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§ 240.17a–4 Records to be preserved by certain exchange members, brokers and dealers.

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

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

(b) Every member, broker or dealer subject to § 240.17a–3 must preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a–3(a)(4), (6) through (11), (16), (18) through (20), and (25) through (31), and analogous records created pursuant to § 240.17a–3(e).

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

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the member, broker or dealer's business as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term *communications* includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78*o*–10(g)(1)).

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the member, broker or dealer's business as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's security-based swaps must be maintained with the customer's or non-customer's account records.

(8) Records which contain the following information in support of amounts included in the report prepared as of the fiscal year end on Part II or IIA of Form X–17A–5 (§ 249.617 of

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this chapter), as applicable, and in the annual financial statements filed with the Commission required by § 240.17a–5(d), § 240.17a–12(b), or § 240.18a–7(c), as applicable:

(i) Money balance and position, long or short, including description, quantity, price, and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;

(ii) Money balance and position, long or short, including description, quantity, price and valuation of each security including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts, and in securities accounts payable to non-customers;

(iii) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(iv) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(v) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(vi) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in trading and investment accounts;

(vii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in trading and investment accounts;

(ix) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(x) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(xi) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker or dealer has an interest, including each participant's interest and margin deposit;

(xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.15c3–1 or § 240.18a–1, as applicable;

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

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

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

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

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

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

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(10) The records required to be made pursuant to § 240.15c3–4 and the results of the periodic reviews conducted pursuant to § 240.15c3–4(d).

(11) All notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a)(16)(ii)(A) of § 240.17a–3. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, must be preserved under this paragraph (b)(11) if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this paragraph (b)(11) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.

(12) The records required to be made pursuant to § 240.15c3–1e(c)(4)(vi) or § 240.18a–1(e)(2)(iii)(F)(*2*), as applicable.

(13) The written policies and procedures the broker-dealer establishes, documents, maintains, and enforces to assess creditworthiness for the purpose of § 240.15c3–1(c)(2)(vi)(E), (c)(2)(vi)(F)(*1*) and (*2*), and (c)(2)(vi)(H) or § 240.18a–1(c)(1)(vi)(*2*), as applicable.

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

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

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

(17) The written probability of default determination, relied upon by such broker or dealer, pursuant to § 242.101(c)(2)(i) or § 242.102(d)(2)(i) of this chapter (Rule 101 or Rule 102 of Regulation M), as applicable.

(c) Every member, broker or dealer subject to § 240.17a–3 must preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(d) Every member, broker or dealer subject to § 240.17a–3 must preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books, and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all Forms SBSE–BD (§ 249.1600b of this chapter), all Forms SBSE–C (§ 249.1600c of this chapter), all Forms SBSE–W (§ 249.1601 of this chapter), all amendments to these forms, and all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority or the Commodity Futures Trading Commission.

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

(1) All records required under § 240.17a–3(a)(12) until at least three years after the associated person's employment and any other connection with the member, broker or dealer has terminated.

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

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

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

(5) All account record information required pursuant to § 240.17a–3(a)(17) and all records required pursuant to

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§ 240.17a–3(a)(35), in each case until at least six years after the earlier of the date the account was closed or the date on which the information was collected, provided, replaced, or updated.

(6) Each report which a securities regulatory authority or the Commodity Futures Trading Commission has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority, Commodity Futures Trading Commission, or prudential regulator examination report until three years after the date of the report.

(7) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.

(8) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member, broker or dealer must promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.

(9) All records required pursuant to § 240.17a–3(a)(23) until three years after the termination of the use of the risk management controls documented therein.

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

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

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

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

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

(13) [Reserved]

(14)(i) The written policies and procedures required to be adopted and implemented pursuant to § 248.30(a)(1) of this chapter until three years after the termination of the use of the policies and procedures;

(ii) The written documentation of any detected unauthorized access to or use of customer information, as well as any response to, and recovery from such unauthorized access to or use of customer information required by § 248.30(a)(3) of this chapter for three years from the date when the records were made;

(iii) The written documentation of any investigation and determination made regarding whether notification is required pursuant to § 248.30(a)(4) of this chapter, including the basis for any determination made, any written documentation from the United States Attorney General related to a delay in

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notice, as well as a copy of any notice transmitted following such determination, for three years from the date when the records were made;

(iv) The written policies and procedures required to be adopted and implemented pursuant to §248.30(a)(5)(i) of this chapter until three years after the termination of the use of the policies and procedures;

(v) The written documentation of any contract or agreement entered into pursuant to §248.30(a)(5) of this chapter until three years after the termination of such contract or agreement; and

(vi) The written policies and procedures required to be adopted and implemented pursuant to §248.30(b)(2) of this chapter until three years after the termination of the use of the policies and procedures;

(f) Subject to the conditions set forth in this paragraph (f), the records required to be maintained and preserved pursuant to §240.17a–3 and this section may be immediately produced or reproduced by means of an electronic recordkeeping system or by means of micrographic media and be maintained and preserved for the required time in that form.

(1) For purposes of this paragraph (f):

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

(ii) The term *electronic recordkeeping system* means a system that preserves records in a digital format in a manner that permits the records to be viewed and downloaded;

(iii) The term *designated executive officer* means a member of senior management of the member, broker, or dealer who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated executive officer;

(iv) The term *designated officer* means an employee of the member, broker, or dealer who reports directly or indirectly to the designated executive officer and who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system either directly or through a *designated specialist* who reports directly or indirectly to the designated officer;

(v) The term *designated specialist* means an employee of the member, broker, or dealer who has access to, and the ability to provide records maintained and preserved on, the electronic recordkeeping system; and

(vi) The term *designated third party* means a person that is not affiliated with the member, broker, or dealer who has access to and the ability to provide records maintained and preserved on the electronic recordkeeping system.

(2) An electronic recordkeeping system must:

(i)(A) Preserve a record for the duration of its applicable retention period in a manner that maintains a complete time-stamped audit trail that includes:

(*1*) All modifications to and deletions of the record or any part thereof;

(*2*) The date and time of actions that create, modify, or delete the record;

(*3*) If applicable, the identity of the individual creating, modifying, or deleting the record; and

(*4*) Any other information needed to maintain an audit trail of the record in a way that maintains security, signatures, and data to ensure the authenticity and reliability of the record and will permit re-creation of the original record if it is modified or deleted; or

(B) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(ii) Verify automatically the completeness and accuracy of the processes for storing and retaining records electronically;

(iii) If applicable, serialize the original and duplicate units of the storage media, and time-date the required period of retention for the information placed on such electronic storage media;

(iv) Have the capacity to readily download and transfer copies of a record and its audit trail (if applicable) in both a human readable format and in a reasonably usable electronic format and to readily download and transfer the information needed to locate the electronic record, as required by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member,

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or any State securities regulator having jurisdiction over the member, broker, or dealer; and

(v)(A) Include a backup electronic recordkeeping system that meets the other requirements of this paragraph (f) and that retains the records required to be maintained and preserved pursuant to § 240.17a–3 and in accordance with this section in a manner that will serve as a redundant set of records if the original electronic recordkeeping system is temporarily or permanently inaccessible; or

(B) Have other redundancy capabilities that are designed to ensure access to the records required to be maintained and preserved pursuant to § 240.17a–3 and this section.

(3) A member, broker, or dealer using an electronic recordkeeping system must:

(i) At all times have available, for examination by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer, facilities for immediately producing the records preserved by means of the electronic recordkeeping system and for producing copies of those records.

(ii) Be ready at all times to provide, and immediately provide, any record stored by means of the electronic recordkeeping system that the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer may request.

(iii) For a broker-dealer operating pursuant to paragraph (f)(2)(i)(B) of this section, the member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to § 240.17a–3 and this section to the electronic recordkeeping system and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organization of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(iv) Organize, maintain, keep current, and provide promptly upon request by the staffs of the Commission, the self-regulatory organizations of which the member, broker, or dealer is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer all information necessary to access and locate records preserved by means of the electronic recordkeeping system.

(v)(A) Have at all times filed with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records signed by either a designated executive officer or designated third party (hereinafter, the ''undersigned''):

> The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, any self- regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer], upon reasonable request, such information as is deemed necessary by the staff of the Commission, any self-regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer], and to download copies of a record and its audit trail (if applicable) preserved by means of an electronic recordkeeping system of [Name of the Member, Broker, or Dealer] into both a human readable format and a reasonably usable electronic format in the event of a failure on the part of [Name of the Member, Broker, or Dealer] to download a requested record or its audit trail (if applicable).
>
> Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to the information preserved by means of an electronic recordkeeping system of [Name of the Member, Broker, or Dealer], including, as appropriate, downloading any record required to be maintained and preserved by [Name of the Member, Broker, or Dealer] pursuant to §§ 240.17a–3 and 240.17a–4 in a format acceptable to the staff of the Commission, any self-regulatory organization of which [Name of the Member, Broker,

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or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer]. Specifically, the undersigned will take reasonable steps to, in the event of a failure on the part of [Name of the Member, Broker, or Dealer] to download the record into a human readable format or a reasonably usable electronic format and after reasonable notice to [Name of the Member, Broker, or Dealer], download the record into a human readable format or a reasonably usable electronic format at the request of the staffs of the Commission, any self-regulatory organization of which [Name of the Member, Broker, or Dealer] is a member, or any State securities regulator having jurisdiction over [Name of the Member, Broker, or Dealer].

(B) A designated executive officer who signs the undertaking required pursuant to paragraph (f)(3)(v)(A) of this section may:

(*1*) Appoint in writing up to two designated officers who will take the steps necessary to fulfill the obligations of the designated executive officer set forth in the undertakings in the event the designated executive officer is unable to fulfill those obligations; and

(*2*) Appoint in writing up to three designated specialists.

(C) The appointment of, or reliance on, a designated officer or designated specialist does not relieve the designated executive officer of the obligations set forth in the undertaking.

(4) A broker-dealer using a micrographic media system must:

(i) At all times have available, for examination by the staffs of the Commission, self-regulatory organizations of which it is a member, and any State securities regulator having jurisdiction over the member, broker, or dealer, facilities for immediate, easily readable projection or production of micrographic media and for producing easily readable images;

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker, or dealer may request;

(iii) Store, separately from the original, a duplicate copy of the record stored on any medium acceptable under this section for the time required; and

(iv) Organize and index accurately all information maintained on both original and duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission, the self-regulatory organizations of which the broker or dealer is a member, and any State securities regulator having jurisdiction over the member, broker or, dealer.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(g) If a person who has been subject to §240.17a–3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Act (15 U.S.C. 78*o*) such person must, for the remainder of the periods of time specified in this section, continue to preserve the records which it theretofore preserved pursuant to this section.

(h) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G–9 of the Municipal Securities Rulemaking Board or any successor rule will be deemed to be in compliance with this section.

(i)(1)(i) If the records required to be maintained and preserved pursuant to the provisions of §240.17a–3 and this section are prepared or maintained by an outside service bureau, depository, bank, or other recordkeeping service, including a recordkeeping service that owns and operates the servers or other storage devices on which the records are preserved or maintained, (none of which operate pursuant to §240.17a–3(c)) on behalf of the member, broker, or dealer required to maintain and preserve such records, such outside entity must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that

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such records are the property of the member, broker, or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker, or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [Name of the Member, Broker, or Dealer], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission and to promptly furnish to said Commission or its designee true, correct, complete and current hard copies of any or all or any part of such books and records.

(ii)(A) If the records required to be maintained and preserved pursuant to the provisions of §240.17a–3 and this section are maintained and preserved by means of an electronic recordkeeping system as defined in paragraph (f) of this section utilizing servers or other storage devices that are owned or operated by an outside entity (including an affiliate) and the broker, dealer, or member has *independent access* to the records as defined in paragraph (i)(1)(ii)(B) of this section, the outside entity may file with the Commission the following undertaking signed by a duly authorized person in lieu of the undertaking required under paragraph (i)(1)(i) of this section:

The undersigned hereby acknowledges that the records of [name of member, broker, or dealer] are the property of [name of member, broker, or dealer] and [name of member, broker, or dealer] has represented: one, that it is subject to rules of the Securities and Exchange Commission governing the maintenance and preservation of certain records, two, that it has independent access to the records maintained by [name of outside entity], and, three, that it consents to [name of outside entity] fulfilling the obligations set forth in this undertaking. The undersigned undertakes that [name of outside entity] will facilitate within its ability, and not impede or prevent, the examination, access, download, or transfer of the records by a representative or designee of the Securities and Exchange Commission as permitted under the law. Further, the undersigned undertakes to facilitate within its ability, and not impede or prevent, a trustee appointed under the Securities Investor Protection Act of 1970 to liquidate [name of member, broker, or dealer] in accessing, downloading, or transferring the records as permitted under the law.

(B) A broker, dealer, or member utilizing servers or other storage devices that are owned or operated by an outside entity has independent access to records with respect to such outside entity if it can regularly access the records without the need of any intervention of the outside entity and through such access:

(*1*) Permit examination of the records at any time or from time to time during business hours by representatives or designees of the Commission; and

(*2*) Promptly furnish to the Commission or its designee a true, correct, complete and current hard copy of any or all or any part of such records.

(2) An agreement with an outside entity will not relieve such member, broker, or dealer from the responsibility to prepare and maintain records as specified in this section or in §240.17a–3.

(j) Every member, broker and dealer subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker, or dealer that are required to be preserved under this section, or any other records of the member, broker, or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78*q*(b)) that are requested by the representative of the Commission. The member, broker, or dealer must furnish a record and its audit trail (if applicable) preserved on an electronic recordkeeping system pursuant to paragraph (f) of this section in a reasonably usable electronic format, if requested by a representative of the Commission.

(k)(1) Except as provided in paragraph (k)(2) of this section, upon request of any designee or representative of the Commission or of any self-regulatory organization of which it is a member, every member, broker or dealer subject to this section must request and obtain from its customers documentation regarding an exchange of security futures products for physical securities, including documentation of underlying cash transactions and exchanges. Upon receipt of such documentation, the member, broker or

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dealer must promptly provide that documentation to the requesting designee or representative.

(2) This paragraph (k) does not apply to an underlying cash transaction(s) or exchange(s) that was effected through a member, broker or dealer registered with the Commission and is of a type required to be recorded pursuant to §240.17a–3.

(l) Records for the most recent two year period required to be made pursuant to §240.17a–3(f) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

(m) When used in this section:

(1) The term *office* has the meaning set forth in §240.17a–3(g)(1).

(2) The term *principal* has the meaning set forth in §240.17a–3(g)(2).

(3) The term *securities regulatory authority* has the meaning set forth in §240.17a–3(g)(3).

(4) The term *associated person* has the meaning set forth in §240.17a–3(g)(4).

(5) The term *business as such* includes security-based swap activity.

CROSS REFERENCE: For interpretative releases applicable to §240.17a–4, see No. 3040 and No. 8024 in tabulation, part 241 of this chapter.

[13 FR 8212, Dec. 22, 1948]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §240.17a–4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§240.17a–5 Reports to be made by certain 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. 78*o*); 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. 78*o*–10); and a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act that is also a major-security-based swap participant registered pursuant to section 15F of the Act. Section 240.18a–7 (rather than this section) applies to the following types of entities: A security-based swap dealer registered pursuant to section 15F of the Act that is not also a broker or dealer, other than an OTC derivatives dealer, registered pursuant to section 15 of the Act; a security-based swap dealer registered pursuant to section 15F of the Act that is also an OTC derivatives dealer; and a major security-based swap participant registered pursuant to section 15F of the Act that is not also a broker or dealer, including an OTC derivatives dealer, registered pursuant to section 15 of the Act.

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

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts and every broker or dealer that is registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78*o*–10) must file with the Commission an executed Part II of Form X–17A–5 (§249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business

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