, for or with whom a broker or dealer has effected a securities transaction in a particular month, which month must be either the month preceding the balance sheet date or the month following the balance sheet date in which the statement is sent.
- (iv) The term “customer” also includes any person for whom the broker or dealer holds securities for safekeeping or as collateral or for whom the broker or dealer carries a free credit balance in the month in which customers are determined for purposes of this paragraph (c).

(c) CUSTOMER STATEMENTS (continued)(5) EXEMPTION FROM SENDING CERTAIN FINANCIAL INFORMATION TO CUSTOMERS

A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker's or dealer's net capital and its required net capital in accordance with §240.15c3-1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker's or dealer's net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of §240.15c3-1; and

(C) Any statements otherwise required by paragraphs (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker's or dealer's Website at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker's or dealer's specified toll-free telephone number.

(iii) Not later than 90 days after the date of the audited statements prescribed by paragraph (c)(2) of this section and not later than 75 days after the date of the unaudited statements prescribed by paragraph (c)(3) of this section, the broker or dealer publishes the statements on its Website, accessible by hyperlinks in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker's or dealer's Website home page; and

(B) On each page at which a customer can enter or log on to the broker's or dealer's Website; and

(C) If the Websites for two or more brokers or dealers can be accessed from the same home page, on the home page of the Website of each broker or dealer.

SEA Rule 17a-5(c)(5)(iii)(C)

(c)(5) CUSTOMER STATEMENTS; EXEMPTION FROM SENDING CERTAIN  
FINANCIAL INFORMATION TO CUSTOMERS (continued)

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

**(NEXT PAGE IS 3231)**

(d) ANNUAL REPORTS

(1)(i) Except as provided in paragraphs (d)(1)(iii) and (iv) of this section, every broker or dealer registered under section 15 of the Act (15 U.S.C. 78o) must file annually:

(A) A financial report as described in paragraph (d)(2) of this section; and

(B)(1) If the broker or dealer did not claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year or the broker or dealer is subject to § 240.15c3-3(p), a compliance report as described in paragraph (d)(3) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section; or

(2) If the broker or dealer did claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year and the broker or dealer is not subject to § 240.15c3-3(p), an exemption report as described in paragraph (d)(4) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section;

(C) Except as provided in paragraph (e)(1)(i) of this section, a report prepared by an independent public accountant, under the engagement provisions in paragraph (g) of this section, covering each report required to be filed under paragraphs (d)(1)(i)(A) and (B) of this section.

(ii) The reports required to be filed under this paragraph (d) must be as of the same fiscal year end each year, unless a change is approved in writing by the designated examining authority for the broker or dealer under paragraph (n) of this section. A copy of the written approval must be sent to the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business.

(iii) A broker or dealer succeeding to and continuing the business of another broker or dealer need not file the reports under this paragraph (d) as of a date in the fiscal year in which the succession occurs if the predecessor broker or dealer has filed reports in compliance with this paragraph (d) as of a date in such fiscal year.

(iv) A broker or dealer that is a member of a national securities exchange, has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance, or security for any person who is defined as a *customer* in paragraph (c)(4) of this section, is not required to file reports under this paragraph (d).

/01 Exemption from filing Annual Audit Report

The exemption is limited to specialists, market makers and floor brokers which have no contact with the public and are subject to close daily supervision by an exchange.

(SEC Letter to Kelley, Drye & Warren, March 1983) (No. 94-6, December 1994)

(d) ANNUAL REPORTS (continued)(2) FINANCIAL REPORT

The financial report must contain:

(i) A Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable. If the Statement of Financial Condition filed in accordance with instructions to Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the applicable Part II or Part IIA as filed by the broker or dealer must be included in the notes to the financial statements reported on by the independent public accountant.

(ii) Supporting schedules that include, from Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3-1, a Computation for Determination of Customer Reserve Requirements under § 240.15c3-3a (Exhibit A of § 240.15c3-3), a Computation for Determination of PAB Requirements under Exhibit A of § 240.15c3-3, a Computation for Determination of Security-Based Swap Customer Reserve Requirements under § 240.15c3-3b (Exhibit B of § 240.15c3-3), Information Relating to the Possession or Control Requirements for Customers under § 240.15c3-3, and Information Relating to the Possession or Control Requirements for Security-Based Swap Customers under § 240.15c3-3, as applicable.

(iii) If any of the Computation of Net Capital under § 240.15c3-1, the Computation for Determination of Customer Reserve Requirements Under Exhibit A of § 240.15c3-3, or the Computation for Determination of Security-Based Swap Customer Reserve Requirements under Exhibit B of § 240.15c3-3, as applicable, in the financial report is materially different from the corresponding computation in the most recent Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, filed by the broker or dealer pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II or Part IIA of Form X-17A-5, as applicable, filed by the broker or dealer. If no material differences exist, a statement so indicating must be included in the financial report.

(d)(2)(iii) ANNUAL REPORTS (continued)/01 Reconciliation of FOCUS Report to the Annual Audit

If a broker-dealer files an amended FOCUS report (as of its audit date) that varies materially from the original FOCUS report, a reconciliation and explanation of material differences between the amended report and the original report must be filed. The reconciliation should include at a minimum the original and amended amounts and an explanation of the differences. The audit report may be reconciled with the amended FOCUS report and a statement as to whether any material differences are noted and the date of the amended FOCUS filing must be included.

(SEC Letter to NYSE, April 24, 1987) (No. 94-6, December 1994)

(d) ANNUAL REPORTS (continued)

(3) COMPLIANCE REPORT

(i) The compliance report must contain:

(A) Statements as to whether:

(1) The broker or dealer has established and maintained *Internal Control Over Compliance* as that term is defined in paragraph (d)(3)(ii) of this section;

(2) The Internal Control Over Compliance of the broker or dealer was effective during the most recent fiscal year;

(3) The Internal Control Over Compliance of the broker or dealer was effective as of the end of the most recent fiscal year;

(4) The broker or dealer was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) as of the end of the most recent fiscal year; and

(5) The information the broker or dealer used to state whether it was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) was derived from the books and records of the broker or dealer.

(B) If applicable, a description of each identified material weakness in the Internal Control Over Compliance of the broker or dealer during the most recent fiscal year.

(C) If applicable, a description of an instance of non-compliance with § 240.15c3-1, § 240.15c3-3(e), or, if applicable, § 240.15c3-3(p)(3) as of the end of the most recent fiscal year.

(ii) The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker or dealer with reasonable assurance that non-compliance with § 240.15c3-1, § 240.15c3-3, § 240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (an “Account Statement Rule”) will be prevented or detected on a timely basis.



(d)(3) ANNUAL REPORTS; COMPLIANCE REPORT (continued)

(iii) The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with § 240.15c3-1, § 240.15c3-3(e), or § 240.15c3-3(p)(3) will not be prevented or detected on a timely basis or that non-compliance to a material extent with § 240.15c3-3, except for paragraph (e), § 240.15c3-3(p), except for paragraph (p)(3), § 240.17a-13, or any Account Statement Rule will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-13, or any Account Statement Rule.

(4) EXEMPTION REPORT

The exemption report must contain the following statements made to the best knowledge and belief of the broker or dealer:

(i) A statement that identifies the provisions in § 240.15c3-3(k) under which the broker or dealer claimed an exemption from § 240.15c3-3;

(ii) A statement that the broker or dealer met the identified exemption provisions in § 240.15c3-3(k) throughout the most recent fiscal year without exception or that it met the identified exemption provisions in § 240.15c3-3(k) throughout the most recent fiscal year except as described under paragraph (d)(4)(iii) of this section; and

(iii) If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the identified exemption provisions in § 240.15c3-3(k) and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.

(d) ANNUAL REPORTS (continued)

(5) The annual reports must be filed not more than sixty (60) calendar days after the end of the fiscal year of the broker or dealer.

(6) FILING OF ANNUAL REPORTS

The annual reports must be filed with the Commission at the regional office of the Commission for the region in which the broker or dealer has its principal place of business and to the Commission's principal office in Washington, DC, or the annual reports may be filed with the Commission electronically in accordance with directions provided on the Commission's website. The annual reports must also be filed at the principal office of the designated examining authority for the broker or dealer and with the Securities Investor Protection Corporation ("SIPC") if the broker or dealer is a member of SIPC. Copies of the reports must be provided to all self-regulatory organizations of which the broker or dealer is a member, unless the self-regulatory organization by rule waives the requirement in this paragraph (d)(6).

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(e) NATURE AND FORM OF REPORTS

The annual reports filed pursuant to paragraph (d) of this section must be prepared and filed in accordance with the following requirements:

(1)(i) The broker or dealer is not required to engage an independent public accountant to provide the reports required under paragraph (d)(1)(i)(C) of this section if, since the date of the registration of the broker or dealer under section 15 of the Act (15 U.S.C. 78o) or of the previous annual reports filed under paragraph (d) of this section:

(A) The securities business of the broker or dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or

(B) The securities business of the broker or dealer has been limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and the broker or dealer has not carried any margin account, credit balance, or security for any securities customer.

(ii) A broker or dealer that files an annual report under paragraph (d) of this section that is not covered by a report prepared by an independent public accountant must include in the oath or affirmation required by paragraph (e)(2) of this section a statement of the facts and circumstances relied upon as a basis for exemption from the requirement that the annual report filed under paragraph (d) of this section be covered by reports prepared by an independent public accountant.

(2) The broker or dealer must attach to the financial report an oath or affirmation that, to the best knowledge and belief of the person making the oath or affirmation:

(i) The financial report is true and correct; and

(ii) Neither the broker or dealer, nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(e) NATURE AND FORM OF REPORTS (continued)

(3) The annual reports filed under paragraph (d) of this section are not confidential, except that, if the Statement of Financial Condition in a format that is consistent with Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter) is bound separately from the balance of the annual reports filed under paragraph (d) of this section, and each page of the balance of the annual reports is stamped “confidential,” then the balance of the annual reports will be deemed confidential to the extent permitted by law. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, by national securities exchanges and registered national securities associations of which the broker or dealer filing such a report is a member, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person as being in the public interest. Nothing contained in this paragraph (e)(3) may be construed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a broker or dealer the right, upon request to the broker or dealer, to obtain information relative to its financial condition.

(4) The broker or dealer must file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.

/01 Supplemental SIPC Report Exemption

Broker-dealers do not have to file the supplemental SIPC report required by SEA Rule 17a-5(e)(4) provided that they are members of SIPC and report \$500,000 or less in gross revenues in their annual audited statement of income filed pursuant to SEA Rule 17a-5(d).

(SEC Letter to SIPC, January 9, 1989) (No. 94-6, December 1994)

/02 SIPC Reports Exemption for Guaranteed Subsidiary

The SEC has granted relief to a guaranteed subsidiary from the filing of the SIPC supplemental report and the accompanying opinion of an independent public accountant based on the fact that it was registered as a broker-dealer and its financial statements were consolidated with those of its parent.

(SEC Letter to First Boston (Puerto Rico), Inc., February 2, 1990) (No. 94-6, December 1994)

**(NEXT PAGE IS 3251)**

(f)(1) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANT

The independent public accountant must be qualified and independent in accordance with § 210.2-01 of this chapter and the independent public accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.

(2) STATEMENT REGARDING INDEPENDENT PUBLIC ACCOUNTANT

(i) Every broker or dealer that is required to file annual reports under paragraph (d) of this section must file no later than December 10 of each year (or 30 calendar days after the effective date of its registration as a broker or dealer, if earlier) a statement as prescribed in paragraph (f)(2)(ii) of this section with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for the broker or dealer. The statement must be dated no later than December 1 (or 20 calendar days after the effective date of its registration as a broker or dealer, if earlier). If the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

/01 Definition of Independent Accountant

The following guidelines may be used to determine if an accountant is "independent" in connection with auditing the financial statements of a client:

- The accountant must be free of any direct financial interest or any material indirect financial interest in the client.
- There are no material unpaid fees outstanding at the commencement of the audit.
- The accountant must not be involved in the maintenance of the basic accounting records or in the preparation of data upon which a client's financial statements are based.
- The accountant must not have business relationships with the client, other than as a customer in the normal course of business.
- Close relatives or other dependent relatives must not have material financial interests, business relationships or hold a supervisory position with a client.

(SEC Letter to McCauley, Nicolas & Co., March 14, 1984)

(SEC Letter to Sanville, McQuestion & Co., July 5, 1984)

(SEC Letter to Oppenheim, Appel, Dixon & Co., March 28, 1986)

(No. 94-6, December 1994)

(f)(2) STATEMENT REGARDING INDEPENDENT PUBLIC ACCOUNTANT (continued)

(ii) The statement must be headed “Statement regarding independent public accountant under Rule 17a-5(f)(2)” and must contain the following information and representations:

(A) Name, address, telephone number, and registration number of the broker or dealer.

(B) Name, address, and telephone number of the independent public accountant.

(C) The date of the fiscal year of the annual reports of the broker or dealer covered by the engagement.

(D) Whether the engagement is for a single year or is of a continuing nature.

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (g)(1) and (2) of this section.

(F) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow representatives of the Commission or its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, to review the audit documentation associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section. For purposes of this paragraph, “audit documentation” has the meaning provided in standards of the Public Company Accounting Oversight Board. The Commission anticipates that, if requested, it will accord confidential treatment to all documents it may obtain from an independent public accountant under this paragraph to the extent permitted by law.

(G) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow the independent public accountant to discuss with representatives of the Commission and its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, the findings associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section.

(iii) If a broker or dealer neither clears transactions nor carries customer accounts, the broker or dealer is not required to include the representations in paragraphs (f)(2)(ii)(F) and (G) of this section.

(iv) Any broker or dealer that is not required to file reports prepared by an independent public accountant under paragraph (d)(1)(i)(C) of this section must file a statement required under paragraph (f)(2)(i) of this section indicating the date as of which the unaudited reports will be prepared.

(f)(3) REPLACEMENT OF ACCOUNTANT

A broker or dealer must file a notice that must be received by the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for the broker or dealer not more than 15 business days after:

(i) The broker or dealer has notified the independent public accountant that provided the reports the broker or dealer filed under paragraph (d)(1)(i)(C) of this section for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; or

(ii) The broker or dealer has notified an independent public accountant that was engaged to provide the reports required under paragraph (d)(1)(i)(C) of this section that the engagement has been terminated; or

(iii) An independent public accountant has notified the broker or dealer that the independent public accountant would not continue under an engagement to provide the reports required under paragraph (d)(1)(i)(C) of this section; or

(iv) A new independent public accountant has been engaged to provide the reports required under paragraph (d)(1)(i)(C) of this section without any notice of termination having been given to or by the previously engaged independent public accountant.

(f)(3) REPLACEMENT OF ACCOUNTANT (continued)

(v) The notice must include:

(A) The date of notification of the termination of the engagement or of the engagement of the new independent public accountant, as applicable; and

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those that occur at the decision-making level – that is, between principal financial officers of the broker or dealer and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (d)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The broker or dealer must also request the former independent public accountant to furnish the broker or dealer with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the broker or dealer and, if not, stating the respects in which the independent public accountant does not agree. The broker or dealer must file three copies of the notice and the accountant's letter, one copy of which must be manually signed by the sole proprietor, a general partner, or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

**(NEXT PAGE IS 3261)**



(g) ENGAGEMENT OF INDEPENDENT PUBLIC ACCOUNTANT

The independent public accountant engaged by the broker or dealer to provide the reports required under paragraph (d)(1)(i)(C) of this section must, as part of the engagement, undertake the following, as applicable:

(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the broker or dealer under paragraph (d)(1)(i)(A) of this section in accordance with standards of the Public Company Accounting Oversight Board; and

(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (d)(3)(i)(A)(2) through (5) of this section in the compliance report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(1) of this section in accordance with standards of the Public Company Accounting Oversight Board; or

(ii) To prepare an independent public accountant's report based on a review of the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(2) of this section in accordance with standards of the Public Company Accounting Oversight Board.

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(h) NOTIFICATION OF NON-COMPLIANCE OR MATERIAL WEAKNESS

If, during the course of preparing the independent public accountant's reports required under paragraph (d)(1)(i)(C) of this section, the independent public accountant determines that the broker or dealer is not in compliance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-13 or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer, as applicable, or the independent public accountant determines that any material weaknesses (as defined in paragraph (d)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the broker or dealer of the nature of the non-compliance or material weakness. If the notice from the accountant concerns an instance of non-compliance that would require a broker or dealer to provide a notification under § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, or if the notice concerns a material weakness, the broker or dealer must provide a notification in accordance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, as applicable, and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission and the designated examining authority within one business day. The report from the accountant must, if the broker or dealer failed to file a notification, describe any instances of non-compliance that required a notification under § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, or any material weaknesses. If the broker or dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker or dealer with which the accountant does not agree.

*Note 1 to paragraph (h):* The attention of the broker or dealer and the independent public accountant is called to the fact that under § 240.17a-11(a)(1), among other things, a broker or dealer whose net capital declines below the minimum required pursuant to § 240.15c3-1 must give notice of such deficiency that same day in accordance with § 240.17a-11(h) and the notice must specify the broker or dealer's net capital requirement and its current amount of net capital. The attention of the broker or dealer and accountant also is called to the fact that under § 240.15c3-3(i), if a broker or dealer fails to make a reserve bank account or special reserve account deposit, as required by § 240.15c3-3, the broker or dealer must immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and must promptly thereafter confirm such notification in writing.

(i) REPORTS OF THE INDEPENDENT PUBLIC ACCOUNTANT REQUIRED UNDER PARAGRAPH (d)(1)(i)(C) OF THIS SECTION

(1) TECHNICAL REQUIREMENTS

The independent public accountant's reports must:

- (i) Be dated;
- (ii) Be signed manually;
- (iii) Indicate the city and state where issued; and
- (iv) Identify without detailed enumeration the items covered by the reports.

(2) REPRESENTATIONS

The independent public accountant's reports must:

(i) State whether the examinations or review, as applicable, were made in accordance with standards of the Public Company Accounting Oversight Board;

(ii) Identify any examination and, if applicable, review procedures deemed necessary by the independent public accountant under the circumstances of the particular case that have been omitted and the reason for their omission.

(iii) Nothing in this section may be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination or review made for the purpose of expressing the opinions or conclusions required under this section.

(i) REPORTS OF THE INDEPENDENT PUBLIC ACCOUNTANT REQUIRED UNDER PARAGRAPH (d)(1)(i)(C) OF THIS SECTION (continued)

(3) OPINION OR CONCLUSION TO BE EXPRESSED

The independent public accountant's reports must state clearly:

(i) The opinion of the independent public accountant with respect to the financial report required under paragraph (d)(1)(i)(A) of this section and the accounting principles and practices reflected in that report;

(ii) The opinion of the independent public accountant with respect to the financial report required under paragraph (d)(1)(i)(A) of this section, as to the consistency of the application of the accounting principles, or as to any changes in those principles, that have a material effect on the financial statements; and

(iii)(A) The opinion of the independent public accountant with respect to the statements required under paragraphs (d)(3)(i)(A)(2) through (5) of this section in the compliance report required under paragraph (d)(1)(i)(B)(1) of this section; or

(B) The conclusion of the independent public accountant with respect to the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required under paragraph (d)(1)(i)(B)(2) of this section.

(4) EXCEPTIONS

Any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports required under paragraph (d) of this section must be given.

(j) [RESERVED]

(k) SUPPLEMENTAL REPORTS

Each broker or dealer that computes certain of its capital charges in accordance with §240.15c3-1e must file concurrently with the annual audit report a supplemental report on management controls, which must be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 et seq.)). The supplemental report must indicate the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in accordance with § 240.15c3-4. This review must be conducted in accordance with procedures agreed upon by the broker or dealer and the registered public accounting firm conducting the review. The agreed upon procedures are to be performed and the report is to be prepared in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3-4. Before commencement of the review and no later than December 10 of each year, the broker or dealer must file a statement with the Division of Trading and Markets, Office of Financial Responsibility, at the Commission's principal office in Washington, DC that includes:

(1) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm; and

(2) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

(l) USE OF CERTAIN STATEMENTS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

At the request of any broker or dealer who is an investment company registered under the Investment Company Act of 1940, or a sponsor or depositor of such a registered investment company who effects transactions in securities only with, or on behalf of, such registered investment company, the Commission will accept the financial statements filed pursuant to sections 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder as a filing pursuant to paragraph (d) of this section. Such a filing must be deemed to satisfy the requirements of this section for any calendar year in which such financial statements are filed, provided that the statements so filed meet the requirements of the other rules under which they are filed with respect to time of filing and content.

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(m) EXTENSIONS AND EXEMPTIONS

(1) A broker's or dealer's designated examining authority may extend the period under paragraph (d) of this section for filing annual reports. The designated examining authority for the broker or dealer must maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

/01 Audit Extension Request

Members and member organizations for which the Exchange is the DEA should use the procedures outlined below when requesting extensions. Members and member organizations for which the Exchange is not the DEA should submit such requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting an extension for an audited financial statement should notify their Coordinator by telephone and follow-up with a written request to the Exchange signed by the Chief Financial Officer. An extension request should be made at least ten (10) business days prior to the audit due date. The written request should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) the extension is being requested; and
3. A letter from the outside independent auditors in which the auditors represent that the organization is in compliance with SEA Rules 15c3-1 and 15c3-3 and CFTC Regulations 1.20 and 30.7; that an unqualified opinion is expected to be issued; and, that no material weaknesses or books and records problems exist.

(NYSE Information Memo No. 93-45, October 1993) (No. 94-6, December 1994)  
(FINRA Regulatory Notice 14-25)

(2) Any "bank" as defined in section 3(a)(6) of the Act (15 U.S.C. 78c) and any "insurance company" as defined in section 3(a)(19) of the Act (15 U.S.C. 78c) registered as a broker or dealer to sell variable contracts but exempt from § 240.15c3-1 shall be exempt from the provisions of this section.

(m) EXTENSIONS AND EXEMPTIONS (continued)

(3) On written request of any national securities exchange, registered national securities association, broker or dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

/01 Exemption From Filing Initial Annual Audit Report

A broker-dealer need not apply to the Securities and Exchange Commission for relief from filing its audited annual report of financial statements required by SEA Rule 17a-5(d) for its initial audit period under the following circumstances:

1. The registration of the broker-dealer with the Commission became effective within three months of the end of its initial audit period;
2. The broker-dealer does not clear transactions, does not carry customer accounts, and is not a broker-dealer that effectuates financial transactions with customers in accordance with SEA Rule 15c3-3(k)(2)(i);
3. The broker-dealer's audited annual report for the next audit period will cover the entire period from the effective date of the broker-dealer's registration with the Commission; and
4. The broker-dealer sends notice to the Commission and to its Designated Examining Authority before its audited annual report is due that it has met the above conditions.

(SEC Letter to NYSE and NASDR, December 16, 2005) (No. 06-5, June 2006)

/011 Broker-Dealers Not Effectuating Transactions Through a Special Bank Account for the Exclusive Benefit of Customers

A broker dealer may be identified by its DEA, for classification purposes only, as a broker-dealer described under SEA Rule 15c3-3(k)(2)(i); even though the broker-dealer has not, and does not intend to, effectuate transactions with customers through a special bank account for the exclusive benefit of customers. Notwithstanding condition (2) of interpretation 17a-5(m)(3)/01, such a broker-dealer may be eligible for the relief provided in the interpretation.

(SEC Staff to NYSE and NASDR) (No. 06-5, June 2006)



(m) EXTENSIONS AND EXEMPTIONS (continued)

(4) The provisions of § 240.17a-5 will not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

(n) NOTIFICATION OF CHANGE OF FISCAL YEAR

(1) In the event any broker or dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for such broker or dealer, a notice of such change.

/01 "As Of" Date Changes

Members and member organization for which the Exchange is the DEA should use the procedures outlined below when requesting changes in "as of" dates. Members and member organizations for which the Exchange is not the DEA should submit such requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting changes in the "as of" date of their audited financial statements should notify their Coordinator by telephone and follow-up with a written request, signed by the Chief Financial Officer, which provides a detailed explanation of the reason(s) for the change. A written request for an "as of" date change should be made at least ninety (90) calendar days prior to the existing "as of" date.

(NYSE Information Memo 93-45, October 1993) (No. 94-6, December 1994)

(2) Such notice must contain a detailed explanation of the reasons for the change. Any change in the filing period for the annual report must be approved in writing by the designated examining authority of the broker or dealer.

(o) FILING REQUIREMENTS

For purposes of filing requirements as described in this section, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of this section which is applicable.

(p) COMPLIANCE WITH § 240.17a-12

An OTC derivatives dealer may comply with §240.17a-5 by complying with the provisions of §240.17a-12.

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**NOTIFICATION PROVISIONS FOR BROKERS AND DEALERS**  
**SEA Rule 17a-11**

This section applies to the following types of entities: Except as provided in this introductory text, a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a-8 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

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

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

NOTIFICATION PROVISIONS FOR BROKERS AND DEALERS (continued)

(b) Every broker or dealer must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (b)(1) through (5) of this section in accordance with paragraph (h) of this section:

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

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

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

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

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

NOTIFICATION PROVISIONS FOR BROKERS AND DEALERS (continued)

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

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

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

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

(e) [Reserved]

(f) If a broker-dealer fails to make in its special reserve account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.15c3-3(p), the broker-dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

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

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington DC and the regional office of the Commission for the region in which the broker or dealer has its principal place of business, or to an email address provided on the Commission's website, and to the designated examining authority of which such broker or dealer is a member, and to the Commodity Futures Trading Commission (CFTC) if the broker or dealer is registered as a futures commission merchant with the CFTC. The report required by paragraph (c) or (d)(2) of this section may be transmitted by overnight delivery.

NOTIFICATION PROVISIONS FOR BROKERS AND DEALERS (continued)

(i) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in §§ 240.15c3-1, 240.15c3-1d, 240.15c3-3, 240.17a-5, and 240.17a-12.

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

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QUARTERLY SECURITY COUNTS (continued)

(c) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than 1 calendar quarter-year, and no security shall be examined, counted, verified, or compared for the purpose of this rule less than 2 months or more than 4 months after a prior examination, count, verification, and comparison.

(d) The examination, count, verification, and comparison shall be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

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

(f) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any member, broker or dealer who satisfies the Commission that is not necessary in the public interest and for the protection of investors to subject the particular member, broker or dealer to certain or all of the provisions of this section, because of the special nature of his business, the safeguards he has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

**(NEXT PAGE IS 3501)**

**NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR  
SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP  
PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR**  
**SEA Rule 18a-3**

(a) Every security-based swap dealer and major security-based swap participant for which there is not a prudential regulator must comply with this section.

(b) *Definitions.* For the purposes of this section:

(1) The term *account* means an account carried by a security-based swap dealer or major security-based swap participant that holds one or more non-cleared security-based swaps for a counterparty.

(2) The term *commercial end user* means a counterparty that qualifies for an exception from clearing under section 3C(g)(1) of the Act (15 U.S.C. 78o-3(g)(1)) and implementing regulations or satisfies the criteria in section 3C(g)(4) of the Act (15 U.S.C. 78o-3(g)(4)) and implementing regulations.

(3) The term *counterparty* means a person with whom the security-based swap dealer or major security-based swap participant has entered into a non-cleared security-based swap transaction.

(4) The term *initial margin amount* means the amount calculated pursuant to paragraph (d) of this section.

(5) The term *non-cleared security-based swap* means a security-based swap that is not, directly or indirectly, submitted to and cleared by a clearing agency registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or by a clearing agency that the Commission has exempted from registration by rule or order pursuant to section 17A of the Act (15 U.S.C. 78q-1).

(6) The term *security-based swap legacy account* means an account that holds no security-based swaps entered into after the compliance date of this section and that only is used to hold one or more security-based swaps entered into prior to the compliance date of this section and collateral for those security-based swaps.



NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR  
SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP  
PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR;  
MARGIN REQUIREMENTS (continued)

(c) *Margin requirements*

(1) *Security-based swap dealers*

(i) *Calculation required.* A security-based swap dealer must calculate with respect to each account of a counterparty as of the close of each business day:

(A) The amount of the current exposure in the account of the counterparty; and

(B) The initial margin amount for the account of the counterparty.

(ii) *Account equity requirements.* Except as provided in paragraph (c)(1)(iii) of this section, a security-based swap dealer must take an action required in paragraph (c)(1)(ii)(A) or (B) of this section by no later than the close of business of the first business day following the day of the calculation required under paragraph (c)(1)(i) of this section or, if the counterparty is located in another country and more than four time zones away, the second business day following the day of the calculation required under paragraph (c)(1)(i) of this section:

(A)(1) Collect from the counterparty collateral in an amount equal to the current exposure that the security-based swap dealer has to the counterparty; or

(2) Deliver to the counterparty collateral in an amount equal to the current exposure that the counterparty has to the security-based swap dealer, provided that such amount does not include the initial margin amount collected from the counterparty under paragraph (c)(1)(ii)(B) of this section; and

(B) Collect from the counterparty collateral in an amount equal to the initial margin amount.

(c)(1) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(iii) *Exceptions*

(A) *Commercial end users.* The requirements of paragraph (c)(1)(ii) of this section do not apply to an account of a counterparty that is a commercial end user.

(B) *Counterparties that are financial market intermediaries.* The requirements of paragraph (c)(1)(ii)(B) of this section do not apply to an account of a counterparty that is a security-based swap dealer, swap dealer, broker or dealer, futures commission merchant, bank, foreign bank, or foreign broker or dealer.

(C) *Counterparties that use third-party custodians.* The requirements of paragraph (c)(1)(ii)(B) of this section do not apply to an account of a counterparty that delivers the collateral to meet the initial margin amount to an independent third-party custodian.

(D) *Security-based swap legacy accounts.* The requirements of paragraph (c)(1)(ii) of this section do not apply to a security-based swap legacy account.

(E) *Bank for International Settlements, European Stability Mechanism, and Multilateral development banks.* The requirements of paragraph (c)(1)(ii) of this section do not apply to an account of a counterparty that is the Bank for International Settlements or the European Stability Mechanism, or is the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member.

(F) *Sovereign entities.* The requirements of paragraph (c)(1)(ii)(B) of this section do not apply to an account of a counterparty that is a central government (including the U.S. government) or an agency, department, ministry, or central bank of a central government if the security-based swap dealer has determined that the counterparty has only a minimal amount of credit risk pursuant to policies and procedures or credit risk models established pursuant to § 240.15c3-1 or § 240.18a-1 (as applicable).

(G) *Affiliates.* The requirements of paragraph (c)(1)(ii)(B) of this section do not apply to an account of a counterparty that is an affiliate of the security-based swap dealer.

(c)(1)(iii) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(H) *Threshold amount*

(I) A security-based swap dealer may elect not to collect the initial margin amount required under paragraph (c)(1)(ii)(B) of this section to the extent that the sum of that amount plus all other credit exposures resulting from non-cleared swaps and non-cleared security-based swaps of the security-based swap dealer and its affiliates with the counterparty and its affiliates does not exceed \$50 million. For purposes of this calculation, a security-based swap dealer need not include any exposures arising from non-cleared security-based swap transactions with a counterparty that is a commercial end user, and non-cleared swap transactions with a counterparty that qualifies for an exception from margin requirements pursuant to section 4s(e)(4) of the Commodity Exchange Act (7 U.S.C. 6s(e)(4)).

(2) *One-time deferral.* Notwithstanding paragraph (c)(1)(iii)(H)(I) of this section, a security-based swap dealer may defer collecting the initial margin amount required under paragraph (c)(1)(ii)(B) of this section for up to two months following the month in which a counterparty no longer qualifies for this threshold exception for the first time.

(I) *Minimum transfer amount.* Notwithstanding any other provision of this rule, a security-based swap dealer is not required to collect or deliver collateral pursuant to this section with respect to a particular counterparty unless and until the total amount of collateral that is required to be collected or delivered, and has not yet been collected or delivered, with respect to the counterparty is greater than \$500,000.

(c) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(2) *Major security-based swap participants*

(i) *Calculation required.* A major security-based swap participant must with respect to each account of a counterparty calculate as of the close of each business day the amount of the current exposure in the account of the counterparty.

(ii) *Account equity requirements.* Except as provided in paragraph (c)(2)(iii) of this section, a major security-based swap participant must take an action required in paragraph (c)(2)(ii)(A) or (B) of this section by no later than the close of business of the first business day following the day of the calculation required under paragraph (c)(2)(i) or, if the counterparty is located in another country and more than four time zones away, the second business day following the day of the calculation required under paragraph (c)(2)(i) of this section:

(A) Collect from the counterparty collateral in an amount equal to the current exposure that the major security-based swap participant has to the counterparty; or

(B) Deliver to the counterparty collateral in an amount equal to the current exposure that the counterparty has to the major security-based swap participant.

(c)(2) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(iii) *Exceptions*

(A) *Commercial end users.* The requirements of paragraph (c)(2)(ii)(A) of this section do not apply to an account of a counterparty that is a commercial end user.

(B) *Security-based swap legacy accounts.* The requirements of paragraph (c)(2)(ii) of this section do not apply to a security-based swap legacy account.

(C) *Bank for International Settlements, European Stability Mechanism, and Multilateral development banks.* The requirements of paragraph (c)(2)(ii)(A) of this section do not apply to an account of a counterparty that is the Bank for International Settlements or the European Stability Mechanism, or is the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, or any other multilateral development bank that provides financing for national or regional development in which the U.S. government is a shareholder or contributing member.

(D) *Minimum transfer amount.* Notwithstanding any other provision of this rule, a major security-based swap participant is not required to collect or deliver collateral pursuant to this section with respect to a particular counterparty unless and until the total amount of collateral that is required to be collected or delivered, and has not yet been collected or delivered, with respect to the counterparty is greater than \$500,000.

(3) *Deductions for collateral*

(i) The fair market value of collateral delivered by a counterparty or the security-based swap dealer must be reduced by the amount of the standardized deductions the security-based swap dealer would apply to the collateral pursuant to § 240.15c3-1 or § 240.18a-1, as applicable, for the purpose of paragraph (c)(1)(ii) of this section.

(ii) Notwithstanding paragraph (c)(3)(i) of this section, the fair market value of assets delivered as collateral by a counterparty or the security-based swap dealer may be reduced by the amount of the standardized deductions prescribed in 17 CFR 23.156 if the security-based swap dealer applies these standardized deductions consistently with respect to the particular counterparty.

(c) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(4) *Collateral requirements.* A security-based swap dealer or a major security-based swap participant when calculating the amounts under paragraphs (c)(1) and (2) of this section may take into account the fair market value of collateral delivered by a counterparty provided:

(i) The collateral:

(A) Has a ready market;

(B) Is readily transferable;

(C) Consists of cash, securities, money market instruments, a major foreign currency, the settlement currency of the non-cleared security-based swap, or gold;

(D) Does not consist of securities and/or money market instruments issued by the counterparty or a party related to the security-based swap dealer, the major security-based swap participant, or the counterparty; and

(E) Is subject to an agreement between the security-based swap dealer or the major security-based swap participant and the counterparty that is legally enforceable by the security-based swap dealer or the major security-based swap participant against the counterparty and any other parties to the agreement; and

(ii) The collateral is either:

(A) Subject to the physical possession or control of the security-based swap dealer or the major security-based swap participant and may be liquidated promptly by the security-based swap dealer or the major security-based swap participant without intervention by any other party; or

(B) The collateral is carried by an independent third-party custodian that is a bank as defined in section 3(a)(6) of the Act or a registered U.S. clearing organization or depository that is not affiliated with the counterparty or, if the collateral consists of foreign securities or currencies, a supervised foreign bank, clearing organization, or depository that is not affiliated with the counterparty and that customarily maintains custody of such foreign securities or currencies.

(c) NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; MARGIN REQUIREMENTS (continued)

(5) *Qualified netting agreements.* A security-based swap dealer or major security-based swap participant may include the effect of a netting agreement that allows the security-based swap dealer or major security-based swap participant to net gross receivables from and gross payables to a counterparty upon the default of the counterparty, for the purposes of the calculations required pursuant to paragraphs (c)(1)(i) and (c)(2)(i) of this section, if:

(i) The netting agreement is legally enforceable in each relevant jurisdiction, including in insolvency proceedings;

(ii) The gross receivables and gross payables that are subject to the netting agreement with a counterparty can be determined at any time; and

(iii) For internal risk management purposes, the security-based swap dealer or major security-based swap participant monitors and controls its exposure to the counterparty on a net basis.

(6) *Frequency of calculations increased.* The calculations required pursuant to paragraphs (c)(1)(i) and (c)(2)(i) of this section must be made more frequently than the close of each business day during periods of extreme volatility and for accounts with concentrated positions.

(7) *Liquidation.* A security-based swap dealer or major security-based swap participant must take prompt steps to liquidate positions in an account that does not meet the margin requirements of this section to the extent necessary to eliminate the margin deficiency.

NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR  
SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP  
PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR;  
CALCULATING INITIAL MARGIN AMOUNT

(d) *Calculating initial margin amount.* A security-based swap dealer must calculate the initial margin amount required by paragraph (c)(1)(i)(B) of this section for non-cleared security-based swaps as follows:

(1) *Standardized approach*

(i) *Credit default swaps.* For credit default swaps, the security-based swap dealer must use the method specified in § 240.18a-1(c)(1)(vi)(B)(I) or, if the security-based swap dealer is registered with the Commission as a broker or dealer, the method specified in § 240.15c3-1(c)(2)(vi)(P)(I).

(ii) *All other security-based swaps.* For security-based swaps other than credit default swaps, the security-based swap dealer must use the method specified in § 240.18a-1(c)(1)(vi)(B)(2) or, if the security-based swap dealer is registered with the Commission as a broker or dealer, the method specified in § 240.15c3-1(c)(2)(vi)(P)(2).

(2) *Model approach*

(i) For security-based swaps other than equity security-based swaps, a security-based swap dealer may apply to the Commission for authorization to use and be responsible for a model to calculate the initial margin amount required by paragraph (c)(1)(i)(B) of this section subject to the application process in § 240.15c3-1e or § 240.18a-1(d), as applicable. The model must use a 99 percent, one-tailed confidence level with price changes equivalent to a ten business-day movement in rates and prices, and must use risk factors sufficient to cover all the material price risks inherent in the positions for which the initial margin amount is being calculated, including foreign exchange or interest rate risk, credit risk, equity risk, and commodity risk, as appropriate. Empirical correlations may be recognized by the model within each broad risk category, but not across broad risk categories.

(ii) Notwithstanding paragraph (d)(2)(i) of this section, a security-based swap dealer that is not registered as a broker or dealer pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)), other than as an OTC derivatives dealer, may apply to the Commission for authorization to use a model to calculate the initial margin amount required by paragraph (c)(1)(i)(B) of this section for equity security-based swaps, subject to the application process and model requirements of paragraph (d)(2)(i) of this section; provided, however, the account of the counterparty subject to the requirements of this paragraph may not hold equity security positions other than equity security-based swaps and equity swaps.



NON-CLEARED SECURITY-BASED SWAP MARGIN REQUIREMENTS FOR  
SECURITY-BASED SWAP DEALERS AND MAJOR SECURITY-BASED SWAP  
PARTICIPANTS FOR WHICH THERE IS NOT A PRUDENTIAL REGULATOR; RISK  
MONITORING AND PROCEDURES

(e) *Risk monitoring and procedures.* A security-based swap dealer must monitor the risk of each account and establish, maintain, and document procedures and guidelines for monitoring the risk of accounts as part of the risk management control system required by § 240.15c3-4. The security-based swap dealer must review, in accordance with written procedures, at reasonable periodic intervals, its non-cleared security-based swap activities for consistency with the risk monitoring procedures and guidelines required by this section. The security-based swap dealer also must determine whether information and data necessary to apply the risk monitoring procedures and guidelines required by this section are accessible on a timely basis and whether information systems are available to adequately capture, monitor, analyze, and report relevant data and information. The risk monitoring procedures and guidelines must include, at a minimum, procedures and guidelines for:

(1) Obtaining and reviewing account documentation and financial information necessary for assessing the amount of current and potential future exposure to a given counterparty permitted by the security-based swap dealer;

(2) Determining, approving, and periodically reviewing credit limits for each counterparty, and across all counterparties;

(3) Monitoring credit risk exposure to the security-based swap dealer from non-cleared security-based swaps, including the type, scope, and frequency of reporting to senior management;

(4) Using stress tests to monitor potential future exposure to a single counterparty and across all counterparties over a specified range of possible market movements over a specified time period;

(5) Managing the impact of credit exposure related to non-cleared security-based swaps on the security-based swap dealer's overall risk exposure;

(6) Determining the need to collect collateral from a particular counterparty, including whether that determination was based upon the creditworthiness of the counterparty and/or the risk of the specific non-cleared security-based swap contracts with the counterparty;

(7) Monitoring the credit exposure resulting from concentrated positions with a single counterparty and across all counterparties, and during periods of extreme volatility; and

(8) Maintaining sufficient equity in the account of each counterparty to protect against the largest individual potential future exposure of a non-cleared security-based swap carried in the account of the counterparty as measured by computing the largest maximum possible loss that could result from the exposure.

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