

REPORTS TO BE MADE BY CERTAIN BROKERS AND DEALERS
SEA Rule 17a-5

(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 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.

/01 **NYSE Monthly Part II Requirement**

The NYSE requires monthly filing of Part II of Form X-17A-5 report for all members and member organizations required to file Part I of Form X-17A-5.

(NYSE Information Memo No. 92-42, December 1992) (No. 94-6, December 1994)

/02 **NYSE Requirements for Guaranteed Subsidiary/Associated Partnership**

Members and member organizations are required to file Part II or IIA of Form X-17A-5 on a quarterly basis for registered broker-dealers that are either guaranteed subsidiaries or from whom flow through capital benefits are received. Members and member organizations that guarantee or receive flow through capital benefits from another person must submit the forms required by NYSE Information Memo 93-54.

A broker-dealer, whether organized as a sole proprietor, partnership or corporation, that is a general partner of another partnership is in effect guaranteeing all the liabilities of that partnership and must submit the forms required by NYSE Information Memo 93-54.

(NYSE Information Memo No. 76-17, April 1992)

(NYSE Information Memo No. 93-54, December 1993) (No. 94-6, December 1994)

(a)(2)(i) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)/03 Retroactive Application of Changes in Accounting Principles

Broker-dealers that are required to adopt a new accounting principle on a retroactive basis need not restate or re-file their previously filed FOCUS Reports or recalculate net capital or other computations that were previously filed or calculated, as long as such FOCUS Reports and net capital or other computations were prepared in accordance with generally accepted accounting principles and SEA Rules in effect at the time they were originally prepared and/or filed.

Note: Any adjustments to retained earnings caused by a new accounting principle that is applied on a retroactive basis should be reported on either line 4260 (Additions) or 4270 (Deductions) in the Statement of Changes in Ownership Equity of the FOCUS Report during the period that the adjustment is comprehended by the broker-dealer. Such adjustments should no longer be included in line 4225 (Cumulative effect of changes in accounting principles) under the Statement of Income (Loss).

(SEC Staff to FINRA) (FINRA Regulatory Notice 13-44)

(a)(2) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts must file with the Commission 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 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).

/01 NYSE FOCUS Filing Due Dates

The NYSE requires their member and member organizations, who have chosen to file their FOCUS Part II as of a date other than the last calendar day of a month or quarter, to file their FOCUS Report 17 business days from their month-end closing date.

(NYSE Information Memo 99-22, May 1999) (No. 99-9, August 1999)

(iii) Every broker or dealer that neither clears transactions nor carries customer accounts must file with the Commission 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.

/01 NYSE FOCUS Filing Due Dates

The NYSE requires their member and member organizations, who have chosen to file their FOCUS Part IIA as of a date other than the last calendar day of a month or quarter, to file their FOCUS Report 17 business days from their month-end closing date.

(NYSE Information Memo 99-22, May 1999) (No. 99-9, August 1999)

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

(a) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)

(3) The reports provided for in this paragraph (a) that must be filed with the Commission shall 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) shall be deemed to be confidential.

(4) The provisions of paragraphs (a)(2) and (3) of this section shall 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 shall 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.

(5) 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 transmit the 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)(4) of this section.

(a) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)

(6) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3-1e must file the following additional reports:

(i) Within 17 business days after the end of each month that is not a quarter, as of month-end:

(A) 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 (b)(3), the product category and the amount of the deduction for market risk;

(B) A graph reflecting, for each business line, the daily intra-month VaR;

(C) The aggregate value at risk for the broker or dealer;

(D) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk;

(E) Credit risk information on derivatives exposures, including:

(1) Overall current exposure;

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

(3) The 10 largest commitments listed by counterparty;

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

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

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

(7) A summary report reflecting the broker 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); and

(F) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application; and

(a)(6) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)

- (ii) Within 17 business days after the end of each quarter:
 - (A) Each of the reports required to be filed in paragraph (a)(6)(i) of this section;
 - (B) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR; and
 - (C) 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.

(a) FILING OF MONTHLY AND QUARTERLY REPORTS (continued)

(7) 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 shall maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

/01 FOCUS Extension Request

Members and member organizations for which the Exchange is the DEA should use the procedures outlined below when requesting extensions. Members and member organizations for which the Exchange is not the DEA should submit extension requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting an extension for a FOCUS Report should notify their Finance Coordinator by telephone and follow-up with a written request to the Exchange signed by the Chief Financial Officer (CFO) or, if the CFO is unable to sign, another senior officer or partner. An extension request should be made at least three (3) business days prior to the FOCUS Report due date and no extension request will be accepted after the due date. The written request should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) the extension is being requested and details on the steps being taken to resolve any problems which led to the request. FOCUS Report extensions as of the annual audit date will not be granted unless extreme hardship can be demonstrated;
3. A statement that the books and records are current, that the organization is in compliance with SEA Rules 15c3-1 and 15c3-3, CFTC Regulations 1.20 and 30.7 and that there are no operational problems at the organization; and
4. A pro forma capital position that includes net worth, net capital, excess net capital, aggregate debit items/aggregate indebtedness, current month's net profit or loss and NYSE Rule 326 capital percentage/ratio.

(NYSE Information Memo 93-45, October 1993) (No. 94-6, December 1994)

(NEXT PAGE IS 3211)

SEA Rule 17a-5(a)(7)/01

(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 shall, 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)(2)(ii) and (iii) of this section as of the date of such event. The report shall 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.

/01 Extension Request on Filing Final FOCUS Report Upon Termination of Membership

Members and member organizations of the New York Stock Exchange ("NYSE") should use the procedures outlined below when requesting an extension for filing the final FOCUS Report upon termination of its NYSE membership. Members and member organizations terminating its membership with other Self-Regulatory Organizations ("SRO") should contact the respective SRO regarding their procedures for requesting an extension.

A member or member organization of the NYSE requesting an extension for filing the final FOCUS Report upon termination of its NYSE membership should notify their Finance Coordinator by telephone and follow-up with a written request to the NYSE, signed by the Chief Financial Officer ("CFO") or, if the CFO is unable to sign, another authorized senior officer or partner. An extension request should be made prior to the termination of membership date.

The written request to the NYSE should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) for which the extension is being requested and details on the steps being taken to resolve any problems which led to the request; and
3. A statement that the member or member organization is not in violation of the applicable requirements specified in SEA Rules 15c3-1 and 15c3-3 under the Exchange Act, is not experiencing any significant financial, operational or record keeping problems, and is in compliance with the other applicable rules of the Commission and each self-regulatory organization of which it is a member.

(SEC Staff to NYSE) (No. 04-3, June 2004)

SEA Rule 17a-5(b)(1)/01

(b) REPORT FILED UPON TERMINATION OF MEMBERSHIP INTEREST (continued)

(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” shall 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 shall 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 or 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 shall report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event, and shall send a copy of such notification to the broker or dealer and notify such broker or dealer of its responsibilities under this paragraph (b).

(NEXT PAGE IS 3221)

SEA Rule 17a-5(b)(5)

(c) CUSTOMER STATEMENTS

(1) WHO MUST FURNISH THE STATEMENTS

Every broker or dealer shall 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 shall 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 § 240.17a-13 by reason of the provisions of paragraph (a) of that section.

(c) CUSTOMER STATEMENTS (continued)(2) AUDITED STATEMENTS TO BE FURNISHED

Audited statements shall 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 shall include the following:

(i) A Statement of Financial Condition with appropriate notes prepared in accordance with U.S. generally accepted accounting principles which shall 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 shall 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)(1) of this section identifies 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.

/01 Additional Time on Sending Audited and Unaudited Statements to Customers – Rescinded (FINRA Regulatory Notice 14-25)

(c) CUSTOMER STATEMENTS (continued)(3) UNAUDITED STATEMENTS TO BE FURNISHED

Unaudited statements dated 6 months from the date of the audited statements required to be furnished by paragraphs (c)(1) and (2) of this section shall 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 shall contain the information specified in paragraphs (c)(2)(i) and (ii) of this section.

/01 Requirement to Furnish Unaudited Statements to Customers – (Rescinded, No. 02-3)/02 Furnishing of “Customer Statements”

The term “customer” includes not only those persons for or with whom the broker-dealer effected a transaction in a particular month but also any person for whom the broker-dealer holds securities for safekeeping or as collateral or for whom the broker-dealer carries a free credit balance in that particular month.

The broker-dealer may choose to send statements to customers (defined in SEA Rule 17a-5(c)(4)) of record during any of the following time periods:

1. The month of the balance sheet date (i.e. financial statement date), if it is at month-end;
2. If the balance sheet is not at month end, the 30 day period preceding the balance sheet date;
3. Any month following the balance sheet date if that month is the month in which the statements are mailed, if it is at month end;
4. If the date the statements are mailed is not at month-end, the 30 day period preceding the date on which the statements are mailed.

(SEC Letter to Cahill Gordon & Reindel, August 23, 1983)
(No. 94-6, December 1994)

(c) CUSTOMER STATEMENTS (continued)

(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 subparagraph (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 shall be either the month preceding the balance sheet date or the month following the balance sheet date in which the statement is sent.

The term “customer” also includes any person for whom the broker or dealer holds securities for safekeeping 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).

(c) CUSTOMER STATEMENTS (continued)

(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.

SEA Rule 17a-5(c)(5)(iii)(C)

(c)(5) CUSTOMER STATEMENTS; EXEMPTION FROM SENDING CERTAIN FINANCIAL INFORMATION TO CUSTOMERS (continued)

(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.

(NEXT PAGE IS 3231)

(d) ANNUAL REPORTS

(1)(i) Except as provided in paragraphs (d)(1)(iii) and (d)(1)(iv) of this section, every broker or dealer registered under section 15 of the Act 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, 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 that it was exempt from § 240.15c3-3 throughout the most recent fiscal year, 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 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).

/01 Exemption from filing Annual Audit Report

The exemption is limited to specialists, market makers and floor brokers which have no contact with the public and are subject to close daily supervision by an exchange.

(SEC Letter to Kelley, Drye & Warren, March 1983) (No. 94-6, December 1994)

(d) ANNUAL REPORTS (continued)

(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 Form X-17A-5 (§ 249.617 of this chapter) Part II or Part IIA. If the Statement of Financial Condition filed in accordance with instructions to Form X-17A-5, Part II or Part IIA, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the Part II or Part IIA Statement of Financial Condition as filed by the broker or dealer must be included in the notes to the financial statements reported on by the independent public accountant.

Note 1 to paragraph (d)(2)(i): If there is other comprehensive income in the period(s) presented, the financial report must contain a Statement of Comprehensive Income (as defined in § 210.1-02 of Regulation S-X of this chapter) in place of a Statement of Income.

(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 the Reserve Requirements under Exhibit A of § 240.15c3-3, and Information Relating to the Possession or Control Requirements Under § 240.15c3-3.

(iii) If either the Computation of Net Capital under § 240.15c3-1 or the Computation for Determination of the Reserve Requirements Under Exhibit A of § 240.15c3-3 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) 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 filed by the broker or dealer. If no material differences exist, a statement so indicating must be included in the financial report.

(d)(2)(iii) ANNUAL REPORTS (continued)/01 Reconciliation of FOCUS Report to the Annual Audit

If a broker-dealer files an amended FOCUS report (as of its audit date) that varies materially from the original FOCUS report, a reconciliation and explanation of material differences between the amended report and the original report must be filed. The reconciliation should include at a minimum the original and amended amounts and an explanation of the differences. The audit report may be reconciled with the amended FOCUS report and a statement as to whether any material differences are noted and the date of the amended FOCUS filing must be included.

(SEC Letter to NYSE, April 24, 1987) (No. 94-6, December 1994)

(d) ANNUAL REPORTS (continued)

(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 and 240.15c3-3(e) 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 and 240.15c3-3(e) was derived from the books and records of the broker or dealer.

(B) If applicable, a description of each 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 any instance of non-compliance with §§ 240.15c3-1 or 240.15c3-3(e) 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.

(d)(3) ANNUAL REPORTS; COMPLIANCE REPORT (continued)

(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 or 240.15c3-3(e) will not be prevented or detected on a timely basis or that non-compliance to a material extent with § 240.15c3-3, except for paragraph (e), § 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, § 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.

(d) ANNUAL REPORTS (continued)

(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) The annual reports must be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, DC, the principal office of 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.

(NEXT PAGE IS 3241)

SEA Rule 17a-5(d)(6)

(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 the issuer in soliciting subscriptions for securities of the 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 annual reports under paragraph (d) of this section that are not covered by reports 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 reports 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.

(e) NATURE AND FORM OF REPORTS (continued)

(3) The annual reports filed under paragraph (d) of this section are not confidential, except that, if the Statement of Financial Condition in a format that is consistent with Form X-17A-5 (§ 249.617 of this chapter), Part II, or Part IIA, is bound separately from the balance of the annual reports filed under paragraph (d) of this section, and each page of the balance of the annual reports is stamped “confidential,” then the balance of the annual reports shall be deemed confidential to the extent permitted by law. 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 as being in the public interest. Nothing contained in this paragraph 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 member broker or dealer the right, upon request to the member broker or dealer, to obtain information relative to its financial condition.

(4)(i) 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.

(ii) Until the earlier of two years after the date paragraph (e)(4)(i) of this section is effective or SIPC adopts a rule under paragraph (e)(4)(i) of this section and the rule is approved by the Commission, the broker or dealer must file with SIPC a supplemental report on the status of the membership of the broker or dealer in SIPC if, under paragraph (d)(1)(i)(C) of this section, the broker or dealer is required to file reports prepared by an independent public accountant. The supplemental report must include the independent public accountant’s report on applying agreed-upon procedures based on the performance of the procedures enumerated in paragraph (e)(4)(ii)(C) of this section. The supplemental report must cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this paragraph (e)(4) that were required to be filed on or prior to the date of the annual reports required by paragraph (d) of this section: Provided, that the broker or dealer is not required to file the supplemental report on the SIPC annual general assessment reconciliation or exclusion from membership form for any period during which the SIPC assessment is a specified dollar value as provided for in section 4(d)(1)(c) of the Securities Investor Protection Act of 1970, as amended. The supplemental report must be filed with the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, DC, the principal office of the designated examining authority for the broker or dealer, and the principal office of SIPC. The supplemental report must include the following:

(e)(4)(ii) NATURE AND FORM OF REPORTS (continued)

(A) A schedule of assessment payments showing any overpayments applied and overpayments carried forward including: payment dates, amounts, and name of SIPC collection agent to whom mailed; or

(B) If exclusion from membership was claimed, a statement that the broker or dealer qualified for exclusion from membership under the Securities Investor Protection Act of 1970, as amended; and

(C) AN INDEPENDENT PUBLIC ACCOUNTANT'S REPORT

The independent public accountant must be engaged to perform the following procedures:

(1) Comparison of listed assessment payments with respective cash disbursements record entries;

(2) For all or any portion of a fiscal year, comparison of amounts reflected in the annual reports required by paragraph (d) of this section with amounts reported in the Annual General Assessment Reconciliation (Form SIPC-7);

(3) Comparison of adjustments reported in Form SIPC-7 with supporting schedules and working papers supporting the adjustments;

(4) Proof of the arithmetical accuracy of the calculations reflected in Form SIPC-7 and in the schedules and working papers supporting any adjustments; and

(5) Comparison of the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or

(6) If exclusion from membership is claimed, a comparison of the income or loss reported in the financial report required by paragraph (d)(2) of this section with the Certification of Exclusion from Membership (Form SIPC-3).

(e)(4)(ii) NATURE AND FORM OF REPORTS (continued)

/01 Supplemental SIPC Report Exemption

Broker-dealers do not have to file the supplemental SIPC report required by SEA Rule 17a-5(e)(4) provided that they are members of SIPC and report \$500,000 or less in gross revenues in their annual audited statement of income filed pursuant to SEA Rule 17a-5(d).

(SEC Letter to SIPC, January 9, 1989) (No. 94-6, December 1994)

/02 SIPC Reports Exemption for Guaranteed Subsidiary

The SEC has granted relief to a guaranteed subsidiary from the filing of the SIPC supplemental report and the accompanying opinion of an independent public accountant based on the fact that it was registered as a broker-dealer and its financial statements were consolidated with those of its parent.

(SEC Letter to First Boston (Puerto Rico), Inc., February 2, 1990) (No. 94-6, December 1994)

(NEXT PAGE IS 3251)

(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.

/01 Definition of Independent Accountant

The following guidelines may be used to determine if an accountant is "independent" in connection with auditing the financial statements of a client:

- The accountant must be free of any direct financial interest or any material indirect financial interest in the client.
- There are no material unpaid fees outstanding at the commencement of the audit.
- The accountant must not be involved in the maintenance of the basic accounting records or in the preparation of data upon which a client's financial statements are based.
- The accountant must not have business relationships with the client, other than as a customer in the normal course of business.
- Close relatives or other dependent relatives must not have material financial interests, business relationships or hold a supervisory position with a client.

(SEC Letter to McCauley, Nicolas & Co., March 14, 1984)

(SEC Letter to Sanville, McQuestion & Co., July 5, 1984)

(SEC Letter to Oppenheim, Appel, Dixon & Co., March 28, 1986)

(No. 94-6, December 1994)

(f)(2) STATEMENT REGARDING INDEPENDENT PUBLIC ACCOUNTANT (continued)

(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.

(f)(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.

(f)(3) REPLACEMENT OF ACCOUNTANT (continued)

(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 accounting 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 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 manually 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.

(NEXT PAGE IS 3261)

SEA Rule 17a-5(f)(3)(v)(B)

(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.

(NEXT PAGE IS 3271)

(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 provide 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 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(b)(1), among other things, a broker or dealer whose net capital declines below the minimum required pursuant to § 240.15c3-1 shall give notice of such deficiency that same day in accordance with § 240.17a-11(g) and the notice shall 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 shall fail to make a reserve bank account or special account deposit, as required by § 240.15c3-3, the broker or dealer shall by telegram immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and shall 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 manually;
- (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 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.

(i) REPORTS OF THE INDEPENDENT PUBLIC ACCOUNTANT REQUIRED UNDER PARAGRAPH (d)(1)(i)(C) OF THIS SECTION (continued)

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

(j) [RESERVED]

(k) SUPPLEMENTAL REPORTS

Each broker or dealer that computes certain of its capital charges in accordance with §240.15c3-1e shall file concurrently with the annual audit report a supplemental report on management controls, which shall 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 shall 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 shall file a statement with the Division of Market Regulation, Office of Financial Responsibility, at the Commission's principal office in Washington, DC that includes:

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

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

(1) USE OF CERTAIN STATEMENTS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION

At the request of any broker or dealer who is (1) an investment company registered under the Investment Company Act of 1940, or (2) 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 Sections 13 or 15(d) of the Securities Exchange Act of 1934 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 shall 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.

(NEXT PAGE IS 3281)

SEA Rule 17a-5(l)

(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 shall maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

/01 Audit Extension Request

Members and member organizations for which the Exchange is the DEA should use the procedures outlined below when requesting extensions. Members and member organizations for which the Exchange is not the DEA should submit such requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting an extension for an audited financial statement should notify their Coordinator by telephone and follow-up with a written request to the Exchange signed by the Chief Financial Officer. An extension request should be made at least ten (10) business days prior to the audit due date. The written request should provide the following information:

1. The amount of time requested on the extension;
2. The specific reason(s) the extension is being requested; and
3. A letter from the outside independent auditors in which the auditors represent that the organization is in compliance with SEA Rules 15c3-1 and 15c3-3 and CFTC Regulations 1.20 and 30.7; that an unqualified opinion is expected to be issued; and, that no material weaknesses or books and records problems exist.

(NYSE Information Memo No. 93-45, October 1993) (No. 94-6, December 1994)
(FINRA Regulatory Notice 14-25)

(2) Any "bank" as defined in section 3(a)(6) of the Act (48 Stat. 882; 15 U.S.C. 78c) and any "insurance company" as defined in Section 3(a)(19) of the Act (78 Stat. 565; 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.

(m) EXTENSIONS AND EXEMPTIONS (continued)

(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.

/01 Exemption From Filing Initial Annual Audit Report

A broker-dealer need not apply to the Securities and Exchange Commission for relief from filing its audited annual report of financial statements required by SEA Rule 17a-5(d) for its initial audit period under the following circumstances:

1. The registration of the broker-dealer with the Commission became effective within three months of the end of its initial audit period;
2. The broker-dealer does not clear transactions, does not carry customer accounts, and is not a broker-dealer that effectuates financial transactions with customers in accordance with SEA Rule 15c3-3(k)(2)(i);
3. The broker-dealer's audited annual report for the next audit period will cover the entire period from the effective date of the broker-dealer's registration with the Commission; and
4. The broker-dealer sends notice to the Commission and to its Designated Examining Authority before its audited annual report is due that it has met the above conditions.

(SEC Letter to NYSE and NASDR, December 16, 2005) (No. 06-5, June 2006)

/011 Broker-Dealers Not Effectuating Transactions Through a Special Bank Account for the Exclusive Benefit of Customers

A broker dealer may be identified by its DEA, for classification purposes only, as a broker-dealer described under SEA Rule 15c3-3(k)(2)(i); even though the broker-dealer has not, and does not intend to, effectuate transactions with customers through a special bank account for the exclusive benefit of customers. Notwithstanding condition (2) of interpretation 17a-5(m)(3)/01, such a broker-dealer may be eligible for the relief provided in the interpretation.

(SEC Staff to NYSE and NASDR) (No. 06-5, June 2006)

(m) EXTENSIONS AND EXEMPTIONS (continued)

(4) The provisions of § 240.17a-5 shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

(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.

/01 "As Of" Date Changes

Members and member organization for which the Exchange is the DEA should use the procedures outlined below when requesting changes in "as of" dates. Members and member organizations for which the Exchange is not the DEA should submit such requests to their respective DEA and supply a copy to the Exchange.

A member or member organization requesting changes in the "as of" date of their audited financial statements should notify their Coordinator by telephone and follow-up with a written request, signed by the Chief Financial Officer, which provides a detailed explanation of the reason(s) for the change. A written request for an "as of" date change should be made at least ninety (90) calendar days prior to the existing "as of" date.

(NYSE Information Memo 93-45, October 1993) (No. 94-6, December 1994)

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

(o) FILING REQUIREMENTS

For purposes of filing requirements as described in § 240.17a-5, such filing shall be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of § 240.17a-5 which is applicable.

(p) COMPLIANCE WITH § 240.17a-12

An OTC derivatives dealer may comply with §240.17a-5 by complying with the provisions of §240.17a-12.

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