§ 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