AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

provisions of this section shall apply in their entirety.

[57 FR 32170, July 21, 1992, as amended at 69 FR 34472, June 21, 2004; 69 FR 34494, June 21, 2004]

SUPERVISED INVESTMENT BANK HOLDING COMPANY RULES

PRELIMINARY NOTE: Rules 17i–1 through 17i–8 set forth a program of supervision at the holding company level for supervised investment bank holding companies. This program is designed to reduce the likelihood that financial and operational weakness in a supervised investment bank holding company will destabilize broker or dealer or the broader financial system. The focus of this supervision of the supervised investment bank holding company is its financial and operational condition and its risk management controls and methodologies.

§ 240.17i–1 Definitions.

(a) For purposes of §§ 240.17i–1 through 240.17i–8, the terms *investment bank holding company*, *supervised investment bank holding company*, *affiliate*, *bank*, *bank holding company*, *company*, *control*, *savings association*, *insured bank*, *foreign bank*, *person associated with an investment bank holding company* and *associated person of an investment bank holding company* shall have the same meaning as set forth in section 17(i)(5) of the Act (15 U.S.C. 78q(i)(5)).

(b) For purposes of §§ 240.17i–2 through 240.17i–8, the term *affiliate group* shall include the supervised investment bank holding company and every affiliate of the supervised investment bank holding company.

(c) For purposes of §§ 240.17i–1 through 240.17i–8, the term *material affiliate* shall mean any member of the affiliate group that is material to the supervised investment bank holding company.

[69 FR 34494, June 21, 2004]

§ 240.17i–2 Notice of intention to be supervised by the Commission as a supervised investment bank holding company.

(a) An investment bank holding company that owns or controls a broker or dealer may file with the Commission a written notice of intention to become supervised by the Commission pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)), provided that the investment bank holding company is not:

(1) An affiliate of an insured bank (other than an institution described in paragraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) (12 U.S.C. 1841(c)(2)(D), (F), or (G) and 12 U.S.C. 1843(f)) or a savings association;

(2) A foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); or

(3) A foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611).

(b) To become supervised as a supervised investment bank holding company an investment bank holding company shall file a notice of intention that includes the following:

(1) A request to become supervised by the Commission as a supervised investment bank holding company;

(2) A statement certifying that the investment bank holding company is not an entity described in section 17(i)(1)(A)(i)–(iii) of the Act (15 U.S.C. 78q(i)(1)(A)(i)–(iii));

(3) Documentation demonstrating that the investment bank holding company owns or controls a broker or dealer that maintains a substantial presence in the securities business as evidenced either by its holding $100 million or more in tentative net capital as calculated pursuant to § 240.15c3–1 or by any other information that the Commission determines is appropriate; and

(4) Supplemental information including:

(i) A description of the business and organization of the investment bank holding company;

(ii) An alphabetical list of each member of the affiliate group, with an identification of the financial regulator, if any, by whom the affiliate is regulated, and a designation as to whether the affiliate is a material affiliate;

(iii) An organizational chart that identifies the investment bank holding company, each broker or dealer owned or controlled by the investment bank holding company, and each material affiliate;

(iv) Consolidated and consolidating financial statements of the affiliate

group as of the end of the quarter preceding the filing of the notice of intention;

(v) Sample computations for the supervised investment bank holding company of allowable capital and allowances for market risk, credit risk, and operational risk made in accordance with § 240.17i–7(a)–(d);

(vi) A list of the categories of positions that the affiliate group holds in its proprietary accounts and a brief description of the method that the investment bank holding company proposes to use to calculate allowances for market and credit risk on those categories of positions pursuant to § 240.17i–7(b) and (c);

(vii) A description of mathematical models that the investment bank holding company proposes to use to price positions and to compute allowances for market and credit risk (as specified in § 240.17i–7(b) and (c)), including:

(A) A description of the creation, use, and maintenance of the mathematical models;

(B) A description of the internal risk management controls over those models, including a description of each category of persons who may input data into the model;

(C) If the mathematical model incorporates correlations across risk factors, a description of the process used to measure those correlations;

(D) A description of the backtesting procedures the investment bank holding company proposes to use to backtest the models, including a description of the backtest and procedures instituted to respond to test results;

(E) A description of how each mathematical model satisfies the applicable qualitative and quantitative requirements listed in § 240.15c3–1e(d); and

(F) A statement describing the extent to which each mathematical model that it is used to analyze risk and report risk to senior management;

(viii) A description of any positions for which the investment bank holding company proposes to use a method other than Value at Risk to compute an allowance for market risk and a description of how that allowance would be determined;

(ix) A description of how the investment bank holding company proposes to calculate the credit equivalent amount and maximum potential exposure (as defined in §§ 240.17i–7(c)(1)(i) and 240.17i–7(c)(1)(i)(E), respectively);

(x) A description of how the investment bank holding company proposes to calculate credit risk weights and internal credit ratings, if applicable;

(xi) A description of the method the investment bank holding company proposes to use to calculate its allowance for operational risk pursuant to § 240.17i–7(d);

(xii) A comprehensive description of the internal risk management control system the investment bank holding company has established to manage the risks of the affiliate group, including market, credit, leverage, liquidity, legal, and operational risks, and how that system satisfies the requirements of § 240.17i–4;

(xiii) Sample risk reports the supervised investment bank holding company regularly provides to the persons responsible for managing risk for the affiliate group that the investment bank holding company proposes to provide to the Commission pursuant to § 240.17i–6(a)(1)(iv);

(xiv) A written undertaking, in a form acceptable to the Commission and signed by a duly authorized person, that provides that if the disclosure of any information with regard to §§ 240.17i–1 through 240.17i–8 would be prohibited by law or otherwise, the supervised investment bank holding company will cooperate with the Commission as needed, including by describing any secrecy laws or other impediments that could restrict the ability of the supervised investment bank holding company or any material affiliate from providing information on its operations or activities and by discussing the manner in which the supervised investment bank holding company proposes to provide the Commission with adequate assurances of access to information; and

(xv) Any other information or documents relating to the investment bank holding company's activities, financial condition, policies, systems for monitoring and controlling financial and operational risks, and transactions and

relationships among members of the affiliate group that the Commission may request to complete its review of the notice of intention.

(c) *Amendments to the notice of intention*—(1) *Prior to a Commission determination.* If any of the information filed with the Commission as part of the notice of intention described in paragraph (b) of this section is found to be or becomes inaccurate before the Commission makes a determination, the investment bank holding company must promptly notify the Commission 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.

(2) *Subsequent to a Commission determination.* A supervised investment bank holding company must amend and resubmit to the Commission its notice of intention, and obtain Commission approval of the amendment, as set forth in paragraph (d)(2)(ii) of this section, before it may make a material change to a mathematical model or other method used to compute allowable capital or allowance for market, credit, or operational risk, or its internal risk management control systems as described in its notice of intention, as modified from time to time.

(d) *Process for review of notice of intention*—(1) *When filed.* A notice of intention to be supervised by the Commission as a supervised investment bank holding company and any amendments thereto shall not be complete until the investment bank holding company has filed with the Commission all the documentation and information specified in this section. The notice of intention, and any amendments thereto, shall be considered filed when received at the Office of the Secretary at the Commission's principal office in Washington DC. All notices of intention, amendments thereto, and other information filed in connection with the notice of intention shall be accorded confidential treatment to the extent permitted by law.

(2) *Commission determination.* (i) An investment bank holding company shall become a supervised investment bank holding company pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)) 45 calendar days after the Commission receives a completed notice of intention to be supervised by the Commission as a supervised investment bank holding company pursuant to paragraph (a) of this section, unless the Commission issues an order determining either that:

(A) The Commission will begin to supervise the investment bank holding company prior to 45 calendar days after the Commission receives the completed notice of intention; or

(B) The Commission will not supervise the investment bank holding company because supervision of the investment bank holding company as a supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q). In addition, the Commission will not consider such supervision necessary or appropriate unless the investment bank holding company demonstrates that it owns or controls a broker or dealer that has a substantial presence in the securities business, which may be demonstrated by a showing that the broker or dealer maintains tentative net capital of $100 million or more.

(ii) The Commission, upon receipt of an amendment to the notice of intention submitted by a supervised investment bank holding company pursuant to paragraph (c)(2) of this section, may approve the amendment after reviewing the amended notice of intention to determine whether the amendment is necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

[69 FR 34494, June 21, 2004]

§ 240.17i–3 Withdrawal from supervision by the Commission as a supervised investment bank holding company.

(a) A supervised investment bank holding company may withdraw from supervision by the Commission as a supervised investment bank holding company by filing a notice of withdrawal with the Commission. The notice of withdrawal shall include a statement regarding whether the supervised investment bank holding company is in compliance with § 240.17i–2(c).

(b) A notice of withdrawal from supervision as a supervised investment bank holding company shall become effective one year after it is filed with the Commission, unless the Commission issues an order determining that it is necessary or appropriate for the Commission to terminate its supervision of the supervised investment bank holding company within a shorter or longer period to help ensure effective supervision of the material risks to the supervised investment bank holding company and to any associated person of the supervised investment bank holding company that is a broker or dealer, or to prevent evasion of the purposes of section 17 of the Act (15 U.S.C. 78q).

(c) Notwithstanding paragraphs (a) and (b) of this section, the Commission, by order, may discontinue supervision of any supervised investment bank holding company if the Commission finds that:

(1) The supervised investment bank holding company is no longer in existence;

(2) The supervised investment bank holding company has ceased to be an investment bank holding company; or

(3) Continued supervision by the Commission of the supervised investment bank holding company is not necessary or appropriate in furtherance of the purposes of section 17 of the Act (15 U.S.C. 78q).

[69 FR 34494, June 21, 2004]

§ 240.17i–4 Internal risk management control system requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall comply with § 240.15c3–4 as though it were an OTC derivatives dealer with respect to all of its business activities, except paragraphs (c)(5)(xiii), (c)(5)(xiv), (d)(8), and (d)(9) will not apply; and

(b) As part of its internal risk management control system, a supervised investment bank holding company must establish, document, and maintain procedures for the detection and prevention of money laundering and terrorist financing.

[69 FR 34494, June 21, 2004]

§ 240.17i–5 Record creation, maintenance, and access requirements for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall make and keep current the following records:

(1) A record reflecting the results of stress tests, conducted by the supervised investment bank holding company at least once each quarter, of the affiliate group's funding and liquidity with respect to the following events:

(i) A credit rating downgrade of the supervised investment bank holding company;

(ii) An inability of the supervised investment bank holding company to access capital markets for unsecured short-term funding;

(iii) An inability of the supervised investment bank holding company to move liquid assets across international borders when the events described in paragraphs (a)(1)(i) or (ii) of this section occur; and

(iv) An inability of the supervised investment bank holding company to access credit or assets held at a particular institution when the events described in paragraphs (a)(1)(i) or (ii) of this section occur;

(2) The supervised investment bank holding company's contingency plan to respond to the events outlined in paragraphs (a)(1)(i) through (iv) of this section;

(3) A record of the basis for the determination of the credit risk weight and internal credit rating, if applicable, for each counterparty; and

(4) A record of the calculations of allowable capital and allowances for market, credit, and operational risk computed currently at least once each month on a consolidated basis.

(b) Except as provided in paragraph (c) of this section, the supervised investment bank holding company shall preserve for a period of not less than three years in an easily accessible place using any storage media acceptable under § 240.17a–4(f):

(1) The documents created in accordance with paragraph (a) of this section;

(2) All notices of intention, amendments thereto, and other documentation and information filed with the

Commission pursuant to § 240.17i–2, and any responses thereto;

(3) All reports and notices filed by the supervised investment bank holding company pursuant to § 240.17i–6;

(4) All notices filed by the supervised investment bank holding company pursuant to § 240.17i–8; and

(5) Records documenting the system of internal risk management controls required to be established pursuant to § 240.17i–4, including written guidelines, policies, and procedures.

(c) A supervised investment bank holding company may maintain the records specified in paragraph (b) of this section either at the supervised investment bank holding company, at an affiliate, or at a records storage facility, provided that the records are located within the United States. If the records are maintained by an entity other than the supervised investment bank holding company, the supervised investment bank holding company shall file with the Commission a written undertaking in a form acceptable to the Commission from the entity, signed by a duly authorized person at the entity maintaining the records, to the effect that the records will be treated as if the supervised investment bank holding company were maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of those records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee a true, correct, complete and current copy of all or any part of those records in paper, or electronically if the records are stored electronically, as specified by the Commission's representative or designee. The election to store records pursuant to the provisions of this paragraph (c) shall not relieve the supervised investment bank holding company from any of its responsibilities under this section or § 240.17i–6.

(d) All information created pursuant to this section and obtained by the Commission from the supervised investment bank holding company shall be accorded confidential treatment to the extent permitted by law.

[69 FR 34494, June 21, 2004]

§ 240.17i–6 Reporting requirements for supervised investment bank holding companies.

(a) *Monthly and quarterly reports.* The supervised investment bank holding company shall file:

(1) A report as of the end of each month, filed not later than 30 calendar days after the end of the month, *Except that* the monthly report need not be filed for a month-end that coincides with a fiscal quarter-end. The monthly report shall include:

(i) A consolidated balance sheet and income statement (including notes to the financial statements) and statements of allowable capital and allowances for market, credit, and operational risk computed pursuant to § 240.17i–7 for the affiliate group, *Except that* the consolidated balance sheet and income statement for the first month of the fiscal year may be filed at a time to which the Commission agrees (when making a determination pursuant to § 240.17i–2(d)(2));

(ii) A graph reflecting, for each business line, the daily intra-month Value at Risk;

(iii) Consolidated credit risk information, including:

(A) Aggregate current exposure and current exposures (including commitments) for the 15 largest exposures listed by counterparty;

(B) Aggregate maximum potential exposure and maximum potential exposures for the 15 largest exposures listed by counterparty; and

(C) A summary report reflecting the geographic distribution of the supervised investment bank holding company's exposures, on a consolidated basis, for each of the top ten countries to which it is exposed (by residence of the main operating group of the counterparty); and

(iv) Certain risk reports the supervised investment bank holding company regularly provides to the persons responsible for managing risk for the affiliate group that the Commission may request from time to time.

(2) A report as of the end of each fiscal quarter, filed not later than 35 calendar days after the end of the quarter, which shall include (except as provided in paragraph (a)(3) below):

(i) The information contained in the monthly report, as set forth in paragraph (1) above;

(ii) A consolidating balance sheet and income statement for the affiliate group, which shall break out information regarding each material affiliate into separate columns, but may consolidate information regarding affiliate group entities that are not material affiliates into one column;

(iii) The results of backtesting of all models used to compute allowable capital and allowances for market and credit risk indicating, for each model, the number of backtesting exceptions;

(iv) A description of all material pending legal or arbitration proceedings involving the supervised investment bank holding company or any member of the affiliate group that are required to be disclosed by the supervised investment bank holding company under generally accepted accounting principles; and

(v) The aggregate amount of unsecured borrowings and lines of credit, segregated into categories, scheduled to mature within twelve months from the most recent fiscal quarter as to each material affiliate.

(3) For a quarter-end that coincides with the supervised investment bank holding company's fiscal year-end, the supervised investment bank holding company need not include in its filing consolidated and consolidating balance sheets and income statements.

(b) *Organizational chart.* The supervised investment holding company shall file, concurrently with its quarterly report for the quarter-end that coincides with the supervised investment bank holding company's fiscal year-end, an organizational chart, as of the investment bank holding company's fiscal year end. Quarterly updates should be provided where a material change in the information provided to the Commission has occurred.

(c) *Additional reports.* Upon receiving notice from the Commission, the supervised investment bank holding company shall file other information as the Commission may request in order to monitor the supervised investment bank holding company's financial or operational condition, risk management system, and transactions and relationships among members of the affiliate group.

(d) *Annual audit report.* (1) A supervised investment bank holding company shall file an annual audit report as of the end of the supervised investment bank holding company's fiscal year, that includes:

(i) Consolidated financial statements (including notes to the financial statements) for the supervised investment bank holding company. The audited financial statements must include a supporting schedule containing statements of allowable capital and allowances for market, credit and operational risk computed in accordance with § 240.17i–7. The audit must be conducted by a registered public accounting firm (as that term is defined at 15 U.S.C. 7201(a)(12)) in accordance the rules promulgated by the Public Company Accounting Oversight Board; and

(ii) A supplemental report entitled ''Accountant's Report on Internal Risk Management Control System'' prepared by the registered public accounting firm (as that term is defined at 15 U.S.C. 7201(a)(12)) indicating the results of the accountant's review of the internal risk management control system established and documented by the supervised investment bank holding company in accordance with § 240.17i–4 and utilized by the affiliate group. This review must be conducted by the accountant in accordance with procedures agreed to by the supervised investment bank holding company and the accountant 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 internal risk management control system complies with the requirements of § 240.17i–4 and that the supervised investment bank holding company and its affiliate group are adhering to the requirements of that internal risk

management control system. The supervised investment bank holding company must file, prior to the commencement of the review, the procedures for conducting the audit agreed to by the supervised investment bank holding company and the accountant (pursuant to paragraph (d)(1) of this section). Prior to the commencement of each subsequent review, the supervised investment bank holding company shall file with the Commission a notice of any changes to the agreed-upon procedures.

(2) Annual audit reports prepared pursuant to this paragraph (d) shall be prepared as of the same date as the annual audit of the supervised investment bank holding company's affiliated broker or dealer.

(3) Annual audit reports prepared pursuant to this paragraph (d) shall be filed not later than 65 calendar days after the end of the fiscal year.

(e) *Consolidating Balance Sheet and Income Statement.* The supervised investment bank holding company shall file, concurrently with the annual audit report, an unaudited consolidating balance sheet and income statement, as of the supervised investment bank holding company's fiscal year-end, for the affiliate group.

(f) *Extensions and exemptions.* Upon the written request of the supervised investment bank holding company, or on its own motion, the Commission may conditionally or unconditionally grant or deny an extension of time or an exemption from any of the requirements of paragraphs (a) through (e) of this section to the extent that such exemption or extension of time is necessary or appropriate in the public interest or for the protection of investors.

(g) *When filed.* The reports required to be filed pursuant to this section shall be considered filed when two copies are received at the Commission's principal office in Washington, DC. The copies shall be addressed to the Division of Market Regulation, Office of Financial Responsibility.

(h) *Confidentiality.* All reports and statements filed by the supervised investment bank holding company with the Commission pursuant to this section shall be accorded confidential treatment to the extent permitted by law.

[69 FR 34494, June 21, 2004]

§ 240.17i–7 Calculations of allowable capital and risk allowances or alternative capital assessment.

(a) *Computation of allowable capital.* The supervised investment bank holding company must compute allowable capital on a consolidated basis as the aggregate of the following:

(1) Common shareholders' equity on the consolidated balance sheet of the supervised investment bank holding company less:

(i) Goodwill;

(ii) Deferred tax assets, except those permitted for inclusion in Tier 1 capital by the Board of Governors of the Federal Reserve (12 CFR 225, Appendix A);

(iii) Other intangible assets; and

(iv) Other deductions from common stockholders' equity as required by the Board of Governors of the Federal Reserve in calculating Tier 1 capital (as defined in 12 CFR 225, Appendix A).

(2) Cumulative and non-cumulative preferred stock, except that the amount of cumulative preferred stock may not exceed 33% of the items included in allowable capital pursuant to paragraph (a)(1) of this section, excluding cumulative preferred stock, provided that:

(i) The stock does not have a maturity date;

(ii) The stock cannot be redeemed at the option of the holder of the instrument;

(iii) The stock has no other provisions that will require future redemption of the issue; and

(iv) The issuer of the stock can defer or eliminate dividends; and

(3) The sum of the following items on the consolidated balance sheet, to the extent that sum does not exceed the sum of the items included in allowable capital pursuant to paragraphs (a)(1) and (a)(2) of this section:

(i) Cumulative preferred stock in excess of the 33% limit specified in paragraph (a)(2) and subject to the conditions of paragraphs (a)(2)(i) through (iv) of this section;

(ii) Subordinated debt if the original weighted average maturity of the subordinated debt is at least five years; each subordinated debt instrument states clearly on its face that repayment of the debt is not protected by any Federal agency or the Securities Investor Protection Corporation; the subordinated debt is unsecured and subordinated in right of payment to all senior indebtedness of the holding company; and the subordinated debt instrument permits acceleration only in the event of bankruptcy or reorganization of the holding company under Chapters 7 (liquidation) (11 U.S.C. 7) and 11 (reorganization) (11 U.S.C. 11) of the U.S. Bankruptcy Code; and

(iii) As part of the investment bank holding company's notice of intention, the investment bank holding company may request to include, for a period of three years after the adoption of this Rule (or such other period as the Commission may approve) long-term debt that has an original weighted average maturity of at least five years and that cannot be accelerated, except upon the occurrence of certain events as the Commission may approve. As part of an amendment to the investment bank holding company's notice of intention, the supervised investment bank holding company may request permission to include long-term debt that meets these criteria in allowable capital for an additional two years; and

(4) Hybrid capital instruments that are permitted for inclusion in Tier 2 capital by the Board of Governors of the Federal Reserve (12 CFR 225, Appendix A).

(b) *Allowance for market risk.* The supervised investment bank holding company must compute an allowance for market risk on a consolidated basis for all proprietary positions, including debt instruments, equity instruments, commodity instruments, foreign exchange contracts, and derivative contracts as the aggregate of the following:

(1) *Value at risk.* The Value at Risk measures obtained by applying one or more approved Value at Risk models to each position and multiplying the result by the appropriate multiplication factor. Each Value at Risk model shall meet the applicable qualitative and quantitative requirements set forth in § 240.15c3–1e(d); and

(2) *Alternative method.* For each position for which there is not adequate historical data to support a Value at Risk model, the measure obtained by computing the allowance for market risk using a method described in the supervised investment bank holding company's notice of intention that produces a suitable allowance for market risk for those positions.

(c) *Allowance for credit risk.* The supervised investment bank holding company must compute an allowance for credit risk for certain assets on the consolidated balance sheet and certain off-balance sheet items, including loans and loan commitments, exposures due to derivatives contracts, structured financial products, other extensions of credit, and credit substitutes in as follows:

(1) By multiplying the credit equivalent amount of the supervised investment bank holding company's exposure to the counterparty, as determined according to sub-paragraph (c)(1)(i) below, by the appropriate credit risk weight of the asset or off-balance sheet item or counterparty, as determined according to sub-paragraph (c)(1)(ii) below, then multiplying the product by 8%, in accordance with the following:

(i) *Credit equivalent amount:*

(A) *Certain loans and loan commitments receivable.* The credit equivalent amount for exposures relating to certain loans and loan commitments is determined by multiplying the nominal amount of the contract by the following credit conversion factors:

(*1*) 0% credit conversion factor for loan commitments that:

(*i*) May be unconditionally cancelled by the lender; or

(*ii*) May be cancelled by the lender due to credit deterioration of the borrower;

(*2*) 20% credit conversion factor for:

(*i*) Loan commitments of less than one year; or

(*ii*) Short term self-liquidating trade related contingencies, including letters of credit;

(*3*) 50% credit conversion factor for loan commitments with an original maturity of greater than one year that

contain transaction contingencies, including performance bonds, revolving underwriting facilities, note issuance facilities and bid bonds; and

(*4*) 100% credit conversion factor for loans and bankers' acceptances, standby letters of credit, and forward purchases of assets, and similar direct credit substitutes;

(B) *Receivables relating to derivative contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions.* The credit equivalent amount for exposures relating to derivative contracts, repurchase agreements, reverse repurchase agreements, stock loans, stock borrows, and other similar collateralized transactions is the sum of:

(*1*) The supervised investment bank holding company's current exposure to the counterparty (as defined in paragraph (c)(1)(i)(D) of this section); and

(*2*) The supervised investment bank holding company's maximum potential exposure to the counterparty (as defined in paragraph (c)(1)(i)(E) of this section) multiplied by the appropriate multiplication factor. The initial multiplication factor shall be one, unless the Commission determines pursuant to §240.17i–2(d)(2), based on a review of the supervised investment bank holding company's internal risk management control system and practices, including a review of the Value at Risk model used to determine maximum potential exposure, that another multiplication factor is appropriate;

(C) *Credit equivalent amount for other assets.* The credit equivalent amount for other assets shall be the book value of the exposure on the supervised investment bank holding company's consolidated balance sheet or other amount as determined according to the standards published by the Basel Committee on Banking Supervision, as amended from time to time;

(D) The *current exposure* is the current replacement value of a counterparty's positions, after applying the effect of netting agreements with that counterparty meeting the requirements of §240.15c3–1e(c)(4)(iv) and taking into account the value of collateral from the counterparty in accordance with §240.15c3–1e(c)(4)(v);

(E) The *maximum potential exposure* is the Value at Risk of the counterparty's positions with the member of the affiliate group, after applying netting agreements with that counterparty meeting the requirements of §240.15c3–1e(c)(4)(iv) and taking into account the value of collateral from the counterparty in accordance with §240.15c3–1e(c)(4)(v)) obtained using a Value at Risk model that meets the applicable requirements of §240.15c3–1e(d) and the current replacement value of the counterparty's positions with the member of the affiliate group, *Except that* for repurchase agreements, reverse repurchase agreements, stock lending and borrowing, and similar collateralized transactions, maximum potential exposure shall be calculated using a time horizon of not less than five days;

(ii) *Credit risk weights.*

(A) *General.* The credit risk weights that shall be applied to certain assets and counterparties shall be determined according to standards published by the Basel Committee on Banking Supervision, as modified from time to time;

(B) *Receivables covered by guarantees.* For the portion of a current exposure covered by a written guarantee, where that guarantee is an unconditional and irrevocable guarantee of the due and punctual payment and performance of the obligation and the supervised investment bank holding company or member of the affiliate group can demand payment after any payment is missed without having to make collection efforts, the supervised investment bank holding company or member of the affiliate group may substitute the credit risk weight of the guarantor for the credit risk weight of the counterparty; and

(iii) *Credit derivatives.* Upon a determination by the Commission pursuant to §240.17i–2(d), the supervised investment bank holding company may use credit derivatives to reduce its allowance for credit risk; or

(2) Upon a determination by the Commission pursuant to §240.17i–2(d), using a calculation consistent with standards published by the Basel Committee on Banking Supervision in International Convergence of Capital Measurement

and Capital Standards (July 1988), as modified from time to time;

(d) *Allowance for operational risk.* A supervised investment bank holding company shall compute an allowance for operational risk on a consolidated basis in accordance with the standards published by the Basel Committee on Banking Supervision, as amended from time to time.

[69 FR 34494, June 21, 2004]

§ 240.17i–8 Notification provisions for supervised investment bank holding companies.

(a) A supervised investment bank holding company shall send notice promptly (but within 24 hours), in accordance with paragraph (c) of this section, after the occurrence of the following events:

(1) The occurrence of any backtesting exception, determined in accordance with § 240.15c3–1e(d)(1)(iii) or (iv), that would require that the supervised investment bank holding company use a higher multiplication factor in the calculation of its allowances for market or credit risk;

(2) The early warning indications of low capital as the Commission may agree;

(3) A material affiliate declares bankruptcy or otherwise becomes insolvent;

(4) The supervised investment bank holding company becomes aware that a nationally recognized statistical rating organization has determined to reduce materially its assessment of the creditworthiness of a material affiliate or the credit rating(s) assigned to one or more outstanding short or long-term obligations of a material affiliate;

(5) The supervised investment bank holding company files a Form 8–K (§ 249.308) with the Commission;

(6) The supervised investment bank holding company becomes aware that any financial regulatory agency or self-regulatory organization has taken significant enforcement or regulatory action against a material affiliate; or

(7) The supervised investment bank holding company becomes ineligible to be supervised by the Commission as a supervised investment bank holding company.

(c) Every notice required to be given or transmitted pursuant to this section shall be given or transmitted by telegraphic notice or facsimile transmission to the Division of Market Regulation, Office of Financial Responsibility at the principal office of the Commission in Washington, DC. The notices filed under this section shall be accorded confidential treatment to the extent permitted by law.

(d) Upon the written request of the supervised investment bank holding company, or on its own motion, the Commission may conditionally or unconditionally grant or deny an extension of time or an exemption from any of the requirements of this Rule 17i–8 to the extent that such exemption or extension of time is necessary or appropriate in the public interest or for the protection of investors.

[69 FR 34494, June 21, 2004]

§ 240.17Ab2–1 Registration of clearing agencies.

(a) An application for registration or for exemption from registration as a clearing agency, as defined in section 3(a)(23) of the Act, or an amendment to any such application shall be filed with the Commission on Form CA–1, in accordance with the instructions thereto.

(b) Any applicant for registration or for exemption from registration as a clearing agency whose application is filed with the Commission on or before November 24, 1975, on and in accordance with the instructions to Form CA–1, with respect to the clearing agency activities described in the application shall, during the period from December 1, 1975 until the Commission grants registration, denies registration or grants an exemption from registration, be exempt from the registration provisions of section 17A(b) of the Act and the rules and regulations thereunder and, unless the Commission shall otherwise provide by rule or by order, the provisions of the Act and the rules and regulations thereunder which would be applicable to clearing agencies as a result of registration under the Act.

(c)(1) The Commission, upon the request of a clearing agency, may grant registration of the clearing agency in accordance with sections 17A(b) and

19(a)(1) of the Act but exempt the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to paragraphs (A) through (I) of section 17A(b)(3) of the Act, provided that any such registration shall be effective only for eighteen months from the date the registration is made effective (or such longer period as the Commission may provide by order).

(2) In the case of any clearing agency registered in accordance with paragraph (c)(1) of this section, not later than nine months from the date such registration is made effective the Commission either will grant registration in accordance with sections 17A(b) and 19(a)(1) of the Act, without exempting the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A) through (I) of section 17A(b)(3) of the Act, or will institute proceedings in accordance with section 19(a)(1)(B) of the Act to determine whether registration should be denied at the expiration of the registration granted in accordance with paragraph (c)(1) of this section.

(d) The filing of an amendment to an application for registration or for exemption from registration as a clearing agency, which registration or exemption has not been granted, or the filing of additional information or documents prior to the granting of registration or an exemption from registration shall extend to ninety days from the date such filing is made (or to such longer period as to which the applicant consents) the period within which the Commission shall grant registration, institute proceedings to determine whether such registration shall be denied, or conditionally or unconditionally exempt registrant from the registration and other provisions of section 17A of the Act or the rules or regulations thereunder.

(e) If any information reported at items 1–3 of Form CA–1 is or becomes inaccurate, misleading or incomplete for any reason, whether before or after registration or an exemption from registration has been granted, the registrant shall file promptly an amendment on Form CA–1 correcting the inaccurate, misleading or incomplete information.

(f) Every application for registration or for exemption from registration as a clearing agency or amendment to, or additional information or document filed in connection with, any such application shall constitute a ''report'' or ''application'' within the meaning of sections 17, 17A, 19 and 32(a) of the Act.

[40 FR 52358, Nov. 10, 1975]

§ 240.17Ac2–1 Application for registration of transfer agents.

(a) An application for registration, pursuant to section 17A(c) of the Act, of a transfer agent for which the Commission is the appropriate regulatory agency, as defined in section 3(a)(34)(B) of the Act, shall be filed with the Commission on Form TA–1, in accordance with the instructions contained therein and shall become effective on the thirtieth day following the date on which the application is filed, unless the Commission takes affirmative action to accelerate, deny or postpone such registration in accord- ance with the provisions of section 17A(c) of the Act.

(b) The filing of any amendment to an application for registration as a transfer agent pursuant to paragraph (a) of this section, which registration has not become effective, shall postpone the effective date of the registration until the thirtieth day following the date on which the amendment is filed, unless the Commission takes affirmative action to accelerate, deny or postpone the registration in accordance with the provisions of section 17A(c) of the Act.

(c) If any of the information reported on Form TA–1 or on the SEC Supplement becomes inaccurate, misleading, or incomplete, the registrant shall correct the information by filing an amendment within sixty days following the date on which the information became inaccurate, misleading, or incomplete.

(d) Every registration and amendment filed pursuant to this section shall constitute a ''report'' or ''application'' within the meaning of sections 17, 17A(c), and 32(a) of the Act.

[40 FR 51184, Nov. 4, 1975, as amended at 51 FR 12127, Apr. 9, 1986]

§ 240.17Ac2–2 Annual reporting requirement for registered transfer agents.

(a) Every transfer agent registered on December 31 must file a report covering the reporting period on Form TA–2 (§ 249b.102 of this chapter) by March 31 following the end of the reporting period. Form TA–2 must be completed in accordance with the instructions contained in the Form.

(1) A registered transfer agent that received fewer than 1,000 items for transfer in the reporting period and that did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period must complete Questions 1 through 5, 11, and the signature section of Form TA–2.

(2) A named transfer agent that engaged a service company to perform all of its transfer agent functions during the reporting period must complete Questions 1 through 3 and the signature section of Form TA–2.

(3) A named transfer agent that engaged a service company to perform some but not all of its transfer agent functions during the reporting period must complete all of Form TA–2 but should enter zero (0) for those questions that relate to transfer agent functions performed by the service company on behalf of the named transfer agent.

(b) For purposes of this section, the term *reporting period* shall mean the calendar year ending December 31 for which Form TA–2 is being filed. The term *named transfer agent* shall have the same meaning as defined in § 240.17Ad–9(j). The term *service company* shall have the same meaning as defined in § 240.17Ad–9(k).

(c) As a transition measure, transfer agents' next required Form TA–2 filing will be on March 31, 2001, which will cover their activities during calendar Year 2000. This will eliminate the filing for the period ending June 30, 2000, which would have been due on August 31, 2000.

[65 FR 36610, June 9, 2000]

§ 240.17Ac3–1 Withdrawal from registration with the Commission.

(a) Notice of withdrawal from registration as a transfer agent with the Commission pursuant to section 17A(c)(3)(C) of the Act shall be filed on Form TA-W in accordance with the instructions contained thereon.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by a transfer agent pursuant to section 17A(c)(3)(C) of the Act shall become effective on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of issuance of a Commission order instituting proceedings pursuant to section 17A(c)(3)(A) of the Act, or if prior to the effective date of the notice of withdrawal the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon such withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of section 17A.

(c) Every notice of withdrawal filed pursuant to this rule shall constitute a ''report'' within the meaning of sections 17 and 32(a) of the Act.

(Secs. 2, 17, 17A, and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 44984, Sept. 8, 1977]

§ 240.17Ad–1 Definitions.

As used in this section and §§ 240.17Ad–2, 240.17Ad–3, 240.17Ad–4, 240.17Ad–5, 240.17Ad–6, and 240.17Ad–7:

(a)(1) The term *item* means:

(i) A certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or an instruction to a transfer agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities;

(ii) Each line on a ''deposit shipment control list'' or a ''withdrawal shipment control list'' submitted by a registered clearing agency; or

(iii) In the case of an outside registrar, each certificate to be countersigned.

(2) If a ''deposit shipment control list'' or ''withdrawal shipment control list'' contains both routine and non-routine transfer instructions, a registered transfer agent shall at its option:

(i) Retain all transfer instructions listed on the shipment control list and treat each line on the shipment control list as a routine item; or

(ii) Return promptly to the registered clearing agency a shipment control list line containing non-routine transfer instructions (together with a copy of the shipment control list, an explanation for the return instructions and all routine transfer instructions reflected on the same line) and treat each line on the shipment control list that reflects retained transfer instructions as a routine item.

(3) A *deposit shipment control list* means a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a registered clearing agency.

(4) A *withdrawal shipment control list* means a list of instructions (either in paper or electronic medium) that:

(i) Directs issuance of certificates in the names of persons or entities other than the registered clearing agency; and

(ii) Accompanies certificates to be cancelled which are registered in the nominee name of a registered clearing agency, or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a registered clearing agency under that clearing agency's transfer agent custody program

(b) The term *outside registrar* with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(c) An item is *made available* when

(1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presentor or a person designated by the presentor, or

(2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or

(3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

(d) The *transfer* of an item is accomplished when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or when, in accordance with the presentor's instructions, a transfer agent which holds securities registered in the name of the presentor completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor or, with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(e) The *turnaround* of an item is completed when transfer is accomplished or, when an outside registrar is involved, the transfer agent in accordance with the presentor's instructions completes all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(f) The term *process* means the accomplishing by an outside registrar of

all acts necessary to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed.

(g) The *receipt* of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in section 3(a)(25) of the Act.

(h) A *business day* is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays, and legal holidays, or other holidays normally observed by the transfer agent.

(i) An item is *routine* if it does not (1) require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; (2) include a certificate as to which the transfer agent has received notice of a stop order, adverse claim, or any other restriction on transfer; (3) require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations, or opinions of counsel before transfer may be effected; (4) require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature, or other common and ordinary guarantees, or appropriate tax, or tax waivers; (5) involve a transfer in connection with a reorganization, tender offer, exchange, redemption, or liquidation; (6) include a warrant, right, or convertible security presented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change; (7) include a warrant, right, or convertible security presented for exercise or conversion; or (8) include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

(j) The term *depository-eligible securities issue* means an issue of securities that is eligible for deposit at any securities depository that is registered with the Commission under the Securities Exchange Act of 1934 as a clearing agency.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)); secs. 3, 17A and 23(a), 15 U.S.C. 78c, 78q–1 and 78w(a))

[42 FR 32411, June 24, 1977, as amended at 49 FR 40575, Oct. 17, 1984; 51 FR 36551, Oct. 14, 1986]

§ 240.17Ad–2 Turnaround, processing, and forwarding of items.

(a) Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month. For the purposes of this paragraph, items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(b) Every registered transfer agent acting as an outside registrar shall process at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of this section, ''items received'' shall not include any item enumerated in § 240.17Ad–1(i) (5), (6), (7), or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(c) Any registered transfer agent which fails to comply with paragraph (a) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of routine items and

the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turnaround in accordance with the requirements of paragraph (a) of this section, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(d) Any registered transfer agent which fails to comply with paragraph (b) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of items received for processing during the month, the number of items which the registered transfer agent failed to process in accordance with the requirements of paragraph (b) of this section, the percentage that such items represent of all items received during the month, the reasons for such failure and the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of items which as of the close of business on the last business day of the month have been in the transfer agent's possession for more than the time allowed for processing and have not been processed.

(e)(1) Except as provided in paragraph (e)(2) of this section, all routine items not turned around within three business days of receipt as required by paragraph (a) of this section and all items not processed within the periods required by paragraph (b) of this section shall be turned around promptly, and all nonroutine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(2) A transfer agent that is exempt under §240.17Ad–4(b) and that has received 30 days notice of depository-eligibility of an issue for which it performs transfer agent functions shall turnaround ninety percent of all routine items received during a month within five business days of receipt. Such transfer agent shall devote diligent and continuous attention to the remaining ten percent of routine items and shall turnaround these items as soon as possible.

(f) A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(g) A registered transfer agent which receives processed items from an outside registrar shall have appropriate procedures to assure, and shall assure, that such items are made available promptly to the presentor.

(h) Any notice required by this section or §240.17Ad–4 shall be filed as follows:

(1) Any notice required to be filed with the Commission shall be filed in triplicate with the principal office of the Commission in Washington, DC 20549 and, in the case of a registered transfer agent for which the Commission is the appropriate regulatory agency, an additional copy shall be filed with the Regional or District Office of the Commission for the region or district in which the registered transfer agent has its principal office for transfer agent activities.

(2) Any notice required to be filed with the Comptroller of the Currency shall be filed with the Office of the Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219.

(3) Any notice required to be filed with the Board of Governors of the Federal Reserve System shall be filed with the Board of Governors of the Federal Reserve System, Washington, DC 20251 and with the Federal Reserve Bank of the district in which the registered transfer agent's principal banking operations are conducted.

(4) Any notice required to be filed with the Federal Deposit Insurance

Corporation shall be filed with the Federal Deposit Insurance Corporation, Washington, DC 20429.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)); secs. 3, 17A and 23(a), 15 U.S.C. 78c, 78q–1, and 78w(a))

[42 FR 32412, June 24, 1977, as amended at 49 FR 40575, Oct. 17, 1984; 59 FR 5946, Feb. 9, 1994]

§ 240.17Ad–3 Limitations on expansion.

(a) Any registered transfer agent which is required to file any notice pursuant to § 240.17Ad–2 (c) or (d) for each of three consecutive months shall not from the fifth business day after the end of the third such month until the end of the next following period of three successive months during which no such notices have been required:

(1) Initiate the performance of any transfer agent function or activity for an issue for which the transfer agent does not perform, or is not under agreement to perform, transfer agent functions prior to such fifth business day; and

(2) With respect to an issue for which transfer agent functions are being performed on such fifth business day, initiate for that issue the performance of an additional transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to such fifth business day.

(b) Any registered transfer agent which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of § 240.17Ad–2(a) or to process at least 75% of all items in accordance with the requirements of § 240.17Ad–2(b) shall be subject to the limitations imposed by paragraph (a) of this section and further shall, within twenty business days after the close of the second such month, send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice filed pursuant to § 240.17Ad–2 (c) or (d) with respect to the second such month.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32412, June 24, 1977]

§ 240.17Ad–4 Applicability of §§ 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11).

(a) Sections 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(b)(1) For purposes of this section, *exempt transfer agent* means a transfer agent that during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing.

(2) Except as provided in paragraph (c) of this section, an exempt transfer agent that satisfies the requirements of paragraph (b)(3) shall be exempt from the provisions of §§ 240.17Ad–2 (a), (b), (c), (d) and (h), 240.17Ad–3 and 240.17Ad–6(a) (2) through (7) and (11).

(3) Within ten business days following the close of the sixth consecutive month described in paragraph (b)(1) of this section, an exempt transfer agent shall:

(i) If its appropriate regulatory agency is either the Commission or the Office of the Comptroller of the Currency, prepare and maintain in its possession a document certifying that the transfer agent qualifies as exempt under paragraph (b)(1) of this section; or

(ii) If its appropriate regulatory agency is either the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation, file with the appropriate regulatory agency a notice certifying that it qualifies as exempt under paragraph (b)(1) of this section.

(c) Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent no longer qualifies as such under paragraph (b)(1), within ten business days after the end of such month: (1) It shall prepare and maintain in its possession a document so stating, if subject to paragraph (b)(3)(i) of this section; or (2)

it shall file with its appropriate regulatory agency a notice to that effect, if subject to paragraph (b)(3)(ii) of this section. Thereafter, beginning with the first month following the month in which such document is required to be prepared or such notice is required to be filed, the registered transfer agent no longer shall be exempt under paragraph (b) of this section. Any registered transfer agent which has ceased to be an exempt transfer agent under this paragraph shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing sections for six consecutive months following the month in which it was required to prepare the document or prepare and file the notice specified in this paragraph.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32413, June 24, 1977, as amended at 48 FR 28246, June 21, 1983]

§ 240.17Ad–5 Written inquiries and requests.

(a) When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(b) When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket with respect to such security and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall, within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(c) When any person, or anyone acting under his authority, requests in writing that a transfer agent confirm possession as of a given date of a certificate presented by such person during the 30 days before the date the inquiry is received and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which the certificate was registered, every registered transfer agent shall, within ten business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available a written response to such person, or anyone acting under his authority, confirming or denying possession of such security as of such given date.

(d) When any person requests in writing a transcript of such person's account with respect to a particular issue, either as the account appears currently or as it appeared on a specific date not more than six months

prior to the date the registered transfer agent receives the request, every registered transfer agent shall, within twenty business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available to such person a transcript, ledger or statement of account in sufficient detail to permit reconstruction of such account as of the date for which the transcript was requested.

(e)(1) *Response to written inquiries concerning dividend and interest payments.* A registered transfer agent shall respond, within ten business days of receipt, to current claims that contain sufficient detail. A registered transfer agent shall respond, within twenty business days of receipt, to aged claims that contain sufficient detail. The response shall indicate in writing that the inquiry has been received, whether the claim requires further research and, if so, a reasonable estimate of how long that research may take. If no further research is required, the response shall indicate whether that claim is being or will be paid and, if not, the reason for not paying the claim. A registered transfer agent shall devote diligent attention to unresolved inquiries and shall resolve all inquiries as soon as possible.

(2) *Misdirected written inquiries concerning dividend and interest payments.* In the event that a transfer agent is not the dividend disbursing or interest paying agent for an issue that is the subject of a claim under this section, but performed those or any transfer agent services for that issue within the preceding three years, the transfer agent shall provide in writing to the inquirer, within ten business days of receipt of the inquiry, the name and address of the current dividend disbursing or interest paying agent. If the transfer agent did not perform those or other transfer agent services for the issue within the preceding three years, the transfer agent must respond to the inquiry and may respond by returning the inquiry with a statement that the transfer agent is not the current dividend disbursing or interest paying agent and that it does not know the name and address of the current dividend disbursing or interest paying agent.

(3) As used in this paragraph:

(i) A *current claim* means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred within the preceding six months.

(ii) An *aged claim* means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred more than six months before the inquiry.

(iii) *Sufficient detail* means a written inquiry or request that identifies: The issue; the name(s) in which the securities are registered; the number of shares (or principal amount of debt securities or number of units for any other kind of security) involved; the approximate record date(s) or payment date(s) relating to the claim; and, with respect to registered broker-dealers, registered clearing agencies, or banks, certificate numbers.

(f) *Telephone response.* (1) A transfer agent may satisfy the written response requirements of this section by a telephone response to the inquirer if:

(i) The telephone response resolves that inquiry; and

(ii) The inquirer does not request a written response.

(2) When any person makes a written inquiry or request that would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii) of this section, a registered transfer agent may telephone the inquirer to obtain the necessary additional detail within the time periods specified in paragraph (e)(1) of this section. If the transfer agent does not receive the additional detail within ten business days, the transfer agent immediately shall make a written request for the additional information.

(g)(1) When any person makes a written inquiry or request which would qualify under paragraph (a), (b), (c), or (d) of this section except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent

shall confirm promptly receipt of the inquiry or request and respond to it as soon as possible.

(2) When any person makes a written inquiry or request which would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii) of this section, a registered transfer agent must respond to the inquiry within the time periods specified in paragraph (e)(1) of this section. A registered transfer agent may respond to such an inquiry in accordance with paragraph (e)(1) of this section as though sufficient detail had been provided, or may return it to the inquirer, requesting the additional necessary details.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32413, June 24, 1977, as amended at 51 FR 5707, Feb. 18, 1986]

§ 240.17Ad–6 Recordkeeping.

(a) Every registered transfer agent shall make and keep current the following:

(1) A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar;

(2) A log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the month that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month;

(3) With respect to items for which the registered transfer agent acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (*1*) received from the presenting transfer agent and (*2*) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by § 240.17Ad–2(b); and

(C) The number of items not processed within the time required by § 240.17Ad–2(b);

(4) A record of calculations demonstrating the registered transfer agent's monitoring of its performance under § 240.17Ad–2 (a) and (b);

(5) A copy of any written notice filed pursuant to § 240.17Ad–2;

(6) Any written inquiry or request, including those not subject to the requirements of § 240.17Ad–5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request under § 240.17Ad–5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry;

(7) A log, journal, schedule or other record showing the number of inquiries subject to § 240.17Ad–5 (a), (b), (c) and (d) received during each month but not responded to within the required time

frames and the number of such inquiries pending as of the close of business on the last business day of each month;

(8) Any document, resolution, contract, appointment or other writing, any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer;

(9) Any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer;

(10) A copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

(11) Any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under §240.17Ad–1(i) (5) or (8).

(b) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization.

(c) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presentor.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32413, June 24, 1977]

§ 240.17Ad–7 Record retention.

(a) The records required by §240.17Ad–6(a)(1), (3)(i), (6) or (11) shall be maintained for a period of not less than two years, the first six months in an easily accessible place.

(b) The records required by §240.17Ad–6(a) (2), (3)(ii), (4), (5) or (7) shall be maintained for a period of not less than two years, the first year in an easily accessible place.

(c) The records required by §240.17Ad–6(a) (8), (9) and (10) and (b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(d) The records required by §240.17Ad–6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(e) Every registered transfer agent shall maintain in an easily accessible place:

(1) All records required under §240.17f–2(d) until at least three years after the termination of employment of those persons required by §240.17f–2 to be fingerprinted; and

(2) All records required pursuant to §240.17f–2(e).

(f) Subject to the conditions set forth in this section, the records required to be maintained pursuant to §240.17Ad–6 may be retained using electronic or micrographic media and may be preserved in those formats for the time required by §240.17Ad–7. Records stored electronically or micrographically in accordance with this paragraph may serve as a substitute for the hard copy records required to be maintained pursuant to §240.17Ad–6.

(1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium.

(ii) The term *electronic storage media* means any digital storage medium or system.

(iii) The term *ARA* means your appropriate regulatory agency as that term is defined in 15 U.S.C. 78c(a)(34).

(2) If you as a registered transfer agent use electronic storage media or micrographic media to store your records, you must:

(i) Have available at all times for examination by the staffs of the Commission and of your ARA facilities to project or produce immediately easily readable images of such records;

(ii) Be ready at all times to provide such records that the staffs of the Commission and your ARA or their representatives may request;

(iii) Create an accurate index of such records, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and your ARA;

(iv) Have quality assurance procedures to verify the quality and accuracy of the electronic or micrographic recording process; and

(v) Maintain separately from the originals duplicates of the records and the index that you store on electronic storage media or micrographic media. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate records and index for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and your ARA.

(3) Any electronic storage media that you use to store your records must:

(i) Ensure the security and integrity of the records by means of manual and automated controls that assure the authenticity and quality of the electronic facsimile, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records resulting from any cause;

(ii) Externally label all removable units of storage media using a unique identifier that allows the manual association of that removable storage unit with its place and order in the record-keeping system; and

(iii) Uniquely identify files and internally label each file with its unique name, the date and time of file creation, the date and time of last modification or extension, and a file sequence number when the file spans more than one volume.

(4) If you use electronic storage media or micrographic media to store your records, you must establish an audit system that accounts for the inputting of and any changes to every record that is stored on electronic storage media or micrographic media. The results of such audit system must:

(i) Be available at all times for examination by the staffs of the Commission and your ARA; and

(ii) Be preserved for the same time that is required by this section for the underlying records.

(5) If you use electronic storage media or micrographic media to store your records, you must:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and your ARA all information necessary to access the records and indexes stored on electronic storage media or micrographic media; and

(ii) Place, or have a third party place on your behalf, in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes. The independent escrow agent must file an undertaking signed by a duly authorized person with the Commission and your ARA stating that:

''[Name of Third Party] hereby undertakes to furnish promptly upon request to the U.S. Securities and Exchange Commission, its designees, or representatives, upon reasonable request, a current copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access the records and indexes of [Name of Transfer Agent]'s electronic records management system.

(6) (i) If you use a third party to maintain or preserve some or all of the required records using electronic storage media or micrographic media, such third party shall file a written undertaking signed by a duly authorized person with the Commission and your ARA stating that:

''With respect to any books and records maintained or preserved on behalf of [Name of Transfer Agent], [Name of Third Party] 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 U.S. Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.''

(ii) Agreement with a third party to maintain your records shall not relieve you from the responsibility to prepare and maintain records as specified in this section or in § 240.17Ad–6.

(g) If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of §§ 240.17Ad–6 and 240.17Ad–7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent if it is not the Commission; and

(2) The outside service bureau, recordkeeping service, or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad–7 to retain the records required to be made and kept current under § 240.17Ad–6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(i) The records required by §§ 240.17Ad–17(c) and 240.17Ad–19(c) shall be maintained for a period of not less than three years, the first year in an easily accessible place.

[42 FR 32414, June 24, 1977, as amended at 47 FR 54063, Dec. 1, 1982; 62 FR 52237, Oct. 7, 1997; 66 FR 21659, May 1, 2001; 68 FR 74401, Dec. 23, 2003; 68 FR 75054, Dec. 29, 2003]

§ 240.17Ad–8 Securities position listings.

(a) For purposes of this section, the term *securities position listing* means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

(Secs. 2, 17A, and 23(a) (15 U.S.C. 78b, 78q–1, and 78w(a)))

[44 FR 76777, Dec. 28, 1979]

§ 240.17Ad–9 Definitions.

As used in this section and §§ 240.17Ad–10, 240.17Ad–11, 240.17Ad–12 and 240.17Ad–13:

(a) *Certificate detail*, with respect to certificated securities, includes, at a minimum, all of the following, and with respect to uncertificated securities, includes items (2) through (8):

(1) The certificate number.

(2) The number of shares for equity securities or the principal dollar amount for debt securities;

(3) The securityholder's registration;

(4) The address of the registered securityholder;

(5) The issue date of the security;

(6) The cancellation date of the security;

(7) In the case of redeemable securities of investment companies, an appropriate description of each debit and credit (*i.e.*, designation indicating purchase, redemption, or transfer); and

(8) Any other identifying information about securities and securityholders the transfer agent reasonably deems essential to its recordkeeping system for the efficient and effective research of record differences.

(b) *Master securityholder file* is the official list of individual securityholder accounts. With respect to uncertificated securities of companies registered under the Investment Company Act of 1940, the master securityholder file may consist of multiple, but linked, automated files.

(c) A *subsidiary file* is any list or record of accounts, securityholders, or certificates that evidences debits or credits that have not been posted to the master securityholder file.

(d) A *control book* is the record or other document that shows the total number of shares (in the case of equity securities) or the principal dollar amount (in the case of debt securities) authorized and issued by the issuer.

(e) A *credit* is an addition of appropriate certificate detail to the master securityholder file.

(f) A *debit* is a cancellation of appropriate certificate detail from the master securityholder file.

(g) A *record difference* occurs when either:

(1) The total number of shares or total principal dollar amount of securities in the master securityholder file does not equal the number of shares or principal dollar amount in the control book; or

(2) The security transferred or redeemed contains certificate detail different from the certificate detail currently on the master securityholder file, which difference cannot be immediately resolved.

(h) A *recordkeeping transfer agent* is the registered transfer agent that maintains and updates the master securityholder file.

(i) A *co-transfer agent* is the registered transfer agent that transfers securities but does not maintain and update the master securityholder file.

(j) A *named transfer agent* is the registered transfer agent that is engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company to perform some or all of those functions.

(k) A *service company* is the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent.

(l) A *file* includes automated and manual records.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28246, June 21, 1983]

§ 240.17Ad–10 Prompt posting of certificate detail to master securityholder files, maintenance of accurate securityholder files, communications between co-transfer agents and recordkeeping transfer agents, maintenance of current control book, retention of certificate detail and "buy-in" of physical overissuance.

(a)(1) Every recordkeeping transfer agent shall promptly and accurately post to the master securityholder file debits and credits containing minimum and appropriate certificate detail representing every security transferred, purchased, redeemed or issued; *Provided*, *however*, That if a security transferred or redeemed contains certificate detail different from that currently posted to the master securityholder file, the credit shall be posted to the master securityholder file and the debit and related certificate detail shall be maintained in a subsidiary file until resolved. The recordkeeping transfer agent shall exercise diligent and continuous attention to resolve the resulting record difference and, once resolved, shall post to the master securityholder file the debit maintained in the subsidiary file. Postings of certificate detail shall remain on the master securityholder file until a debit to a securityholder acount is appropriate.

(2) As used in this paragraph, the term *promptly* means the following number of days after issuance, purchase, transfer, or redemption of a security:

(i) With respect to recordkeeping transfer agents (other than transfer agents that perform transfer agent functions with respect to redeemable securities issued by investment companies registered under section 8 of the Investment Company Act of 1940) that are exempt transfer agents under § 240.17Ad–4(b), 30 calendar days;

(ii) With respect to recordkeeping transfer agents (other than transfer agents that perform transfer agent

functions with respect to redeemable securities issued by investment companies registered under section 8 of the Investment Company Act of 1940) that:

(A) Perform transfer agent functions solely for their own or their affiliated companies' securities issues, and

(B) Employ batch posting systems, ten business days; and

(iii) With respect to all other recordkeeping transfer agents, five business days;

Provided, however, That all securities transferred, purchased, redeemed or issued prior to record date, but posted subsequent thereto, shall be posted as of the record date.

(3) With respect to posting certificate detail from transfer journals received by the recordkeeping transfer agent from a co-transfer agent, the time frames set forth in paragraph (a)(2) shall commence upon receipt of those journals by the recordkeeping transfer agent.

(b) Every recordkeeping transfer agent shall maintain and keep current an accurate master securityholder file and subsidiary files. If such transfer agent has any record difference, its master securityholder file and subsidiary files must accurately represent all relevant debits and credits until the record difference is resolve. The recordkeeping transfer agent shall exercise diligent and continuous attention to resolve all record differences.

(c)(1) Every co-transfer agent shall dispatch or mail promptly to the recordkeeping transfer agent a record of debits and credits for every security transferred or issued. For the purposes of this paragraph, ''promptly'' means within two business days following transfer of each security, and, with respect to transfers occurring within five business days of record date, daily.

(2) Within three business days following the end of each month, every co-transfer agent shall mail to the recordkeeping transfer agent for each issue of securities for which it acts as a co-transfer agent, a report setting forth:

(i) The principal dollar amount of debt securities or the number of shares and related market value of equity securities comprising any buy-in executed by the co-transfer agent during the preceding month pursuant to paragraph (g) of this section; and

(ii) The reason for the buy-in.

(d) Every co-transfer agent shall respond promptly to all inquiries from the recordkeeping transfer agent regarding records required to be dispatched or mailed by the co-transfer agent pursuant to § 240.17Ad–10(c). For the purposes of this paragraph, ''promptly'' means within five business days of receipt of an inquiry from a recordkeeping transfer agent.

(e) Every recordkeeping transfer agent shall maintain and keep current an accurate control book for each issue of securities. A change in the control book shall not be made except upon written authorization from a duly authorized agent of the issuer.

(f) Every recordkeeping transfer agent shall retain a record of all certificate detail deleted from the master securityholder file for a period of six years from the date of deletion. In lieu of maintaining a hard copy, a recordkeeping transfer agent may comply with this paragraph by complying with § 240.17Ad–7(f) or § 240.17Ad–7(g).

(g)(1) A registered transfer agent, in the event of any actual physical overissuance that such transfer agent caused and of which it has knowledge, shall, within 60 days of the discovery of such overissuance, buy in securities equal to the number of shares in the case of equity securities or the principal dollar amount in the case of debt securities. During the sixty-day period, the registered transfer agent shall devote diligent attention to resolving the overissuance and recovering the certificates. This paragraph requires a buy-in only by the transfer agent that erroneously issued the certificate(s) giving rise to the physical overissuance, and applies only to those physical overissuances created by transfers or issuances subsequent to September 30, 1983.

(2) If a transfer agent obtains a letter from the party holding the overissued certificates that confirms that the overissued certificate(s) will be returned to the transfer agent not later than thirty days after the expiration of the sixty-day period, the transfer agent need not buy in securities by the sixtieth day. If, however, the certificate(s)

are not returned to the transfer agent within the additional thirty-day period, the transfer agent immediately must execute the buy-in in accordance with paragraph (g)(1) of this section.

(3) If the certificates involved are covered by a surety bond indemnifying the transfer agent for all expenses incurred as a result of actual overissuance, the transfer agent need not buy in the securities. The transfer agent, however, shall devote diligent attention to resolving the overissuance and recovering the certificates.

(4) For purposes of this paragraph, *discovery of the overissuance* occurs when the transfer agent identifies the erroneously issued certificate(s) and the registered securityholder(s).

(h) Subsequent to the effective date of this section, registered transfer agents that:

(1) Assume the maintenance and updating of master securityholder files from predecessor transfer agents,

(2) Establish a new master securityholder file for a particular issue, or

(3) Convert from manual to automated systems,

must carry over any existing certificate detail required by this section on the master securityholder file.

A recordkeeping transfer agent shall not be required to add certificate detail to the master securityholder file respecting certificates issued prior to the effective date of this section.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28246, June 21, 1983, as amended at 51 FR 5708, Feb. 18, 1986]

§ 240.17Ad–11 Reports regarding aged record differences, buy-ins and failure to post certificate detail to master securityholder and subsidiary files.

(a) *Definitions.* (1) *Issuer capitalization* means the market value of the issuer's authorized and outstanding equity securities or, with respect to a municipal securities issuer, the market value of all debt issues for which the transfer agent performs recordkeeping functions on behalf of that issuer, determined by reference to the control book and current market prices.

(2) An *aged record difference* is a record difference that has existed for more than thirty calendar days.

(b) *Reports to Issuers.* (1) Within ten business days following the end of each month, every recordkeeping transfer agent shall report the information specified in paragraph (d)(1) of this section to the persons specified in paragraph (b)(3) of this section, when the aggregate market value of aged record differences in all equity securities issues or debt securities issues maintained on behalf of a particular issuer exceeds the thresholds set forth in the table below.

Issuer capitalization	Aggregate market value of aged record differences exceeds	
	For equity securities	For debt securities
(1) $5 million or less	$50,000	$100,000
(2) Greater than $5 million but less than $50 million	250,000	500,000
(3) Greater than $50 million but less than $150 million	500,000	1,000,000
(4) Greater than $150 million	1,000,000	2,000,000

(2) Within ten business days following the end of each month (or within ten days thereafter in the case of a named transfer agent that receives a report from a service company pursuant to paragraph (b)(3)(i)(**C**)), every recordkeeping transfer agent shall report the information specified in paragraph (d)(2) of this section to the persons specified in paragraph (b)(3) of this section, with respect to each issue of securities for which it acts as recordkeeping transfer agent, concerning any securities bought-in pursuant to § 240.17Ad–10(g) or reported as bought-in pursuant to § 240.17Ad–10(c) during the preceding month.

(3) The report shall be sent:

(i) By every recordkeeping transfer agent (other than a recordkeeping transfer agent that performs transfer agent functions solely for its own securities):

(A) To the official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists or for which the buy-in occurred;

(B) With respect to an issue of municipal securities, to the chief financial officer of the issuer of the securities for

which the aged record difference exists or for which the buy-in occurred; or

(C) If it acts as a service company, to the named transfer agent; and

(ii) By every named transfer agent that is engaged by an issuer to maintain and update the master securityholder file:

(A) To the official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists or for which the buy-in occurred; or

(B) With respect to an issue of municipal securities, to the chief financial officer of the issuer of the securities for which the aged record difference exists or for which the buy-in occurred.

(c) *Reports to appropriate regulatory agencies* (1) Within ten business days following the end of each calendar quarter, every recordkeeping transfer agent shall report the information specified in paragraph (d)(1) of this section to its appropriate regulatory agency in accordance with §240.17Ad–2(h), when the aggregate market value of aged record differences for all issues for which it performs recordkeeping functions exceeds the thresholds specified below:

(i) $300,000 if it is a recordkeeping transfer agent for 5 or fewer issues;

(ii) $500,000 for 6–24 issues;

(iii) $800,000 for 25–49 issues;

(iv) $1 million for 50–74 issues;

(v) $1.2 million for 75–99 issues;

(vi) $1.4 million for 100–499 issues;

(vii) $1.6 million for 500–999 issues;

(viii) $2.6 million for 1,000–1,999 issues; and

(ix) An additional $1 million for each additional 1,000 issues.

(2) Within ten business days following the end of each calendar quarter, every recordkeeping transfer agent shall report the information specified in paragraph (d)(2) of this section to its appropriate regulatory agency in accordance with §240.17Ad–2(h), concerning buy-ins of all issues for which it acts as recordkeeping transfer agent, when the aggregate market value of all buy-ins executed pursuant to §240.17Ad–10(g) during that calendar quarter exceeds $100,000.

(3) When the recordkeeping transfer agent has any debits or credits for securities transferred, purchased, redeemed or issued that are unposted to the master securityholder and/or subsidiary files for more than five business days after debits and credits are required to be posted to the master securityholder file or subsidiary files pursuant to §240.17Ad–10, it shall immediately report such fact to its appropriate regulatory agency in accordance with §240.17Ad–2(h) and shall state in that report what steps have been, and are being, taken to correct the situation.

(d) *Content of reports.* (1) Each report pursuant to paragraphs (b)(1) and (c)(1) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount and related market value of debt securities or the number of shares and related market value of equity securities comprising the aged record difference (including information concerning aged record differences existing as of the effective date of this section);

(ii) The reasons for the aged record difference; and

(iii) The steps being taken or to be taken to resolve the aged record difference.

(2) Each report pursuant to paragraphs (b)(2) and (c)(2) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount of debt securities and related market value or the number of shares and related market value of equity securities comprising any buy-in executed pursuant to §240.17Ad–10(g);

(ii) The party that executed the buy-in; and

(iii) The reason for the buy-in.

(e) For purposes of this section, the market value of an issue shall be determined as of the last business day on which market value information is available during the reporting period.

(f) A copy of any report required under this section shall be retained by the reporting transfer agent for a period of not less than three years, the first year in an easily accessible place.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28247, June 21, 1983]

§ 240.17Ad–12 Safeguarding of funds and securities.

(a) Any registered transfer agent that has custody or possession of any funds or securities related to its transfer agent activities shall assure that:

(1) All such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad-19); and

(2) All such funds are protected, in light of all facts and circumstances, against misuse. In evaluating which particular safeguards and procedures must be employed, the cost of the various safeguards and procedures as well as the nature and degree of potential financial exposure are two relevant factors.

(b) For purposes of this section, the term *securities* shall have the same meaning as the term *securities certificate* as defined in § 240.17f–1(a)(6).

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28248, June 21, 1983, as amended at 68 FR 74401, Dec. 23, 2003]

§ 240.17Ad–13 Annual study and evaluation of internal accounting control.

(a) *Accountant's report.* Every registered transfer agent, except as provided in paragraph (d) of this section, shall file annually with the Commission and the transfer agent's appropriate regulatory agency in accordance with § 240.17Ad–2(h), a report specified in paragraph (a)(1) of this section prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That report shall be filed within 90 calendar days of the date of the study and evaluation set forth in paragraph (a)(1).

(1) The accountant's report shall:

(i) State whether the study and evaluation was made in accordance with generally accepted auditing standards using the criteria set forth in paragraph (a)(3) of this section;

(ii) Describe any material inadequacies found to exist as of the date of the study and evaluation and any corrective action taken, or if no material inadequacy existed, the report shall so state;

(iii) Comment on the current status of any material inadequacy described in the immediately preceding report; and

(iv) Indicate the date of the study and evaluation.

(2) The study and evaluation of the transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds shall cover the following:

(i) Transferring securities related to changes of ownership (*i.e.*, cancellation of certificates or other instruments evidencing prior ownership and issuance of certificates or instruments evidencing current ownership);

(ii) Registering changes of ownership on the books and records of the issuer;

(iii) Transferring record ownership as a result of corporate actions (*e.g.*, issuance, retirement, redemption, liquidation, conversion, exchange, tender offer or other types of reorganization);

(iv) Dividend disbursement or interest paying-agent activities;

(v) Administering dividend reinvestment programs; and

(vi) Distributing statements respecting initial offerings of securities.

(3) For purposes of this report, the objectives of a transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds should be to provide reasonable, but not absolute, assurance that securities and funds are safeguarded against loss from unauthorized use or disposition and that transfer agent activities are performed promptly and accurately. For purposes of this report, a material inadequacy is a condition for which the independent accountant believes that the prescribed procedures or the degree of compliance with them do not reduce to a relatively low level the risk that errors or irregularities, in amounts that would have a significant adverse effect on the transfer agent's ability promptly and accurately to

transfer record ownership and safeguard related securities and funds, would occur or not be detected within a timely period by employees in the normal course of performing their assigned functions. Occurrence of errors or irregularities more frequently than in isolated instances may be evidence that the system has a material inadequacy. A significant adverse effect on a transfer agent's ability promptly and accurately to transfer record ownership and safeguard related securities and funds could result from any condition or conditions that individually, or taken as a whole, would reasonably be expected to:

(i) Inhibit the transfer agent from promptly and accurately discharging its responsibilities under its contractual agreement with the issuer;

(ii) Result in material financial loss to the transfer agent; or

(iii) Result in a violation of § 240.17Ad–2, 17Ad–10 or 17Ad–12(a).

(b) *Notice of corrective action.* If the accountant's report describes any material inadequacy, the transfer agent shall, within sixty calendar days after receipt of the report, notify the Commission and its appropriate regulatory agency in writing regarding the corrective action taken or proposed to be taken.

(c) *Record retention.* The accountant's report and any documents required by paragraph (b) of this section shall be maintained by the transfer agent for at least three years, the first year in an easily accessible place.

(d) *Exemptions.* The requirements of § 240.17Ad–13 shall not apply to registered transfer agents that qualify for exemptions pursuant to this paragraph, 17Ad–13(d).

(1) A registered transfer agent shall be exempt if it performs transfer agent functions solely for:

(i) Its own securities;

(ii) Securities issued by a subsidiary in which it owns 51% or more of the subsidiary's capital stock; and

(iii) Securities issued by another corporation that owns 51% or more of the capital stock of the registered transfer agent.

(2) A registered transfer agent shall be exempt if it:

(i) Is an exempt transfer agent pursuant to § 240.17AD–4(b); and

(ii) In the case of a transfer agent that performs transfer agent functions for redeemable securities issued by companies registered under section 8 of the Investment Company Act of 1940, maintains master securityholder files consisting of fewer than 1000 shareholder accounts, in the aggregate, for each of such issues for which it performs transfer agent functions.

(3) A registered transfer agent shall be exempt if it is a bank or financial institution subject to regulation by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, provided that it is not notified to the contrary by its appropriate regulatory agency and provided that a report similar in scope to the requirements of § 240.17Ad–13(a) is prepared for either the bank's board of directors or an audit committee of the board of directors.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28248, June 21, 1983]

§ 240.17Ad–14 Tender agents.

(a) *Establishing book-entry depository accounts.* When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depositary, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to

transmittal letters and other documentation and for purposes of allowing tender agents to return to depository participants by book-entry movement securities withdrawn from the offer.

(b) *Exclusions.* The rule shall not apply to tender or exchange offers (1) that are made for a class of securities of a subject company that has fewer than (i) 500 security holders of record for that class, or (ii) 500,000 shares of that class outstanding; or (2) that are made exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this rule, (1) the terms *subject company*, *business day*, *security holders*, and *transmittal letter* shall be given the meanings provided in § 240.14d–1(b); (2) unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d–2; (3) the term *bidder* shall mean any person who makes a tender or exchange offer or on whose behalf a tender or exchange offer is made; (4) a *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Securities Exchange Act of 1934 to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository; and (5) the term *depositary* refers to that agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer.

(d) *Exemptions.* The Commission may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any registered transfer agent, tender or exchange offer, or class of tender or exchange offers, if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of impediments to a national clearance and settlement system.

(Secs. 2, 11A(a)(1)(B), 14(d)(4), 15(c)(3), 15(c)(6), 17A(a), 17A(d)(1), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78k–1(a)(1)(B), 78n(d)(4), 78o(c)(3), 78o(c)(6), 78q–1(a), 78q–1(d)(1) and 78w(a)))

[49 FR 3071, Jan. 25, 1984]

§ 240.17Ad–15 Signature guarantees.

(a) *Definitions.* For purposes of this section, the following terms shall mean:

(1) *Act* means the Securities Exchange Act of 1934;

(2) *Eligible Guarantor Institution* means:

(i) Banks (as that term is defined in section 3(a) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)]);

(ii) Brokers, dealers municipal securities dealers, municipal securities brokers, government securities dealers, and government securities brokers, as those terms are defined under the Act;

(iii) Credit unions (as that term is defined in Section 19 (b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]);

(iv) National securities exchanges, registered securities associations, clearing agencies, as those terms are used under the Act; and

(v) Savings associations (as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]).

(3) *Guarantee* means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security or instructions concerning transfer of securities.

(b) *Acceptance of signature guarantees.* A registered transfer agent shall not, directly or indirectly, engage in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution or a class of institutions.

(c) *Transfer agent's standards and procedures.* Every registered transfer agent shall establish:

(1) Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and

(2) Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions. Such standards and procedures shall not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type specified in paragraphs (a)(2)(i)–(a)(2)(v) of this section.

(d) *Rejection of items presented for transfer.* (1) No registered transfer agent shall reject a request for transfer of a certificated or uncertificated security because the certificate, instruction, or documents accompanying the certificate or instruction includes an unacceptable guarantee, unless the transfer agent determines that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

(2) A registered transfer agent shall notify the guarantor and the presentor of the rejection and the reasons for the rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. Notification to the presentor may be accomplished by making the rejected item available to the presentor. Notification to the guarantor may be accomplished by telephone, facsimile, or ordinary mail.

(e) *Record retention.* (1) Every registered transfer agent shall maintain a copy of the standards and procedures specified in paragraph (c) of this section in an easily accessible place.

(2) Every registered transfer agent shall make available a copy of the standards and procedures specified in paragraph (c) of this section to any person requesting a copy of such standards and procedures. The registered transfer agent shall respond within three days of a request for such standards and procedures by sending the requesting party a copy of the requested transfer agent's standards and procedures.

(3) Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

(f) *Exclusions.* Nothing in this section shall prohibit a transfer agent from rejecting a request for transfer of a certificated or uncertificated security:

(1) For reasons unrelated to acceptance of the guarantor institution;

(2) Because the person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution; or

(3) Because the eligible guarantor institution of a type specified in paragraph (a)(2)(ii) of this section is neither a member of a clearing corporation nor maintains net capital of at least $100,000.

(g) *Signature guarantee program.* (1) A registered transfer agent shall be deemed to comply with paragraph (c) of this section if its standards and procedures include:

(i) Rejecting a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program; or

(ii) Accepting a guarantee from an eligible guarantor institution who, at the time of issuing the guarantee, is a member of or participant in a signature guarantee program.

(2) Within the first six months after revising its standards and procedures to include a signature guarantee program, the transfer agent shall not reject a request for transfer because the guarantor is neither a member of nor participant in a signature guarantee program, unless the transfer agent has given that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors.

(3) For purposes of paragraph (g) of this section, the term ''signature guarantee program,'' means a program, the

terms and conditions of which the transfer agent reasonably determines:

(i) To facilitate the equitable treatment of eligible guarantor institutions; and

(ii) To promote the prompt, accurate and safe transfer of securities by providing:

(A) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and

(B) Adequate protection to the transfer agent against the issuance of unauthorized guarantees.

[57 FR 1095, Jan. 10, 1992]

§ 240.17Ad–16 Notice of assumption or termination of transfer agent services.

(a) A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities, including a registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities because of a merger or acquisition by another transfer agent, shall send written notice of such termination to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such termination or the day the transfer agent is notified of the effective date of such termination. Such notice shall include the full name, address, telephone number, and Financial Industry Number Standard (''FINS'') number of the transfer agent ceasing to perform the transfer agent services for the issuer; the issuer's name; the issue or issues handled and their CUSIP number(s); and if known, the name, address, and telephone number of the transfer agent that thereafter will provide transfer services for the issuer. If no successor transfer agent is known, the notice shall include the name and address of a contact person at the issuer.

(b) A registered transfer agent that changes its name or address or that assumes transfer agent services on behalf of an issuer of securities, including a transfer agent that assumes transfer agent services on behalf of an issuer of securities because of a merger or acquisition of another transfer agent, shall send written notice of such to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such change in status or the day the transfer agent is notified of the effective date of such change in status. A notice regarding a change of name or address shall include the full name, address, telephone number, and FINS number of the transfer agent and the location where certificates are received for transfer. A notice regarding the assumption of transfer agent services on behalf of an issuer of securities, including assumption of transfer agent services resulting from the merger or acquisition of another transfer agent, shall include the full name, address, telephone number, and FINS number of the transfer agent assuming the transfer agent services for the issuer; the issuer's name; and the issue or issues handled and their CUSIP number(s).

(c) The notice described in paragraphs (a) and (b) of this section shall be delivered by means of secure communication. For purposes of this section, secure communication shall include telegraph, overnight mail, facsimile, or any other form of secure communication.

(d)(1) The appropriate qualified registered securities depository that receives notices pursuant to paragraphs (a) and (b) of this section shall deliver within 24 hours a copy of such notices to each qualified registered securities depository. A qualified registered securities depository that receives notice pursuant to this section shall deliver a copy of such notices to its own participants within 24 hours.

(2) A qualified registered securities depository may comply with its notice requirements under paragraph (d)(1) of this section by making available the notice of all material information from the notice within 24 hours in a manner set forth in the rules of the qualified registered securities depository.

(3) A qualified registered securities depository shall maintain such notices for a period of not less than two years, the first six months in an easily accessible place. Such notice shall be made available to the Commission or other persons as the Commission may designate by order.

(4) A registered transfer agent that provides notice pursuant to paragraphs (a) and (b) of this section shall maintain such notice for a period of not less than two years, the first six months in an easily accessible place.

(e) For purposes of this section, a *qualified registered securities depository* shall mean a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) that performs clearing agency functions as described in section 3(a)(23)(A)(i) of the Act (15 U.S.C. 78c(a)(23)(A)(i)) and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to this section.

(f) For purposes of this section, an *appropriate qualified registered securities depository* shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date.

[59 FR 63661, Dec. 8, 1994]

§ 240.17Ad–17 Transfer agents' obligation to search for lost securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain for its master securityholder file such lost securityholders' current addresses, each recordkeeping transfer agent shall conduct two data base searches using at least one information data base service. The transfer agent shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data base searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's first search for such lost securityholder.

(2) A transfer agent may not use a search method or service to establish contact with lost securityholders that results in a charge to a lost securityholder prior to completing the searches set forth in paragraph (a)(1) of this section.

(3) A transfer agent need not conduct the searches set forth in paragraph (a)(1) of this section for a lost securityholder if:

(i) It has received documentation that such securityholder is deceased or

(ii) The aggregate value of assets listed in the lost securityholder's account, including all dividend, interest, and other payments due to the lost securityholder and all securities owned by the lost securityholder as recorded in the transfer agent's master securityholder files, is less that $25; or

(iii) The securityholder is not a natural person.

(b) For purposes of this section:

(1) *Information data base service* means either:

(i) Any automated data base service that contains addresses from the entire United States geographic area, contains the names of at least 50% of the United States adult population, is indexed by taxpayer identification number or name, and is updated at least four times a year; or

(ii) Any service or combination of services which produces results comparable to those of the service described in paragraph (b)(1)(i) of this section in locating lost securityholders.

(2) *Lost securityholder* means a securityholder:

(i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and

(ii) For whom the transfer agent has not received information regarding the securityholder's new address.

(c) Every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures which describe the transfer agent's methodology for complying with this section.

[62 FR 52237, Oct. 7, 1997; 63 FR 1884, Jan. 12, 1998, as amended at 68 FR 14316, Mar. 25, 2003]

§ 240.17Ad–18 Year 2000 Reports to be made by certain transfer agents.

(a) Each registered non-bank transfer agent must file Part I of Form TA-Y2K (§ 249.619 of this chapter) with the Commission describing the transfer agent's preparation for Year 2000 Problems. Part I of Form TA-Y2K shall be filed no later than August 31, 1998, and April 30, 1999. Part I of Form TA-Y2K shall reflect the transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

(b) Each registered non-bank transfer agent, except for those transfer agents that qualify for the exemption in paragraph (d) of § 240.17Ad–13, must file with the Commission Part II of Form TA-Y2K (§ 249.619 of this chapter) in addition to Part I of Form TA-Y2K. Part II of Form TA-Y2K report shall address the following topics:

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing its computer systems for Year 2000 Problems;

(2) Whether the plans of the transfer agent exist in writing and address all mission critical computer systems of the transfer agent wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, has hired new employees, or has engaged third parties to provide assistance in addressing Year 2000 Problems; and if so, a description of the work that these groups of individuals have performed as of the date of each report;

(4) The current progress on each stage of preparation for potential problems caused by Year 2000 Problems. These stages are:

(i) Awareness of potential Year 2000 Problems;

(ii) Assessment of what steps the transfer agent must take to address Year 2000 Problems;

(iii) Implementation of the steps needed to address Year 2000 Problems;

(iv) Internal testing of software designed to address Year 2000 Problems, including the number and description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(v) Point-to point or industry-wide testing of software designed to address Year 2000 Problems (including testing with other transfer agents, other financial institutions, and customers), including the number and description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(vi) Implementation of tested software that will address Year 2000 Problems;

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(6) What levels of the transfer agent's management are responsible for addressing potential problems caused by Year 2000 Problems, including a description of the responsibilities for each level of management regarding the Year 2000 Problems;

(7) Any additional material information in both reports concerning its management of Year 2000 Problems that could help the Commission assess the transfer agent's readiness for the Year 2000.

(8) Part II of Form TA-Y2K (§ 249.619 of this chapter) shall be filed no later than August 31, 1998, and April 30, 1999. Part II of Form TA-Y2K shall reflect the transfer agent's preparation for the Year 2000 as of July 15, 1998, and March 15, 1999, respectively.

(c) Any non-bank transfer agent that registers between the adoption of the final rule and December 31, 1999, must file with the Commission Part I of Form TA-Y2K (§ 249.619 of this chapter) no later than 30 days after their registration becomes effective. New transfer agents whose registration with the Commission becomes effective between January 1, 1999, and April 30, 1999,

would be required to file the second report due on April 30, 1999.

(d) For purposes of this section, the term Year 2000 Problem shall include problems arising from:

(1) Computer software incorrectly reading the date ''01/01/00'' as being the year 1900 or another incorrect year;

(2) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(3) Computer software failing to detect that the Year 2000 is a leap year; or

(4) Any other computer software error that is directly or indirectly caused by paragraph (d)(1), (2), or (3) of this section.

(e) For purposes of this section, the term non-bank transfer agent means a transfer agent whose:

(1) Appropriate regulatory agency, as that term is defined by 15 U.S.C. 78(c)(34)(B), is the Securities and Exchange Commission; and

(2) Is not a savings association, as defined by Section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813, which is regulated by the Office of Thrift Supervision.

(f) *Nature and form of reports.* No later than April 30, 1999, every non-bank transfer agent required to file Part II of Form TA-Y2K (§ 249.619 of this chapter) pursuant to paragraph (b)(8) of this section shall file with its Form TA-Y2K an original and two copies of a report prepared by an independent public accountant regarding the non-bank transfer agent's process, as of March 15, 1999, for addressing Year 2000 Problems with the Commission's principal office in Washington, DC. The independent public accountant's report shall be prepared in accordance with standards that have been reviewed by the Commission and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards.

[63 FR 37693, July 13, 1998, as amended at 63 FR 58635, Nov. 2, 1998]

§ 240.17Ad–19 Requirements for cancellation, processing, storage, transportation, and destruction or other disposition of securities certificates.

(a) *Definitions.* For purposes of this section:

(1) The terms *cancelled* or *cancellation* means the process in which a securities certificate:

(i) Is physically marked to clearly indicate that it no longer represents a claim against the issuer; and

(ii) Is voided on the records of the transfer agent.

(2) The term *cancelled certificate facility* means any location where securities certificates are cancelled and thereafter processed, stored, transported, destroyed or otherwise disposed of.

(3) The term *certificate number* means a unique identification or serial number that is assigned and affixed by an issuer or transfer agent to each securities certificate.

(4) The term *controlled access* means the practice of permitting the entry of only authorized personnel to areas where securities certificates are cancelled and thereafter processed, stored, transported, destroyed or otherwise disposed of.

(5) The term *CUSIP number* means the unique identification number that is assigned to each securities issue.

(6) The term *destruction* means the physical ruination of a securities certificate by a transfer agent as part of the certificate destruction procedures that make the reconstruction of the certificate impossible.

(7) The term *otherwise disposed of* means any disposition other than by destruction.

(8) The term *securities certificate* has the same meaning that it has in § 240.17f-1(a)(6).

(b) *Required procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates.* Every transfer agent involved in the handling, processing, or storage of securities certificates shall establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. This requirement applies to any agent that the transfer agent uses to perform any of these activities.

(c) *Written procedures.* The written procedures required by paragraph (b) of this section at a minimum shall provide that:

(1) There is controlled access to any cancelled certificate facility;

(2) Each cancelled certificate be marked with the word ''CANCELLED'' by stamp or perforation on the face of the certificate unless the transfer agent has procedures adopted pursuant to this rule for the destruction of cancelled certificates within three business days of their cancellation;

(3) A record that is indexed and retrievable by CUSIP and certificate number that contains the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date of each cancelled certificate;

(4) A record that is indexed and retrievable by CUSIP and certificate number of each destroyed securities certificate or securities certificate otherwise disposed of, the records must contain for each destroyed or otherwise disposed of certificate the CUSIP number, certificate number with any prefix or suffix, denomination, registration, issue date, and cancellation date, and additionally for any certificate otherwise disposed of a record of how it was disposed of, the name and address of the party to whom it was disposed, and the date of disposition;

(5) The physical transportation of cancelled certificates be made in a secure manner and that the transfer agent maintain separately a record of the CUSIP number and certificate number of each certificate in transit;

(6) Authorized personnel of the transfer agent or its designee supervise and witness the intentional destruction of any cancelled certificate and retain copies of all records relating to certificates which were destroyed; and

(7) Reports to the Lost and Stolen Securities Program be effected in a timely and complete manner, as provided in §240.17f–1 of any cancelled certificate that is lost, stolen, missing, or counterfeit.

(d) *Recordkeeping.* Every transfer agent subject to this section shall maintain records that demonstrate compliance with the requirements set forth in this section and that describe the transfer agent's methodology for complying with this section for three years, the first year in an easily accessible place.

(e) *Exemptive authority.* Upon written application or upon its own motion, the Commission may grant an exemption from any of the provisions of this section, either unconditionally or on specific terms and conditions, to any transfer agent or any class of transfer agents and to any securities certificate or any class of securities certificates.

[68 FR 74401, Dec. 23, 2003]

§240.17Ad–20 Issuer restrictions or prohibitions on ownership by securities intermediaries.

(a) Except as provided in paragraph (c) of this section, no registered transfer agent shall transfer any equity security registered pursuant to section 12 or any equity security that subjects an issuer to reporting under section 15(d) of the Act (15 U.S.C. 78*l* or 15 U.S.C. 78o(d)) if such security is subject to any restriction or prohibition on transfer to or from a securities intermediary in its capacity as such.

(b) The term *securities intermediary* means a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) or a person, including a bank, broker, or dealer, that in the ordinary course of its business maintains securities accounts for others in its capacity as such.

(c) The provisions of this section shall not apply to any equity security issued by a partnership as defined in rule 901(b) of Regulation S–K (§229.901(b) of this chapter).

[70 FR 70862, Dec. 7, 2004]

§240.17Ad–21T Operational capability in a Year 2000 environment.

(a) This section applies to every registered non-bank transfer agent that uses computers in the conduct of its business as a transfer agent.

(b)(1) You have a material Year 2000 problem if, at any time on or after August 31, 1999:

(i) Any of your mission critical computer systems incorrectly identifies any date in the Year 1999 or the Year 2000, and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical systems under your control.

(2) You will be presumed to have a material Year 2000 problem if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures reasonably designed to identify, assess, and remediate any material Year 2000 problems in your mission critical systems under your control;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems under your control and reasonable testing of your external links under your control; or

(iii) Have not remediated all exceptions related to your mission critical systems contained in any independent public accountant's report prepared on your behalf pursuant to § 240.17Ad–18(f).

(c) If you have or are presumed to have a material Year 2000 problem, you must immediately notify the Commission and your issuers of the problem. You must send this notice to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(d)(1) If you are a registered nonbank transfer agent that has or is presumed to have a material Year 2000 problem, you may not, on or after August 31, 1999, engage in any transfer agent function, including:

(i) Countersigning such securities upon issuance;

(ii) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(iii) Registering the transfer of such securities;

(iv) Exchanging or converting such securities; or

(v) Transferring record ownership of securities by bookkeeping entry without physical issuance of securities certificates.

(2) Notwithstanding paragraph (d)(1) of this section, you may continue to engage in transfer agent functions:

(i) Until December 1, 1999, if you have submitted a certificate to the Commission in compliance with paragraph (e) of this section; or

(ii) Solely to the extent necessary to effect an orderly cessation or transfer of these functions.

(e)(1)(i) If you are a registered nonbank transfer agent that has or is presumed to have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission and your issuers a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(A) You are in the process of remediating your material Year 2000 problem;

(B) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(C) The date by which you anticipate completing remediation of the material Year 2000 problem in your mission critical systems; and

(D) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem in your mission critical systems will impair your ability, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, or the production and retention of required records; and you anticipate that the steps referred to in paragraphs (e)(1)(i)(A) through (C) of this section will result in remedying the material Year 2000 problem on or before November 15, 1999.

(ii) If the information contained in any certificate provided to the Commission pursuant to paragraph (e) of this section is or becomes misleading or inaccurate for any reason, you must promptly file an updated certificate correcting such information. In addition to the information contained in the certificate, you may provide the Commission with any other information necessary to establish that your mission critical systems will not have material Year 2000 problems on or after November 15, 1999.

(2) If you have submitted a certificate pursuant to paragraph (e)(1) of this section, you must submit a certificate to the Commission and your

issuers signed by your chief executive officer (or an individual with similar authority) on or before November 15, 1999, stating that, based on inquiries and to the best of the chief executive officer's knowledge, you have remediated your Year 2000 problem or that you will cease operations. This certificate must be sent to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1002 Attention: Y2K Compliance.

(f) Notwithstanding paragraph (d)(2) of this section, you must comply with the requirements of paragraph (d)(1) of this section if you have been so ordered by the Commission or by a court.

(g) Beginning August 31, 1999, and ending March 31, 2000, you must make backup records for all master securityholder files at the close of each business day and must preserve these backup records for a rolling five business day period in a manner that will allow for the transfer and conversion of the records to a successor transfer agent. If you have a material Year 2000 problem, you must preserve for at least one year the five day backup records immediately preceding the day the problem was discovered. In addition, you must make at the close of business on December 27 through 31, 1999, a backup copy for all master securityholder files and preserve these records for at least one year. Such backup records must permit the timely restoration of such systems to their condition existing prior to experiencing the material Year 2000 problem. Copies of the backup records must be kept in an easily accessible place but must not be located with or held in the same computer system as the primary records, and you must be able to immediately produce or reproduce them. You must furnish promptly to a representative of the Commission such legible, true, and complete copies of those records, as may be requested.

(h) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of this section;

(2) The term *customer* includes an issuer, transfer agent, or other person for which you provide transfer agent services;

(3) The term *registered non-bank transfer agent* means a transfer agent, whose appropriate regulatory agency is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and

(4) The term *master securityholder file* has the same definition as defined in § 240.17Ad–9(b).

(i) This temporary section will expire on July 1, 2001.

[64 FR 42029, Aug. 3, 1999]

SUSPENSION AND EXPULSION OF EXCHANGE MEMBERS

§ 240.19a3–1 [Reserved]

§ 240.19b–3 [Reserved]

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

PRELIMINARY NOTE: A self-regulatory organization also must refer to Form 19b–4 (17 CFR 249.819) for further requirements with respect to the filing of proposed rule changes.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rules changes by self-regulatory organizations submitted pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)), shall be made electronically on Form 19b–4 (17 CFR 249.819).

(b) The term *stated policy, practice, or interpretation* means:

(1) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(2) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization (''specified persons''), or to a group or category of