

## § 240.17a-4

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the Commission designated in such demand, true, correct, complete, and current copies of any or all of such records. Such undertaking shall include the following provisions:

The undersigned hereby undertakes to maintain and preserve on behalf of [BD] the books and records required to be maintained and preserved by [BD] pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional or district office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.

Nothing herein contained shall be deemed to relieve such member, broker, or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in §§ 240.17a-3 and 240.17a-4.

(c) This section shall not be deemed to require a member of a national securities exchange, or a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o) as amended, to make or keep such records as are required by paragraph (a) reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.

(d) The records specified in paragraph (a) of this section shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(e) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-8 of the Municipal Securities Rule-

making Board will be deemed to be in compliance with this section.

(Secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d-1, 78d-2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565-568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3-5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 78l, 78n, 78q, 78w(a))

CROSS REFERENCE: For interpretative release applicable to § 240.17a-3, see No. 3040 in tabulation, part 241 of this chapter.

[13 FR 8212, Dec. 22, 1948]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.17a-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

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

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required to be made pursuant to § 240.17a-3(a) (1), (2), (3), and (5).

(b) Every such broker and dealer shall preserve for a period of not less than 3 years, the first two years in an accessible place:

(1) All records required to be made pursuant to paragraphs (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), and (a)(16) of § 240.17a-3.

(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 business of such member, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such.

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements,

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branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, 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 his business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA or Part IIB and in annual audited financial statements required by § 240.17a-5(d) and § 240.17a-12(b):

(i) Money balance 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, 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, 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 position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price and valuation of each spot commodity 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;

(xiii) Detail relating to information for possession or control requirements under § 240.15c3-3 and reported on the schedule in Part II or IIA of Form X-17A-5 (§ 249.617 of this chapter);

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

(xv) Other schedules which are specifically prescribed by the Commission

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as necessary to support information reported as required by § 240.17a-5 and § 240.17a-12.

(9) The records required to be made pursuant to § 240.15c3-3(d)(4).

(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, shall 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.

(c) Every such member, broker and dealer shall preserve for a period of not less than 6 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 such account.

(d) Every such member, broker and dealer shall 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.

(e) Every such member, broker and dealer shall maintain and preserve in an easily accessible place:

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

(2) All records required under paragraph (a)(13) of § 240.17a-3 until at least three years after the termination of employment or association of those

persons required by § 240.17f-2 to be fingerprinted; and

(3) All records required pursuant to paragraph (a)(15) of § 240.17a-3 for the life of the enterprise.

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

(f) The records required to be maintained and preserved pursuant to §§ 240.17a-3 and 240.17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section:

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

(ii) The term *electronic storage media* means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).

(2) If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

(i) The member, broker, or dealer must notify its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).

(ii) The electronic storage media must:

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

(B) Verify automatically the quality and accuracy of the storage media recording process;

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

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of which the member, broker, or dealer is a member.

(3) If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

(i) At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission or its representatives may request.

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under § 240.17a-4 for the time required.

(iv) Organize and index accurately all information maintained on both original and any 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 and the self-regulatory organizations of which the broker or dealer is a member.

(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.

(v) 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 240.17a-4 to electronic storage media 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 organizations of which the broker or dealer is a member.

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

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party ("the undersigned"), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's or designee's staff to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under Rule 17a-4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be

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maintained and preserved by the broker or dealer pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff or its designee. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the Commission's staff or its designee may request.

(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 Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o), such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he 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 Rule-making Board will be deemed to be in compliance with this section.

(i) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to § 240.17a-3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that 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 [BD], the undersigned hereby undertakes to permit examination of such books and records at

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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 copy of any or all or any part of such books and records.

Agreement with an outside entity shall 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 or dealer subject to this section shall furnish promptly to a representative of the Commission such legible, true and complete copies of those records of the member, broker or dealer, which are required to be preserved under this section, as are requested by the representative of the Commission.

(Secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78d-1, 78d-2, 78a; sec. 14, Pub. L. 94-29, 89 Stat. 137 (15 U.S.C. 78a; sec. 18, Pub. L. 94-29, 89 Stat. 155 (15 U.S.C. 78w))

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 on GPO Access.

### § 240.17a-5 Reports to be made by certain brokers and dealers.

(a) *Filing of monthly and quarterly reports.* (1) This paragraph (a) shall apply to every broker or dealer registered pursuant to section 15 of the Act.

(2)(i) Every broker or dealer subject to this paragraph (a) who clears or carries customer accounts shall file 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 shall file 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 date selected for the annual audit of financial statements where said date is other than a calendar quarter. Certain of such brokers or dealers