

# CHANGES TO SEC RECORDKEEPING REQUIREMENTS

## EXCHANGE ACT RULES 17A-3 AND 17A-4

This document discusses Rule 17a-3 and Rule 17a-4, listing all the recordkeeping requirements of these two provisions and highlighting new or changed requirements that become effective May 2, 2003.

### LIST OF REQUIREMENTS UNDER RULE 17A-3

17 CFR 240 §17a-3. Records to be Made by Certain Exchange Members, Brokers and Dealers

17a-3(a)(1)

**Blotters** (or other records of original entry) containing:

- an itemized daily record of all purchases and sales of securities,
- all receipts and deliveries of securities (including certificate numbers),
- all receipts and disbursements of cash, and
- all other debits and credits

Such records shall show:

- the account for which each such transaction was effected,
- the name and amount of securities,
- the unit and aggregate purchase or sale price (if any),
- the trade date, and
- the name or other designation of the person from whom purchased or received or to whom sold or delivered.

17a-3(a)(2)

**Ledgers** (or other records) reflecting **all**

- assets and liabilities,
- income and expense and
- capital accounts.

17a-3(a)(3)

**Ledger accounts** (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof,

- all purchases,
- sales,
- receipts and
- deliveries of securities and commodities for such account and
- all other debits and credits to such account.

17a-3(a)(4)

**Ledgers** (or other records) reflecting the following:

- securities in transfer;
- dividends and interest received;
- securities borrowed and securities loaned;
- monies borrowed and monies loaned (together with a record of the collateral and any collateral substitutions);

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- Securities failed to receive and failed to deliver;
- All long and short securities record differences arising from the examination, count, verification and comparison pursuant to Rules 17a-5, 17a-12 and 17a-13 hereunder (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);
- Repurchase and reverse repurchase agreements.

#### 17a-3(a)(5)

A securities record or ledger reflecting separately for each security as of the clearance dates

- **all "long" or "short" positions** (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for its account or for the account of his customers or partners or others and **showing the location of all securities long** and the **offsetting position to all securities short**, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered,
- and in all cases the name or designation of the account in which each position is carried.

#### 17a-3(a)(6)

(i) A memorandum of each **brokerage order**, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. The memorandum shall show

- the terms and conditions of the order or instructions and of any modification or cancellation thereof;
- the account for which entered;
- the time the order was received;
- the time of entry;
- the price at which executed;
- ⇒ the identity of each associated person, if any, responsible for the account;
- ⇒ the identity of any other person who entered or accepted the order on behalf of the customer **or, if a customer entered the order on an electronic system, a notation of that entry;**
- and, to the extent feasible, the time of execution or cancellation.

The memorandum **need not show** the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order **if the order is entered into an electronic system that generates the memorandum** and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the member, broker or dealer shall produce **upon request** by a representative of a securities regulatory authority **a separate record** which identifies each other person.

- An order entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated.

The term instruction shall include instructions between partners and employees of a member, broker or dealer.

The term time of entry shall mean the time when the member, broker or dealer transmits the order or instruction for execution. ~~or, if it is not so transmitted, the time when it is received.~~

(ii) This memorandum **need not be made** as to a purchase, sale or redemption of a security on a **subscription** way basis directly from or to the issuer, **if the member, broker or dealer maintains a copy of the customer's subscription agreement** regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

### 17a-3(a)(7)

A memorandum of each **purchase and sale** for the account of the member, broker, or dealer showing

- the price
- and, to the extent feasible, the time of execution;
- and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing
  - the time of receipt;
  - the terms and conditions of the order and any modification thereof;
  - the account for which it was entered;
  - ⇒ the identity of each associated person, if any, responsible for the account;
  - ⇒ the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry.

The memorandum **need not show** the identity of any person other than the associated person responsible for the account who may have entered the order **if the order is entered into an electronic system that generates the memorandum** and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person: in that circumstance, the member, broker or dealer shall produce **upon request** by a representative of a securities regulatory authority a **separate record** which identifies each other person.

- ⇒ An order with a customer other than a member, broker or dealer entered pursuant to the exercise of discretionary authority by the member, broker or dealer, or associated person thereof, shall be so designated.

### 17a-3(a)(8)

- Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements,
- and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

### 17a-3(a)(9)

A record in respect of each cash and margin account with such member, broker or dealer indicating

- the name and address of the beneficial owner of such account, and
- Except with respect to exempt employee benefit plan securities as defined in §240.14a-1(d), but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, **whether or not the beneficial owner** of securities registered in the name of such members, brokers or dealers, or a registered clearing agency or its nominee **objects to disclosure** of his or her identity, address and securities positions to issuers, and
- in the case of a margin account, the signature of such owner, Provided, That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

### 17a-3(a)(10)

- A record of all **puts, calls, spreads, straddles and other options** in which such member, broker or dealer has any direct or indirect interest or which such member, broker or dealer has granted or guaranteed, containing at least, an identification of the security and the number of units involved.

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- An OTC derivatives dealer shall also keep a record of all **eligible OTC derivative instruments** as defined in §240.3b-13 in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.

17a-3(a)(11)

- A record of the proof of money balances of all ledger accounts in the form of trial balances, and
- a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to §240.15c3-1 :

Provided, however, (i) That such **computation need not be made** by any member, broker or dealer unconditionally exempt from §240.15c3-1 by subparagraph (b)(1) or (b)(3), thereof; and (ii) that any member of an exchange whose members are exempt from §240.15c3-1 by subparagraph (b)(2) thereof shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges therein listed of which it is a member.

- Such trial balances and computations shall be prepared currently at least once a month.

17a-3(a)(12)

- (i) A questionnaire or application for employment executed by each "associated person" (as defined in §17a-3(g)(4)) of the member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and **shall contain at least the following** information with respect to the associated person:
  - (A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the member, broker or dealer;
  - (B) The associated person's date of birth;
  - (C) A complete, consecutive statement of all the associated person's business connections for at least the preceding **ten years**, including whether the employment was part-time or full-time.
  - (D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;
  - (E) A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker or dealer with which the associated person was associated in any capacity when such action was taken;
  - (F) A record of any permanent or temporary injunction entered against the associated person or any member, broker or dealer with which the associated person was associated in any capacity at the time such injunction was entered;
  - (G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omission, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing.
  - (H) A record of any other name or names by which the associated person has been known or which the associated person has used;

**provided, however,** that if such associated person **has been** registered as a registered representative of such member, broker or dealer with, **or** the associated person's **employment** has been **approved by**, the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Cincinnati Stock Exchange, Inc. or the International Securities Exchange, **then retention of a full,**

**correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements** of this subparagraph.

(ii) A record listing every associated person of the member, broker or dealer which shows, for each associated person,

- ⇒ **every office** of the member, broker or dealer where the associated person **regularly conducts the business** of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security for the member, broker or dealer, and
- ⇒ **the Central Registration Depository number**, if any, and
- ⇒ **every internal identification number** or code assigned to that person by the member, broker or dealer.

#### 17a-3(a)(13)

Records required to be maintained pursuant to Rule 17f-2, paragraph (d) **(concerning fingerprinting cards or substitute records)**.

#### 17a-3(a)(14)

- Copies of all Forms X-17F-1A filed pursuant to §240.17f-1,
- all agreements between reporting institutions regarding registration or other aspects of §240.17f-1, and
- all confirmations or other information received from the Commission or its designee as a result of inquiry.

#### 17a-3(a)(15)

Records required to be maintained pursuant to paragraph (e) of §240.17f-2 **(concerning notices of compliance with certain fingerprinting requirements)**.

#### 17a-3(a)(16)

(i) The following records regarding any internal broker-dealer system of which such a broker or dealer is the sponsor:

- (A) A record of the broker's or dealer's customers that have access to an internal broker-dealer system sponsored by such broker or dealer (identifying any affiliations between such customers and the broker or dealer);
- (B) Daily summaries of trading in the internal broker-dealer system, including:
  - (1) Securities for which transactions have been executed through use of such system; and
  - (2) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation):
    - (i) With respect to equity securities, stated in number of trades, number of shares, and total U.S. dollar value;
    - (ii) With respect to debt securities, stated in total settlement value in U.S. dollars; and
    - (iii) With respect to other securities, stated in number of trades, number of units of securities, and in dollar value, or other appropriate commonly used measure of value of such securities; and
- (C) Time-sequenced records of each transaction effected through the internal broker-dealer system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if internal broker-dealer system allows alternative means or

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locations for execution, such as routing to another market, matching with limit orders, or executing against the quotations of the broker or dealer sponsoring the system).

(ii) For purposes of paragraph (a) of this section, the term:

(A) Internal broker-dealer system shall mean any facility, other than a national securities exchange, an exchange exempt from registration based on limited volume, or an alternative trading system as defined in Regulation ATS, §§242.300 through 242.303 of this chapter, that provides a mechanism, automated in full or in part, for collecting, receiving, disseminating, or displaying system orders and facilitating agreement to the basic terms of a purchase or sale of a security between a customer and the sponsor, or between two customers of the sponsor, through use of the internal broker-dealer system or through the broker or dealer sponsor of such system;

(B) Sponsor shall mean any broker or dealer that organizes, operates, administers, or otherwise directly controls an internal broker-dealer trading system or, if the operator of the internal broker-dealer system is not a registered broker or dealer, any broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved on a regular basis with executing transactions in connection with use of the internal broker-dealer system, other than solely for its own account or as a customer with access to the internal broker-dealer system; and

(C) System order means any order or other communication or indication submitted by any customer with access to the internal broker-dealer system for entry into a trading system announcing an interest in purchasing or selling a security. The term "system order" does not include inquiries or indications of interest that are not entered into the internal broker-dealer system.

#### 17a-3(a)(17)

For each account with a natural person as a customer or owner:

(i)(A) An account record including

- ⇒ the customer's or owner's name,
- ⇒ tax identification number,
- ⇒ address,
- ⇒ telephone number,
- ⇒ date of birth,
- ⇒ employment status (including occupation and whether the customer is an associated person of a member, broker or dealer),
- ⇒ annual income,
- ⇒ net worth (excluding value of primary residence), and
- ⇒ the account's investment objectives.
- ⇒ In the case of a **joint account**, the account record must include **personal information for each joint owner** who is a natural person; however, financial information for the individual joint owners **may** be combined.
- ⇒ The account record **shall indicate** whether it has been **signed by the associated person** responsible for the account, if any, **and approved or accepted by a principal** of the member, broker or dealer.
- ⇒ For accounts in existence on the effective date of this section, the member, broker or dealer **must obtain this information within three years** of the effective date of the section. (May 2, 2006)

(B) A record indicating that:

- ⇒ (1) The member, broker or dealer has **furnished to each customer or owner within three years** of the effective date of this section (May 2, 2006), **and to each customer or owner who opened an account** after the effective date of this section (May 2, 2003) within thirty days of the opening of the account, **and thereafter at intervals no greater than thirty-six months, a copy of the account record** or an alternate document with all information required by paragraph (a)(17)(i)(A) of this section.

The member, broker or dealer **may elect** to send this notification **with the next statement** mailed to the customer or owner after the opening of the account.

The member, broker or dealer **may choose** to exclude any tax identification number and date of birth from the account record or alternative document furnished to the customer or owner.

The member, broker or dealer **shall include** with the account record or alternative document provided to each customer or owner an **explanation** of any terms regarding investment objectives.

The account record or alternate document furnished to the customer or owner **shall include or be accompanied** by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the member, broker or dealer, and that the customer or owner should notify the member, broker or dealer of any future changes to information contained in the account record.

⇒ (2) **For each account** record updated to reflect a **change in the name or address** of the customer or owner, the member, broker or dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the associated person, if any, responsible for that account, **on or before the 30th day after** the date the member, broker or dealer received notice of the change.

⇒ (3) **For each change in the account's investment objectives** the member, broker or dealer has furnished to each customer or owner, and the associated person, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by paragraph (a)(17)(i)(B)(1) of this section, **on or before the 30th day after** the date the member, broker or dealer received notice of any change, or, if the account was updated for some reason other than the firm receiving notice of a change, after the date the account record was updated.

The member, broker or dealer **may elect** to send this notification **with the next statement** scheduled to be mailed to the customer or owner.

(C) For purposes of this paragraph (a)(17), the **neglect, refusal, or inability of a customer** or owner to provide or update any account record information required under paragraph (a)(17)(i)(A) of this section **shall excuse** the member, broker or dealer from obtaining that required information.

(D) The account record requirements in paragraph (a)(17)(i)(A) of this section **shall only apply to accounts** for which the member, broker or dealer is, or has within the past 36 months been, required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. Additionally, the furnishing requirement in paragraph (a)(17)(i)(B)(1) of this section **shall not be applicable** to an account for which, within the last 36 months, the member, broker or dealer has not been required to make a suitability determination under the federal securities laws or under the requirements of a self-regulatory organization of which it is a member. This paragraph (a)(17)(i)(D) **does not relieve** a member, broker or dealer from any **obligation** arising from the rules of a self-regulatory organization of which it is a member regarding the collection of information from a customer or owner.

(ii) If an account is a discretionary account, a record containing

⇒ the dated signature of each customer or owner granting the authority and

⇒ the dated signature of each natural person to whom discretionary authority was granted.

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(iii) A record for each account indicating that

- ⇒ **each customer** or owner was **furnished** with a copy of each written agreement entered into on or after the effective date of this paragraph pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.

17a-3(a)(18)

A record:

(i) As to each associated person of each written **customer complaint** received by the member, broker or dealer concerning that associated person.

- ⇒ The record shall include
- ⇒ the complainant's name,
- ⇒ address, and
- ⇒ account number;
- ⇒ the date the complaint was received;
- ⇒ the name of any other associated person identified in the complaint;
- ⇒ a description of the nature of the complaint; and
- ⇒ the disposition of the complaint.

Instead of the record, a member, broker or dealer **may maintain a copy** of each original complaint in a **separate file** by the associated person named in the complaint along with a record of the **disposition** of the complaint.

- ⇒ (ii) Indicating that each customer of the member, broker or dealer has been provided with a **notice** containing the address and telephone number of the department of the member, broker or dealer to which any complaints as to the account may be directed.

17a-3(a)(19)

A record:

(i) As to each associated person listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include

- ⇒ the amount of compensation if monetary and a description of the compensation if non-monetary.

In lieu of making this record, a member, broker or dealer **may elect** to produce the required information promptly upon request of a representative of a securities regulatory authority.

- ⇒ (ii) Of all agreements pertaining to the relationship between each associated person and the member, broker or dealer including a **summary** of each associated person's **compensation** arrangement or plan with the member, broker or dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

17a-3(a)(20)

- ⇒ A record, which need not be separate from the advertisements, sales literature, or communications, **documenting** that the member, broker or dealer has **complied** with, or adopted policies and procedures **reasonably designed to establish compliance** with, applicable federal requirements and rules of a self-regulatory organization of which the member, broker or dealer is a member which require that advertisements, sales literature, or any other communications with the public by a member, broker or dealer or its associated persons be approved by a principal.



### 17a-3(a)(21)

- ⇒ A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

### 17a-3(a)(22)

- ⇒ A record listing each principal of a member, broker or dealer responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the member, broker or dealer is a member that require acceptance or approval of a record by a principal.

### 17a-3(b)

(1) This rule **shall not be deemed to require** a member of a national securities exchange, a broker or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to Section 15 of the Act, to make or keep such records of transactions cleared for such member, broker or dealer as are **customarily made** and kept by a clearing broker or dealer pursuant to the requirements of Rules 17a-3 and 17a-4, **Provided that** the clearing broker or dealer has and maintains net capital of not less than \$25,000 and is otherwise in compliance with Rule 15c3-1 or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from Rule 15c3-1 by subparagraph (b)(2) thereof.

(2) This rule **shall not be deemed to require** a member of a national securities exchange, a broker or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to Section 15 of the Act, to make or keep such records of transactions cleared for such member, broker or dealer by a bank as **are customarily made** and kept by a clearing broker or dealer pursuant to the requirements of Rules 17a-3 and 17a-4, **Provided that** such member, broker or dealer obtains from such bank an agreement in writing to the effect that the records made and kept by such bank are the property of the member, broker or dealer, and **Provided further** that such bank files with the Commission a written undertaking in form acceptable to the Commission and signed by a duly authorized person, that such books and records are available for examination by representatives of the Commission as specified in Section 17(a) of the Act, and that it will **furnish to the Commission, upon demand**, at its principal office in Washington, D. C. or at any Regional or District Office of 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, D. C., 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 Rule 17a-3 and Rule 17a-4.

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### 17a-3(c)

This rule **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, 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.

### 17a-3(d)

The records specified in paragraph (a) of this rule **shall not be required** with respect to any cash transaction of **\$100.00 or less** involving only **subscription rights or warrants** which by their terms expire within **90 days** after the issuance thereof.

### 17a-3(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 Rulemaking Board will be deemed to be compliance with this section.

### 17a-3(f)

Security futures products. The provisions of this section shall not apply to security futures product transactions and positions in a futures account (as that term is defined in § 240.15c3-3(a)(15)); *provided*, that the Commodity Futures Trading Commission's recordkeeping rules apply to those transactions and positions.

(The SEC added a new 17a-3(f) **after** adding 17a-3(f) and (g) below. However, the 17a-3(f) above is effective September 13, 2002, and the 17a-3(f) and (g) below are effective May 2, 2003. It is likely that the SEC intended to redesignate 17a-3(f) and (g) below as 17a-3(g) and (h). CCH notified the SEC of the error and is monitoring the SEC for correction.)

### 17a-3(f)

Every member, broker or dealer **shall make and keep current, as to each office**, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section.

### 17a-3(g)

When used in this section:

(1) The term **office** means any location where one or more associated persons regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

(2) The term **principal** means any individual registered with a registered national securities association as a principal or branch manager of a member, broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the member, broker or dealer.

(3) The term **securities regulatory authority** means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States.

(4) The term **associated person** means an "associated person of a member" or "associated person of a broker or dealer" as defined in sections 3(a)(21) and 3(a)(18) of the Act (15 U.S.C. 78c(a)(21) and (a)(18)) respectively, but shall not include persons whose functions are solely clerical or ministerial.

## **LIST OF REQUIREMENTS UNDER RULE 17A-4**

### 17 CFR 240 §17a-4. Records to be Preserved by Certain Exchange Members, Brokers and Dealers

#### 17a-4(a)

Every member, broker and dealer subject to §240.17a-3 shall **preserve** for a period of not less than **six years**, the **first two years** in an **easily accessible place**, all records required to be made pursuant to paragraphs §240.17a-3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph §240.17a-3(f).

#### 17a-4(b)

Every member, broker and dealer subject to §240.17a-3 shall **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), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to §240.17a-3(f).
- (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 (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, the term communications includes sales scripts.
- (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 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 its 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 the annual 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;

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- (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 as necessary to support information reported as required by Rule 17a-5 and Rule 17a-12.
- (9) The records required to be made pursuant to §240.15c3-3(d)(4) and (o).

(The SEC added the words "and (o)" effective September 13, 2002. Section 240.15c3-3(o) deals with information that broker-dealers who are also registered with the CFTC as a "futures commission merchant" must maintain for three-years ("the first two years in an accessible place").

(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.

#### 17a-4(c)

Every **member**, broker and dealer **subject to §240.17a-3** shall **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.

#### 17a-4(d)

Every member, broker and dealer **subject to §240.17a-3** 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 (**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 **amendments to these forms**, all **licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority**.

#### 17a-4(e)

Every member, broker and dealer **subject to §240.17a-3** 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's employment and any other connection** with the member, broker or dealer has terminated.

(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**.

**(5) All account record information** required pursuant to **§240.17a-3(a)(17)** until at least **six years after the earlier of the date the account was closed or the date on which the information was replaced or updated**.

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(6) **Each report** which a securities **regulatory authority 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 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 shall 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.

#### 17a-4(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 section 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 section (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 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 §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

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**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, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer, upon reasonable request, such information as is deemed necessary by 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 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 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 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. 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** 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**.

#### 17a-4(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. 780), 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.

#### 17a-4(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 will be deemed to be in compliance with this section.

#### 17a-4(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 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 Section 240.17a-3.

#### 17a-4(j)

Every member, broker and dealer subject to this section shall **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. 78q(b)) that are requested by the representative of the Commission.

#### 17a-4(k)

*Exchanges of futures for physical.*

(1) Except as provided in paragraph (k)(2), 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 shall 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 dealer shall 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.

(The SEC added 17a-4(k) effective September 13, 2002, and redesignated the 17a-4(k) and (l) that are to be effective May 2, 2003, as (l) and (m), which follow below.)

#### 17a-4(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**

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**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.

17a-4(m)

When used in this section:

- (1) The term office shall have the meaning set forth in §240.17a-3(g)(1).
- (2) The term principal shall have the meaning set forth in §240.17a-3(g)(2).
- (3) The term securities regulatory authority shall have the meaning set forth in §240.17a-3(g)(3).
- (4) The term associated person shall have the meaning set forth in §240.17a-3(g)(4).