

§ 240.17a-11

17 CFR Ch. II (4-1-22 Edition)

contain an agreement to file the report on or before the specified date.

(Sec. 17, 48 Stat. 897; 15 U.S.C. 78q)

[33 FR 10390, July 20, 1968, as amended at 35 FR 3804, Feb. 27, 1970; 35 FR 7644, May 16, 1970; 37 FR 13615, July 12, 1972; 40 FR 59717, Dec. 30, 1975; 42 FR 23789, May 10, 1977; 46 FR 60193, Dec. 9, 1981]

§ 240.17a-11 Notification provisions for brokers and dealers.

This section applies to the following types of entities: Except as provided in this introductory text, a broker or dealer, including an *OTC derivatives dealer* as that term is defined in § 240.3b-12, registered pursuant to section 15 of the Act (15 U.S.C. 78o); a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a security-based swap dealer registered pursuant to section 15F of the Act (15 U.S.C. 78o-10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a-8 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

(a)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3-1, or is insolvent as that term is defined in § 240.15c3-1(c)(16), must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of

§ 240.15c3-1 and the broker or dealer has not given notice of the capital deficiency under this section, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3-1, must give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer or broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e must also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3-1. The notice must specify the tentative net capital requirements, and current amount of net capital and tentative net capital, of the OTC derivatives dealer or the broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3-1e.

(b) Every broker or dealer must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (b)(1) through (5) of this section in accordance with paragraph (h) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3-1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3-1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3-3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3-3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3-1 shows that its total net capital is less than 120 percent of the broker's or dealer's required minimum net capital, or if a computation made by an OTC derivatives dealer pursuant to § 240.15c3-1 shows that its total tentative net capital is less than 120 percent of the dealer's required minimum tentative net capital.

(4) The occurrence of the fourth and each subsequent backtesting exception

under § 240.15c3-1f(e)(1)(iv) during any 250 business day measurement period.

(5) If a computation made by a broker or dealer pursuant to § 240.15c3-1 shows that the total amount of money payable against all securities loaned or subject to a repurchase agreement or the total contract value of all securities borrowed or subject to a reverse repurchase agreement is in excess of 2500 percent of its tentative net capital; *provided*, however, that for purposes of this leverage test transactions involving government securities, as defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), must be excluded from the calculation; *provided* further, however, that a broker or dealer will not be required to send the notice required by this paragraph (c)(5) if it reports monthly its securities lending and borrowing and repurchase and reverse repurchase activity (including the total amount of money payable against securities loaned or subject to a repurchase agreement and the total contract value of securities borrowed or subject to a reverse repurchase agreement) to its designated examining authority in a form acceptable to its designated examining authority.

(c) Every broker or dealer that fails to make and keep current the books and records required by § 240.17a-3, must give notice of this fact that same day in accordance with paragraph (h) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer must also transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(d) Whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-12(i)(2), of the existence of any material inadequacy as defined in § 240.17a-12(h)(2), or whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a-5(h), of the existence of any material weakness as defined in § 240.17a-5(d)(3)(iii), the broker or dealer must:

(1) Give notice, in accordance with paragraph (h) of this section, of the

material inadequacy or material weakness within 24 hours of the discovery or notification of the material inadequacy or material weakness; and

(2) Transmit a report in accordance with paragraph (h) of this section, within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) [Reserved]

(f) If a broker-dealer fails to make in its special reserve account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.15c3-3(p), the broker-dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

(g) Every national securities exchange or national securities association that learns that a broker or dealer has failed to send notice or transmit a report as required by this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, must immediately give notice of such failure in accordance with paragraph (h) of this section.

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington DC and the regional office of the Commission for the region in which the broker or dealer has its principal place of business, or to an email address provided on the Commission's website, and to the designated examining authority of which such broker or dealer is a member, and to the Commodity Futures Trading Commission (CFTC) if the broker or dealer is registered as a futures commission merchant with the CFTC. The report required by paragraph (c) or (d)(2) of this section may be transmitted by overnight delivery.

(i) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in §§ 240.15c3-1, 240.15c3-1d, 240.15c3-3, 240.17a-5, and 240.17a-12.

(j) The provisions of this section will not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section

6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

[58 FR 37657, July 13, 1993, as amended at 59 FR 5945, Feb. 9, 1994; 63 FR 59401, Nov. 3, 1998; 67 FR 58300, Sept. 13, 2002; 69 FR 34472, June 21, 2004; 73 FR 32228, June 5, 2008; 78 FR 51907, Aug. 21, 2013; 78 FR 51933, Aug. 21, 2013; 84 FR 68655, Dec. 16, 2019]

§ 240.17a-12 Reports to be made by certain OTC derivatives dealers.

(a) *Filing of quarterly reports.* (1) This paragraph (a) shall apply to every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o).

(i) Every OTC derivatives dealer shall file Part II of Form X-17A-5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter.

(ii) Upon receiving from the Commission written notice that additional reporting is required, an OTC derivatives dealer shall file monthly, or at such times as shall be specified, Part II of Form X-17A-5 (§ 249.617 of this chapter) and such other financial or operational information as shall be required by the Commission.

(2) The reports provided for in this paragraph (a) shall be considered filed when received at the Commission's principal office in Washington, DC. All reports filed pursuant to this paragraph (a) shall be deemed to be confidential.

(3) Upon written application by an OTC derivatives dealer to the Commission, the Commission may extend the time for filing the information required by this paragraph (a). The written application shall be filed with the Commission at its principal office in Washington DC.

(b) *Annual filing of audited financial statements.* (1)(i) Every OTC derivatives dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o) shall file annually, on a calendar or fiscal year basis, a report which shall be audited by a certified public accountant. Reports filed pursuant to this paragraph (b) shall be as of the same fixed or de-

terminable date each year, unless a change is approved in writing by the Commission.

(ii) An OTC derivatives dealer succeeding to and continuing the business of another OTC derivatives dealer need not file a report under this paragraph (b) as of a date in the fiscal or calendar year in which the succession occurs if the predecessor OTC derivatives dealer has filed a report in compliance with this paragraph (b) as of a date in such fiscal or calendar year.

(2) The annual audit report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the total reported on the Statement of Financial Condition contained in Form X-17A-5 (§ 249.617 of this chapter), Part II, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Such statements shall be in a format which is consistent with such statements as contained in Form X-17A-5 (§ 249.617 of this chapter), Part II. If the Statement of Financial Condition filed in accordance with instructions to Form X-17A-5 (§ 249.617 of this chapter), Part II, is not consolidated, a summary of financial data for subsidiaries not consolidated in the Part II Statement of Financial Condition as filed by the OTC derivatives dealer shall be included in the notes to the consolidated statement of financial condition reported on by the certified public accountant. The summary financial data shall include the assets, liabilities, and net worth or stockholders' equity of the unconsolidated subsidiaries.

NOTE 1 TO PARAGRAPH (b)(2). If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X of this chapter) in place of a Statement of Income.

(3) Supporting schedules shall include, from Part II of Form X-17A-5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3-1.

(4) A reconciliation, including appropriate explanations, of the Computation of Net Capital under § 240.15c3-1 contained in the audit report with the