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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.

(1) 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

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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. 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-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. 78o-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

days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. Certain of such brokers or dealers must file with the Commission an executed Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X-17A-5 (§ 249.617 of this chapter).

(iii) Every broker or dealer that neither clears transactions nor carries customer accounts and that is not registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o-10) must file with the Commission an executed Part IIA 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 end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter.

(iv) Upon receiving written notice from the Commission or the examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (“designated examining authority”), a broker or dealer who receives such notice must file with the Commission on a monthly basis, or at such times as will be specified, an executed Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), and such other financial or operational information as will be required by the Commission or the designated examining authority.

(2) The reports provided for in this paragraph (a) that must be filed with the Commission will be considered filed when received at the Commission’s principal office 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. All reports filed pursuant to this paragraph (a) will be deemed confidential for the purposes of section 24(b) of the Act.

(3) The provisions of paragraph (a)(1) of this section will not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by Part I, Part II, or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as to such member, and

transmits to the Commission a copy of the applicable parts of Form X-17A-5 (§ 249.617 of this chapter) as to such member, pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one specified national securities exchange or registered national securities association. For the purposes of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association will not become effective unless the Commission, having due regard for the fulfillment of the Commission’s duties and responsibilities under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission’s duties and responsibilities under the Act.

(4) Every broker or dealer subject to this paragraph (a) must file Form Custody (§ 249.639 of this chapter) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. The designated examining authority must maintain the information obtained through the filing of Form Custody and must promptly transmit that information to the Commission at such time as it transmits the applicable part of Form X-17A-5 (§ 249.617 of this chapter) as required in paragraph (a)(2) of this section.

(5) Broker-dealers that have been authorized by the Commission to compute net capital pursuant to § 240.15c-3

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le must file the following additional reports with the Commission:

(i) For each product for which the broker or dealer calculates a deduction for market risk other than in accordance with §240.15c3-1e(b)(1) or (3), the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month value at risk within 17 business days after the end of the month;

(iii) The aggregate value at risk for the broker or dealer within 17 business days after the end of the month;

(iv) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on derivatives exposures within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(vi) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application, within 17 business days after the end of the month;

(vii) [Reserved]

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of the calendar quarter.

(6) Upon written application by a broker or dealer to its designated examining authority, the designated examining authority may extend the time for filing the information required by this paragraph (a). The designated examining authority for the broker or dealer will maintain, in the manner prescribed in §240.17a-1, a record of each extension granted.

(b) *Report filed upon termination of membership interest.* (1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such broker or dealer must, within two business days after such event, file with the Commission Part II or Part IIA of Form X-17A-5 (§249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(1)(ii) through (iv) of this section as of the date of such event. The report must be filed at the Commission's principal office in Washington, DC, and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business; *provided, however*, that such report need not be made or filed if the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirement; *provided, further*, that the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

(2) The broker or dealer must attach to the report required by paragraph (b)(1) of this section an oath or affirmation that to the best knowledge and belief of the person making the oath or affirmation the information contained in the report is true and correct. The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the

broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(3) For the purposes of this paragraph (b) "membership interest" will include the following: full membership, allied membership, associated membership, floor privileges, and any other interest that entitles a broker or dealer to the exercise of any privilege on an exchange or with an association.

(4) For the purposes of this paragraph (b), any broker or dealer will be deemed to have ceased to be a member in good standing of such exchange or association when the broker or dealer has resigned, withdrawn, or been suspended or expelled from a membership interest in such exchange or association, or has directly or through any associated person sold or entered into an agreement for the sale of a membership interest which would on consummation thereof result in the termination of the broker's or dealer's membership interest in such exchange or association.

(5) Whenever any national securities exchange or registered national securities association takes any action which causes any broker or dealer which is a member of such exchange or association to cease to be a member in good standing of such exchange or association or when such exchange or association learns of any action by such member of any other person which causes such broker or dealer to cease to be a member in good standing of such exchange or association, such exchange or association will report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event, and will send a copy of such notification to the broker or dealer and notify such broker or dealer of its responsibilities under this paragraph (b).

(c) *Customer Statements*—(1) *Who must furnish the statements.* Every broker or dealer must file with the Commission

at its principal office in Washington, DC, with the regional office of the Commission for the region in which the broker or dealer has its principal place of business, and with each national securities exchange and registered national securities association of which it is a member, and must send to its customers the statements prescribed by paragraphs (c) (2) and (3) of this section, except as provided in paragraph (c)(5) of this section or if the activities of such broker or dealer are limited to any one or combination of the following and are conducted in the manner prescribed herein:

(i) As introducing broker or dealer, the forwarding of all the transactions of customers of the introducing broker or dealer to a clearing broker or dealer on a fully disclosed basis: *Provided*, That such clearing broker or dealer reflects such transactions on its books and records in accounts it carries in the names of such customers and that the introducing broker or dealer does not hold funds or securities for, or owe funds or securities to, customers other than funds and securities promptly forwarded to the clearing broker or dealer or to customers;

(ii) The prompt forwarding of subscriptions for securities to the issuer, underwriter or other distributor of such securities and of receiving checks, drafts, notes, or other evidences of indebtedness payable solely to the issuer, underwriter or other distributor who delivers the security directly to the subscriber or to a custodian bank, if the broker or dealer does not otherwise hold funds or securities for, or owe money or securities to, customers;

(iii) The sale and redemption of redeemable shares of registered investment companies or the solicitation of share accounts of savings and loan associations and otherwise qualified to maintain net capital of no less than what is required under §240.15c3-1(a)(2)(iv) or the offering to extend any credit to or participate in arranging a loan for a customer to purchase insurance in connection with the sale of redeemable shares of registered investment companies; or

(iv) Conduct which would exempt the broker or dealer from the provisions of

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§ 240.17a-13 by reason of the provisions of paragraph (a) of that section.

(2) *Audited statements to be furnished.* Audited statements must be furnished within 105 days after the end of the fiscal year of the broker or dealer. The statements may be furnished 30 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The audited statements must include the following:

(i) A Statement of Financial Condition with appropriate notes prepared in accordance with U.S. generally accepted accounting principles which must be audited if the financial statements furnished in accordance with paragraph (d) of this section are required to be certified;

(ii) A footnote containing a statement of the amount of the broker's or dealer's net capital and its required net capital, computed in accordance with § 240.15c3-1. Such statement must include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3-1, where material, and the effect thereof on the net capital and required net capital of the broker or dealer;

(iii) A statement indicating that the Statement of Financial Condition of the most recent financial report of the broker or dealer under paragraph (d)(1)(i)(A) of this section is available for examination at the principal office of the broker or dealer and at the regional office of the Commission for the region in which the broker or dealer has its principal place of business; and

(iv) If, in connection with the most recent annual reports required under paragraph (d) of this section, the report of the independent public accountant required under paragraph (d)(1)(i)(C) of this section covering the report of the broker or dealer required under paragraph (d)(1)(i)(B)(I) of this section iden-

tifies one or more *material weaknesses*, a statement by the broker or dealer that one or more *material weaknesses* have been identified and that a copy of the report of the independent public accountant required under paragraph (d)(1)(i)(C) of this section is currently available for the customer's inspection at 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.

(3) *Unaudited statements to be furnished.* Unaudited statements dated 6 months after the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section must be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3-1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements must contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

(4) *Definition of "customer."* For purposes of this paragraph (c), the term *customer* includes any person other than:

(i) Another broker or dealer who is exempted by paragraph (c)(1) of this section;

(ii) A general, special or limited partner or director or officer of a broker or dealer; or

(iii) Any person to the extent that such person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer, for or with whom a broker or dealer has effected a securities transaction in a particular month, which month must be either the month preceding the balance sheet date or the month following the

balance sheet date in which the statement is sent.

(iv) The term “customer” also includes any person for whom the broker or dealer holds securities for safe-keeping or as collateral or for whom the broker or dealer carries a free credit balance in the month in which customers are determined for purposes of this paragraph (c).

(5) *Exemption from sending certain financial information to customers.* A broker or dealer is not required to send to its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section if the following conditions are met:

(i) The broker or dealer semi-annually sends its customers, at the times it otherwise is required to send its customers the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, a financial disclosure statement that includes:

(A) The amount of the broker’s or dealer’s net capital and its required net capital in accordance with § 240.15c3-1, as of the date of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section;

(B) To the extent required under paragraph (c)(2)(ii) of this section, a description of the effect on the broker’s or dealer’s net capital and required net capital of the consolidation of the assets and liabilities of subsidiaries or affiliates consolidated pursuant to Appendix C of § 240.15c3-1; and

(C) Any statements otherwise required by paragraphs (c)(2)(iii) and (iv) of this section.

(ii) The financial disclosure statement is given prominence in the materials delivered to customers of the broker or dealer and includes an appropriate caption stating that customers may obtain the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, at no cost, by:

(A) Accessing the broker’s or dealer’s Website at the specified Internet Uniform Resource Locator (URL); or

(B) Calling the broker’s or dealer’s specified toll-free telephone number.

(iii) Not later than 90 days after the date of the audited statements prescribed by paragraph (c)(2) of this section and not later than 75 days after the date of the unaudited statements

prescribed by paragraph (c)(3) of this section, the broker or dealer publishes the statements on its Website, accessible by hyperlinks in either textual or button format, which are separate, prominent links, are clearly visible, and are placed in each of the following locations:

(A) On the broker’s or dealer’s Website home page; and

(B) On each page at which a customer can enter or log on to the broker’s or dealer’s Website; and

(C) If the Websites for two or more brokers or dealers can be accessed from the same home page, on the home page of the Website of each broker or dealer.

(iv) The broker or dealer maintains a toll-free telephone number that customers can call to request a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section.

(v) If a customer requests a copy of the statements prescribed by paragraphs (c)(2) and (c)(3) of this section, the broker or dealer sends it promptly at no cost to the customer.

(d) *Annual reports.* (1)(i) Except as provided in paragraphs (d)(1)(iii) and (iv) of this section, every broker or dealer registered under section 15 of the Act (15 U.S.C. 78o) must file annually:

(A) A financial report as described in paragraph (d)(2) of this section; and

(B)(1) If the broker or dealer did not claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year or the broker or dealer is subject to § 240.15c3-3(p), a compliance report as described in paragraph (d)(3) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section; or

(2) If the broker or dealer did claim it was exempt from § 240.15c3-3 throughout the most recent fiscal year and the broker or dealer is not subject to § 240.15c3-3(p), an exemption report as described in paragraph (d)(4) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section;

(C) Except as provided in paragraph (e)(1)(i) of this section, a report prepared by an independent public accountant, under the engagement provisions in paragraph (g) of this section, covering each report required to be

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filed under paragraphs (d)(1)(i)(A) and (B) of this section.

(ii) The reports required to be filed under this paragraph (d) must be as of the same fiscal year end each year, unless a change is approved in writing by the designated examining authority for the broker or dealer under paragraph (n) of this section. A copy of the written approval must be sent to the Commission's principal office 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.

(iii) A broker or dealer succeeding to and continuing the business of another broker or dealer need not file the reports under this paragraph (d) as of a date in the fiscal year in which the succession occurs if the predecessor broker or dealer has filed reports in compliance with this paragraph (d) as of a date in such fiscal year.

(iv) A broker or dealer that is a member of a national securities exchange, has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance, or security for any person who is defined as a customer in paragraph (c)(4) of this section, is not required to file reports under this paragraph (d).

(2) *Financial report.* The financial report must contain:

(i) A Statement of Financial Condition, 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. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable. If the Statement of Financial Condition filed in accordance with instructions to Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the applicable Part

II or Part IIA as filed by the broker or dealer must be included in the notes to the financial statements reported on by the independent public accountant.

(ii) Supporting schedules that include, from Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), a Computation of Net Capital under § 240.15c3-1, a Computation for Determination of Customer Reserve Requirements under § 240.15c3-3a (Exhibit A of § 240.15c3-3), a Computation for Determination of PAB Requirements under Exhibit A of § 240.15c3-3, a Computation for Determination of Security-Based Swap Customer Reserve Requirements under § 240.15c3-3b (Exhibit B of § 240.15c3-3), Information Relating to the Possession or Control Requirements for Customers under § 240.15c3-3, and Information Relating to the Possession or Control Requirements for Security-Based Swap Customers under § 240.15c3-3, as applicable.

(iii) If any of the Computation of Net Capital under § 240.15c3-1, the Computation for Determination of Customer Reserve Requirements Under Exhibit A of § 240.15c3-3, or the Computation for Determination of Security-Based Swap Customer Reserve Requirements under Exhibit B of § 240.15c3-3, as applicable, in the financial report is materially different from the corresponding computation in the most recent Part II or Part IIA of Form X-17A-5 (§ 249.617 of this chapter), as applicable, filed by the broker or dealer pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II or Part IIA of Form X-17A-5, as applicable, filed by the broker or dealer. If no material differences exist, a statement so indicating must be included in the financial report.

(3) *Compliance report.* (i) The compliance report must contain:

(A) Statements as to whether:

(1) The broker or dealer has established and maintained *Internal Control Over Compliance* as that term is defined in paragraph (d)(3)(ii) of this section;

(2) The Internal Control Over Compliance of the broker or dealer was effective during the most recent fiscal year;

(3) The Internal Control Over Compliance of the broker or dealer was effective as of the end of the most recent fiscal year;

(4) The broker or dealer was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) as of the end of the most recent fiscal year; and

(5) The information the broker or dealer used to state whether it was in compliance with §§ 240.15c3-1, 240.15c3-3(e) and, if applicable, 240.15c3-3(p)(3) was derived from the books and records of the broker or dealer.

(B) If applicable, a description of each identified material weakness in the Internal Control Over Compliance of the broker or dealer during the most recent fiscal year.

(C) If applicable, a description of an instance of non-compliance with § 240.15c3-1, § 240.15c3-3(e), or, if applicable, § 240.15c3-3(p)(3) as of the end of the most recent fiscal year.

(ii) The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker or dealer with reasonable assurance that non-compliance with § 240.15c3-1, § 240.15c3-3, § 240.17a-13, or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer (an "Account Statement Rule") will be prevented or detected on a timely basis.

(iii) The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with § 240.15c3-1, § 240.15c3-3(e), or § 240.15c3-3(p)(3) will not be prevented or detected on a time-

ly basis or that non-compliance to a material extent with § 240.15c3-3, except for paragraph (e), § 240.15c3-3(p), except for paragraph (p)(3), § 240.17a-13, or any Account Statement Rule will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-13, or any Account Statement Rule.

(4) *Exemption report.* The exemption report must contain the following statements made to the best knowledge and belief of the broker or dealer:

(i) A statement that identifies the provisions in § 240.15c3-3(k) under which the broker or dealer claimed an exemption from § 240.15c3-3;

(ii) A statement that the broker or dealer met the identified exemption provisions in § 240.15c3-3(k) throughout the most recent fiscal year without exception or that it met the identified exemption provisions in § 240.15c3-3(k) throughout the most recent fiscal year except as described under paragraph (d)(4)(iii) of this section; and

(iii) If applicable, a statement that identifies each exception during the most recent fiscal year in meeting the identified exemption provisions in § 240.15c3-3(k) and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.

(5) The annual reports must be filed not more than sixty (60) calendar days after the end of the fiscal year of the broker or dealer.

(6)(i) *Filing with the Commission.* The annual reports must be filed with the Commission electronically on EDGAR in accordance with the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S-T) and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S-T). The annual reports must be provided as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S-T).

(ii) *Filing with other organizations.* The annual reports also must be filed

with the designated examining authority for the broker or dealer and with the Securities Investor Protection Corporation (“SIPC”) if the broker or dealer is a member of SIPC. Copies of the reports must be provided to all self-regulatory organizations of which the broker or dealer is a member, unless the self-regulatory organization by rule waives this requirement.

(e) *Nature and form of reports.* The annual reports filed pursuant to paragraph (d) of this section must be prepared and filed in accordance with the following requirements:

(1)(i) The broker or dealer is not required to engage an independent public accountant to provide the reports required under paragraph (d)(1)(i)(C) of this section if, since the date of the registration of the broker or dealer under section 15 of the Act (15 U.S.C. 78o) or of the previous annual reports filed under paragraph (d) of this section:

(A) The securities business of the broker or dealer has been limited to acting as broker (agent) for a single issuer in soliciting subscriptions for securities of that issuer, the broker has promptly transmitted to the issuer all funds and promptly delivered to the subscriber all securities received in connection with the transaction, and the broker has not otherwise held funds or securities for or owed money or securities to customers; or

(B) The securities business of the broker or dealer has been limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and the broker or dealer has not carried any margin account, credit balance, or security for any securities customer.

(ii) A broker or dealer that files an annual report under paragraph (d) of this section that is not covered by a report prepared by an independent public accountant must include in the oath or affirmation required by paragraph (e)(2) of this section a statement of the facts and circumstances relied upon as a basis for exemption from the requirement that the annual report filed under paragraph (d) of this section be covered by reports prepared by an independent public accountant.

(2) The broker or dealer must attach to the financial report an oath or affirmation that, to the best knowledge and belief of the person making the oath or affirmation:

(i) The financial report is true and correct; and

(ii) Neither the broker or dealer, nor any partner, officer, director, or equivalent person, as the case may be, has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(iii) The broker or dealer must keep the original oath or affirmation for a period of not less than six years, the first two years in an easily accessible place and in accordance with the requirements of § 240.17a-4 of this chapter (Rule 17a-4) under the Exchange Act.

(3) The annual reports filed under paragraph (d) of this section may be filed as:

(i) One public document; or

(ii) Two documents:

(A) A document consisting of the Statement of Financial Condition, the notes to the Statement of Financial Condition, and the report of the independent public accountant covering the Statement of Financial Condition, which is not confidential; and

(B) A document containing the balance of the annual reports for which confidential treatment may be requested and which will be deemed confidential for the purposes of section 24(b) of the Act. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, by national securities exchanges and registered national securities associations of which the broker or

dealer filing such a report is a member, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person. Nothing contained in this paragraph (e)(3) may be construed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a broker or dealer the right, upon request to the broker or dealer, to obtain information relative to its financial condition.

(4) The broker or dealer must file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms that contains such information and is in such format as determined by SIPC by rule and approved by the Commission.

(f)(1) *Qualifications of independent public accountant.* The independent public accountant must be qualified and independent in accordance with §210.2-01 of this chapter and the independent public accountant must be registered with the Public Company Accounting Oversight Board if required by the Sarbanes-Oxley Act of 2002.

(2) *Statement regarding independent public accountant.* (i) Every broker or dealer that is required to file annual reports under paragraph (d) of this section must file no later than December 10 of each year (or 30 calendar days after the effective date of its registration as a broker or dealer, if earlier) a statement as prescribed in paragraph (f)(2)(ii) of this section with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for the broker or dealer. The statement must be dated no later than December 1 (or 20 calendar days after the effective date of its registration as a broker or dealer, if earlier). If the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

(ii) The statement must be headed "Statement regarding independent public accountant under Rule 17a-5(f)(2)" and must contain the following information and representations:

(A) Name, address, telephone number, and registration number of the broker or dealer.

(B) Name, address, and telephone number of the independent public accountant.

(C) The date of the fiscal year of the annual reports of the broker or dealer covered by the engagement.

(D) Whether the engagement is for a single year or is of a continuing nature.

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (g)(1) and (2) of this section.

(F) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow representatives of the Commission or its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, to review the audit documentation associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section. For purposes of this paragraph, "audit documentation" has the meaning provided in standards of the Public Company Accounting Oversight Board. The Commission anticipates that, if requested, it will accord confidential treatment to all documents it may obtain from an independent public accountant under this paragraph to the extent permitted by law.

(G) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow the independent public accountant to discuss with representatives of the Commission and its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, the findings associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section.

(iii) If a broker or dealer neither clears transactions nor carries customer accounts, the broker or dealer is

not required to include the representations in paragraphs (f)(2)(ii)(F) and (G) of this section.

(iv) Any broker or dealer that is not required to file reports prepared by an independent public accountant under paragraph (d)(1)(i)(C) of this section must file a statement required under paragraph (f)(2)(i) of this section indicating the date as of which the unaudited reports will be prepared.

(3) *Replacement of accountant.* A broker or dealer must file a notice that must be received by the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which its principal place of business is located, and the principal office of the designated examining authority for the broker or dealer not more than 15 business days after:

(i) The broker or dealer has notified the independent public accountant that provided the reports the broker or dealer filed under paragraph (d)(1)(i)(C) of this section for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; or

(ii) The broker or dealer has notified an independent public accountant that was engaged to provide the reports required under paragraph (d)(1)(i)(C) of this section that the engagement has been terminated; or

(iii) An independent public accountant has notified the broker or dealer that the independent public accountant would not continue under an engagement to provide the reports required under paragraph (d)(1)(i)(C) of this section; or

(iv) A new independent public accountant has been engaged to provide the reports required under paragraph (d)(1)(i)(C) of this section without any notice of termination having been given to or by the previously engaged independent public accountant.

(v) The notice must include:

(A) The date of notification of the termination of the engagement or of the engagement of the new independent public accountant, as applicable; and

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of ac-

counting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those that occur at the decision-making level—that is, between principal financial officers of the broker or dealer and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (d)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The broker or dealer must also request the former independent public accountant to furnish the broker or dealer with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the broker or dealer and, if not, stating the respects in which the independent public accountant does not agree. The broker or dealer must file three copies of the notice and the accountant's letter, one copy of which must be signed by the sole proprietor, a general partner, or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

(g) *Engagement of independent public accountant.* The independent public accountant engaged by the broker or dealer to provide the reports required under paragraph (d)(1)(i)(C) of this section must, as part of the engagement, undertake the following, as applicable:

(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the broker or dealer under paragraph (d)(1)(i)(A) of this section in accordance with standards of the Public Company Accounting Oversight Board; and

(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (d)(3)(i)(A)(2) through (5) of this section in the compliance report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(1) of this section in accordance with standards of the Public Company Accounting Oversight Board; or

(ii) To prepare an independent public accountant's report based on a review of the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(2) of this section in accordance with standards of the Public Company Accounting Oversight Board.

(h) *Notification of non-compliance or material weakness.* If, during the course of preparing the independent public accountant's reports required under paragraph (d)(1)(i)(C) of this section, the independent public accountant determines that the broker or dealer is not in compliance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-13 or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer, as applicable, or the independent public accountant determines that any material weaknesses (as defined in paragraph (d)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the broker or dealer of the nature of the non-compliance or material weakness. If the notice from the accountant concerns an instance of non-compliance that would require a broker or dealer to provide a notification under § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, or if the notice concerns a material weakness, the broker or dealer must provide a notification in accordance with § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, as applicable, and pro-

vide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission and the designated examining authority within one business day. The report from the accountant must, if the broker or dealer failed to file a notification, describe any instances of non-compliance that required a notification under § 240.15c3-1, § 240.15c3-3, or § 240.17a-11, or any material weaknesses. If the broker or dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker or dealer with which the accountant does not agree.

NOTE 1 TO PARAGRAPH (h): The attention of the broker or dealer and the independent public accountant is called to the fact that under § 240.17a-11(a)(1), among other things, a broker or dealer whose net capital declines below the minimum required pursuant to § 240.15c3-1 must give notice of such deficiency that same day in accordance with § 240.17a-11(h) and the notice must specify the broker or dealer's net capital requirement and its current amount of net capital. The attention of the broker or dealer and accountant also is called to the fact that under § 240.15c3-3(i), if a broker or dealer fails to make a reserve bank account or special reserve account deposit, as required by § 240.15c3-3, the broker or dealer must immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and must promptly thereafter confirm such notification in writing.

(i) *Reports of the independent public accountant required under paragraph (d)(1)(i)(C) of this section—(1) Technical requirements.* The independent public accountant's reports must:

- (i) Be dated;
- (ii) Be signed;
- (iii) Indicate the city and state where issued; and
- (iv) Identify without detailed enumeration the items covered by the reports.

(2) *Representations.* The independent public accountant's reports must:

- (i) State whether the examinations or review, as applicable, were made in

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accordance with standards of the Public Company Accounting Oversight Board;

(ii) Identify any examination and, if applicable, review procedures deemed necessary by the independent public accountant under the circumstances of the particular case that have been omitted and the reason for their omission.

(iii) Nothing in this section may be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination or review made for the purpose of expressing the opinions or conclusions required under this section.

(3) *Opinion or conclusion to be expressed.* The independent public accountant's reports must state clearly:

(i) The opinion of the independent public accountant with respect to the financial report required under paragraph (d)(1)(i)(A) of this section and the accounting principles and practices reflected in that report;

(ii) The opinion of the independent public accountant with respect to the financial report required under paragraph (d)(1)(i)(A) of this section, as to the consistency of the application of the accounting principles, or as to any changes in those principles, that have a material effect on the financial statements; and

(iii)(A) The opinion of the independent public accountant with respect to the statements required under paragraphs (d)(3)(i)(A)(2) through (5) of this section in the compliance report required under paragraph (d)(1)(i)(B)(1) of this section; or

(B) The conclusion of the independent public accountant with respect to the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required under paragraph (d)(1)(i)(B)(2) of this section.

(4) *Exceptions.* Any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports re-

quired under paragraph (d) of this section must be given.

(j) [Reserved]

(k) *Supplemental reports.* (1) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3-1e shall file concurrently with the annual reports a supplemental report on management controls, which must be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)). The supplemental report must indicate the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in accordance with § 240.15c3-4. This review shall be conducted in accordance with procedures agreed upon by the broker or dealer and the registered public accounting firm 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 broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3-4. Before commencement of the review and no later than December 10 of each year, the broker or dealer must file a statement with the Commission that includes:

(i) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm; and

(ii) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

(2) The supplemental report and statement to be filed under paragraph (k)(1) of this section must be filed with the Commission electronically on EDGAR in the manner described by the EDGAR Filer Manual, as defined in 17 CFR 232.11 (Rule 11 of Regulation S-T), and must be filed in accordance with the requirements of 17 CFR part 232 (Regulation S-T). The supplemental report and statement must be provided

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as an Interactive Data File in accordance with 17 CFR 232.405 (Rule 405 of Regulation S-T).

(l) *Use of certain statements filed with the Securities and Exchange Commission.* At the request of any broker or dealer who is an investment company registered under the Investment Company Act of 1940, or a sponsor or depositor of such a registered investment company who effects transactions in securities only with, or on behalf of, such registered investment company, the Commission will accept the financial statements filed pursuant to section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder as a filing pursuant to paragraph (d) of this section. Such a filing must be deemed to satisfy the requirements of this section for any calendar year in which such financial statements are filed, provided that the statements so filed meet the requirements of the other rules under which they are filed with respect to time of filing and content.

(m) *Extensions and exemptions.* (1) A broker's or dealer's designated examining authority may extend the period under paragraph (d) of this section for filing annual reports. The designated examining authority for the broker or dealer must maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

(2) Any "bank" as defined in section 3(a)(6) of the Act (15 U.S.C. 78c) and any "insurance company" as defined in section 3(a)(19) of the Act (15 U.S.C. 78c) registered as a broker or dealer to sell variable contracts but exempt from § 240.15c3-1 shall be exempt from the provisions of this section.

(3) On written request of any national securities exchange, registered national securities association, broker or dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(4) The provisions of § 240.17a-5 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 se-

curities 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)).

(n) *Notification of change of fiscal year.* (1) In the event any broker or dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for such broker or dealer, a notice of such change.

(2) Such notice must contain a detailed explanation of the reasons for the change. Any change in the filing period for the annual report must be approved in writing by the designated examining authority of the broker or dealer.

(o) *Compliance with § 240.17a-12.* An OTC derivatives dealer may comply with § 240.17a-5 by complying with the provisions of § 240.17a-12.

(p) *Signatures.* Any signature required by this section may be a manual or electronic signature. The signing process for an electronic signature must, at a minimum:

(1) Require the signatory to present a physical, logical, or digital credential that authenticates the signatory's individual identity;

(2) Reasonably provide for non-repudiation of the signature;

(3) Provide that the signature be attached, affixed, or otherwise logically associated with the signature page or document being signed; and

(4) Include a timestamp to record the date and time of the signature.

CROSS REFERENCE: For interpretative release applicable to § 240.17a-5, see No. 51 in tabulation, part 211 of this chapter.

[40 FR 59713, Dec. 30, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.17a-5, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.govinfo.gov.