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(3) In calculating capital for the purposes of this paragraph, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (d)(1)(i) of this section.

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with § 240.15c3-1e if that broker or dealer is affiliated with an ultimate holding company that is not an ultimate holding company that has a principal regulator, as defined in § 240.15c3-1(c)(13).

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i-1(a).

(6) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with such Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently fixed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to this section concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to § 240.17h-2T.

(e) *Location of records.* A broker or dealer required to maintain records concerning a Material Associated Person pursuant to this section may maintain those records either at the Material Associated Person or at a records storage facility provided that the records are located within the boundaries of the United States and the records are kept in an easily accessible place, as that term is used in § 240.17a-4. In order to operate pursuant to the

provisions of this paragraph, the Material Associated Person or other entity maintaining the records shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the broker or dealer was maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of such 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 true, correct, complete and current hard copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the broker or dealer required to maintain and preserve such records from any of its responsibilities under this section or section 240.17h-2T.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(g) *Temporary implementation schedule.* Every broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing September 30, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

[57 FR 32168, July 21, 1992, as amended at 58 FR 25774, Apr. 28, 1993; 69 FR 34472, June 21, 2004; 69 FR 34494, June 21, 2004]

§ 240.17h-2T Risk assessment reporting requirements for brokers and dealers.

(a) *Reporting requirements of risk assessment information required to be maintained by section 240.17h-1T.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (b) of this section, shall file

a Form 17-H within 60 calendar days after the end of each fiscal quarter. The Form 17-H for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year-end financial statements required by section 240.17h-1T may be filed separately within 105 calendar days of the end of the fiscal year.

(2) The reports required to be filed pursuant to paragraph (a)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(3) For the purposes of this section, the term Material Associated Person shall have the meaning used in §240.17h-1T.

(b) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3-3:

(i) Pursuant to paragraph (k)(1) of §240.15c3-3; or

(ii) Pursuant to paragraph (k)(2) of §240.15c3-3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of §240.15c3-3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of §240.15c3-1 equal to or greater than \$20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of §240.15c3-1 of less than \$250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital and subordinated debt for the purposes of this section, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (b)(1)(i) of this section.

(4) The provisions of this section shall not apply to a broker or dealer that computes certain of its capital charges in accordance with §240.15c3-1e if that broker or dealer is affiliated with an ultimate holding company that is not an ultimate holding company that has a principal regulator, as defined in §240.15c3-1(c)(13).

(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in §240.17i-1(a).

(6) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with the Reporting Broker or Dealer. The term "Reporting Broker or Dealer" shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently filed Form X-17A-5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to §240.17h-1T concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to the provisions of this section.

(c) *Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators.* A broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed on Form FR Y-9C, Form FR Y-6, Form FR Y-7, and Form FR 2068 by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes,

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section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(2) If the Material Associated Person is subject to the supervision of an insurance commissioner or other similar official agency of a state; and

(i) In the case of a Material Associated Person organized as a public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the filings made by the insurance company pursuant to sections 13 or 15 of the Act and the Investment Company Act of 1940; or

(ii) In the case of Material Associated Person organized as a mutual insurance company or a non-public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the Annual and Quarterly Statements prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners. The Annual Statement furnished to the Commission pursuant to this section shall include: The classification (distribution by state) section from the schedule of real estate; distribution by state, the interest overdue (more than three months), in process of foreclosure, and foreclosed properties transferred to real estate during the year sections from the schedule of mortgages; and the quality and maturity distribution of all bonds at statement values and by major types of issues section from the schedule of bonds and stocks. All other Schedules and Exhibits to such Annual and Quarterly Statements shall be maintained at the broker-dealer pursuant to the provisions of §240.17h-1T but not furnished to the Commission.

(iii) In the event an insurance company organized as a stock or mutual company is not required to prepare Quarterly Statements, the broker or dealer must file with the Commission a Form 17-H in accordance with the provisions of this section on a quarterly basis.

(3) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures

Trading Commission, the broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by the Material Associated Person with the Commodity Futures Trading Commission on Forms 1 FR-FCM or 1 FR-IB.

(4) No broker or dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Associated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Associated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 24(b) of the Act.

(5) The furnishing of any information or documents by a broker or dealer pursuant to this section shall not constitute an admission for any purpose that a Material Associated Person is otherwise subject to the Act. Any documents or information furnished to the Commission by a broker or dealer pursuant to this rule shall not be deemed to be "filed" for the purposes of the liabilities set forth in section 18 of the Act.

(d) *Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority.* A broker or dealer shall be deemed to be in compliance with the reporting requirements of this section with respect to a Material Associated Person if such broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The broker or dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(e) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material

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Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(f) *Temporary implementation schedule.* Every broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 of Form 17-H by October 31, 1992. Commencing December 31, 1992, the 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,