

# Information Memo



Member Firm Regulation

20 Broad Street  
New York, NY 10005

Number 93-54  
December 10, 1993

**TO:** ALL MEMBERS AND MEMBER ORGANIZATIONS

**ATTENTION:** CHIEF EXECUTIVE OFFICER/MANAGING PARTNER, LEGAL AND COMPLIANCE DEPARTMENTS

**SUBJECT:** FORMATION OR ACQUISITION OF AFFILIATES; ORGANIZATIONS GUARANTEED BY MEMBERS OR MEMBER ORGANIZATIONS; RECEIPT OF FLOW THROUGH BENEFITS

**NOTE:** THIS MEMORANDUM MAY REQUIRE ACTION BY MEMBERS AND MEMBER ORGANIZATIONS

On August 31, 1993 the Securities and Exchange Commission approved amendments to Exchange rules concerning organizations controlled or guaranteed by members and member organizations (See Securities Exchange Act Release No. 34-32823). The revisions consist of amendments to Rules 113, 122, 321, 342, 346, 416 and 476, rescission of Rules 322 and 324, and adoption of new Rule 322.

Generally, the rule amendments will allow members and member organizations much greater flexibility in structuring their affiliates in a manner that will permit diversification and keep pace with the competitive environment within the industry, while maintaining appropriate regulatory safeguards. The rules have been significantly simplified and updated in view of today's sophisticated corporate structures and the internationalization of the securities markets.

The text of the rule amendments is attached as Exhibits A, B and C. The significant areas of change are discussed below.

**RULE 321 - FORMATION OR ACQUISITION OF AFFILIATES**

Amended Rule 321 permits a member or member organization to form or acquire an affiliate, with prior written Exchange approval. An "affiliate" is defined as an entity engaged in a securities or kindred business that is controlled by the member or member organization.\*

Exchange approval to form or acquire an affiliate should be sought through a letter of application to the Exchange which details the control relationship. Such request must include disclosure of any of the affiliate's employees who will require Exchange approval (Rule 321.15), submission of the required financial statements (Rule 321.16), information as to any proposed space sharing arrangements (Rule 321.19), and the required opinion of counsel (Rule 321.22).

**Under amended Rule 321.15, an employee of a non-U.S. registered foreign affiliate whose duties (involving the purchase or sale of U.S. securities) correspond to those of a registered representative\*\* must file a completed Uniform Application for Securities Industry Registration or Transfer (Form U-4) and be approved by the Exchange as a registered representative of the parent member or member organization. Consequently, the member organization would be required to establish supervisory procedures adequate to enforce the requirements applicable to its registered representatives.**

Rule 321.16 requires that a pro forma balance sheet for the affiliate must be submitted to the Exchange with the application for approval. This requirement may be satisfied by filing the balance sheet part of the FOCUS report (Part II) and schedules (for registered broker-dealers) or page 1 of the "Summary Financial Statement for Entities Conducting a Securities or Kindred Business" (for non registered broker-dealers) (see Exhibit D attached).

Rule 321.21 provides that an affiliate may have cash or margin transactions effected for its own account by the related member or member organization. Under these circumstances, the affiliate will be treated as a customer of its parent for such purposes as Regulation T of the Federal Reserve Board and Rule 15c3-3 of the Securities Exchange Act of 1934.

**WITHIN THIRTY (30) DAYS OF THE DATE OF THIS INFORMATION MEMORANDUM, ALL MEMBERS AND MEMBER ORGANIZATIONS MUST**

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\* See Rule 2 (excluding paragraph (iii) thereof) which defines "control", in pertinent part, as the power to direct or cause direction of the management or policies of a person. There is a presumption of control where a person (i) has the right to vote 25% or more of the voting securities, or (ii) is entitled to 25% or more of the net profits.

\*\* See Rules 10 and 345

SUBMIT A LIST TO THE EXCHANGE WHICH IDENTIFIES EACH OF THEIR EXISTING AFFILIATES, AS THAT TERM IS DEFINED IN AMENDED RULE 321.

IN ADDITION, MEMBERS AND MEMBER ORGANIZATIONS MUST NOTIFY AND MAKE APPLICATION TO THE EXCHANGE WITHIN NINETY (90) DAYS OF THE DATE OF THIS MEMORANDUM IF THEY CURRENTLY HAVE FOREIGN AFFILIATES (AS DEFINED IN AMENDED RULE 321) WHOSE EMPLOYEES REQUIRE EXCHANGE APPROVAL AS REGISTERED REPRESENTATIVES UNDER THE AMENDED RULE.

Member organizations should be aware that any affiliate subject to Rule 321 is also required to become an approved person under Rule 304(h). An entity formed or acquired under Rule 321 also may be subject to the requirements of Rule 322 (see discussion of Rule 322 below).

NEW RULE 322 - GUARANTEES BY, OR FLOW THROUGH BENEFITS FOR MEMBERS OR MEMBER ORGANIZATIONS

New Rule 322 requires that written notice be provided to the Exchange at least 10 business days prior to a member or member organization entering into any arrangement or relationship under which it guarantees or assumes or endorses the obligations and/or liabilities of another person ("guarantee") or receives flow-through capital benefits in accordance with Appendix C of Securities Exchange Act Rule 15c3-1. Under Appendix C, flow-through benefits are recognized only if received from a majority owned and controlled subsidiary. **Therefore, members and member organizations must have satisfied the conditions of Appendix C prior to submitting written notice under new Rule 322.**

The written notice required under Rule 322 must include a statement with respect to the financial and operational impact that the guarantee or receipt of flow-through benefits will have upon the member or member organization (see Rule 322.10). Additionally, members and member organizations will be required to provide the Exchange with access to books and records of the person it guarantees or from which it receives flow-through capital benefits, upon request (Rule 322.12).

The financial statements referred to in Rule 322.13 may take one of three forms, dependent upon the nature of the entity which is the subject of the rule (i.e., (a) registered broker-dealer; (b) unregistered broker-dealer; and (c) other entities). Members and member organizations will be required to file copies of FOCUS reports with the Exchange for guaranteed entities and for those from whom flow through benefits are received that are registered broker-dealers. The financial report entitled "Summary Financial Statement for Entities Conducting a Securities or Kindred Business" (See Exhibit D attached) must be filed by members and member organizations on behalf of such entities that, while not registered as brokers or dealers, are engaged in a securities

or kindred business.\*\*\* This report is to be prepared using the instructions to FOCUS Report, Part II. For entities that are non-broker-dealers, members and member organizations will be required to file the report entitled "Non Securities or Kindred Business Summary Financial Statement" (See Exhibit E attached). These financial reports shall be submitted on the following basis, unless otherwise required by the Exchange:

- Entities from whom flow through capital benefits are received - File appropriate report when initial notice is submitted to the Exchange, and quarterly thereafter.
- Fully guaranteed entities - File appropriate report when initial notice is submitted to the Exchange, and quarterly thereafter.
- Specific or Limited guaranteed obligations and/or liabilities of another entity - File appropriate report when initial notice is submitted to the Exchange, and whenever a capital charge is incurred and quarterly thereafter.
- Entities fully consolidated in a consolidated FOCUS report filing - File only the balance sheet section of the appropriate report, on a quarterly basis. If the consolidated entity is a registered broker-dealer, file FOCUS on quarterly basis.

These requirements must be complied with, separately, for each entity subject to new Rule 322.

**MEMBERS AND MEMBER ORGANIZATIONS MUST IDENTIFY EACH ENTITY WITH WHICH IT HAS AN ARRANGEMENT OR RELATIONSHIP (i.e., THAT IT GUARANTEES OR FROM WHICH IT RECEIVES FLOW-THROUGH BENEFITS) WITHIN THE TERMS OF NEW RULE 322. A LIST OF ALL SUCH ENTITIES MUST BE SUBMITTED TO THE EXCHANGE WITHIN THIRTY (30) DAYS OF THE DATE OF THIS INFORMATION MEMORANDUM.**

#### RULE 342 - OFFICES - APPROVAL, SUPERVISION AND CONTROL

Amended Rule 342 defines the term "foreign branch office" and provides that members and member organizations may, with prior written Exchange approval, establish a foreign branch office in corporate or partnership form provided it is wholly owned by the member or member organization. Application for Exchange approval is made by filing a branch office application

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\*\*\* Rule 2 defines securities or kindred business as transacting business generally as a broker or dealer in securities, including but not limited to, servicing customer accounts or introducing them to another person.

for each foreign branch location. All foreign branch office personnel will be subject to the Exchange Constitution and Rules to the same extent as are domestic personnel of a member organization. Also, for regulatory purposes, a foreign branch office will be treated like any other branch of the member organization. All liabilities and obligations of a foreign branch office must be assumed or guaranteed by the parent member organization.

Pursuant to Rule 342.12, a foreign branch office includes any such independently organized location where the financial resources of the member or member organization are being utilized or held out as being utilized. However, this will not mean that a location is deemed to be a foreign branch office under Rule 342 merely because it receives its initial financing from a member or member organization.

Although a separate legal entity, the foreign branch office, as noted, is treated, for all intents and purposes, as a domestic branch office. Consequently, all accounts must be introduced to the member or member organization or that member's or member organization's clearing organization and the foreign branch office may not carry any accounts or deal with customers as principal. Thus, a foreign location is not deemed to be a branch if it carries accounts on its own books and does not introduce accounts to the member or member organization. Rather, such a location may be considered an affiliate under Rule 321 and an arrangement also subject to new Rule 322. Prior written approval of the Exchange is required.

#### OTHER RULE AMENDMENTS

In order to effect the above changes and to provide for consistency in the rules, changes were also made to Rules 113 "Specialists' Public Customers", 122 "Orders With More Than One Broker", 346 "Limitations - Employment and Association with Members and Member Organizations", and 416 "Questionnaires and Reports". In addition, amendments were made to Rule 476 in order to clarify and codify the Exchange's authority to impose sanctions upon all persons subject to Exchange jurisdiction (including affiliates and foreign branch offices and their associated persons) upon a finding of guilt in a proceeding under Rule 476.

#### DISCLOSURE TO OTHER PARTIES


The amended rules may have the effect of changing the existing basis for relationships and/or arrangements between members and member organizations and other entities e.g., where an affiliate previously formed under old Rule 322 is no longer guaranteed by its parent member organization. Where such is the case, disclosure of such changes should be made to persons conducting business with existing affiliates.

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Members and member organizations are reminded that in circumstances where there is no requirement under Rules 321 or 322 to receive approval from or provide notice to the Exchange of a relationship with another entity, Exchange Rule 346(c), which requires that the Exchange receive notification of any control relationship (see Rule 2 definition of control), nevertheless may be applicable.

Any questions relating to these amendments may be directed to Mary Anne Furlong at (212) 656-4823 or Patricia Dorilio at (212) 656-2744. Requests for approval of affiliates, notice of guarantees, initial submission of lists of current affiliates and questions concerning the required financial reports should be directed to your Finance Coordinator at the Exchange.

Applications for employees of foreign affiliates requiring Exchange approval should be submitted to the Exchange's Qualifications and Registrations area.



Salvatore Pallante  
Senior Vice President

Additions underscored  
Deletions [bracketed]

### Formation or Aquisition of [Corporate] Affiliates

Rule 321. No [A] member or member organization [firm comprised of two or more general partners of a member corporation] may, without [with] the prior written approval of the Exchange, form or acquire an affiliated company. The member or member organization shall require such affiliate to comply with the following provisions.

... Supplementary Material:

#### Information Regarding Affiliated Companies of Members and Member Organizations

.10 Definition of affiliate. - For purposes of this rule, the term "affiliate" means an entity engaged in a securities or kindred business that is controlled by a member or member organization within the meaning of Rule 2 of the Constitution and Rules, except that it shall not include paragraph (iii) of said Rule 2.

[.10 Authority to form. - A member organization will be required to show adequate reason for desiring an affiliate.]

.11 Form of organization. - An affiliate shall be an incorporated company[,the liability of whose stockholders is limited.] or partnership.

.12 Name. - The name of the [corporate] affiliate and the name of the member organization must be sufficiently different to prevent confusion. The mere addition of "Inc." or "and Co." may not be sufficient.

[.13 Capitalization. - Not less than 25% of the total capital of the corporate affiliate shall be in the form of capital stock. The members and allied members in the member organization or the member organization itself shall at all times own beneficially at least 40% of the total capitalization of the corporate affiliate, except that where the member organization is a member corporation having outstanding any freely transferable security, such ownership shall be by the member corporation itself. Such ownership shall comprise all the voting stock (except as otherwise approved by the Exchange) and may include non-voting stocks, debentures and subordinated borrowings.

Holders of non-voting stock, debentures and/or notes, who are not members or allied members of the Exchange, may not receive in the aggregate in excess of 45% of the direct or indirect profits of the corporate affiliate.]

[.14 Classes of stock. - A corporate affiliate shall have but one class of voting stock, but may have one or more classes of capital stock.

Except where otherwise specifically required by law, sole voting control must under all circumstances be vested in the holders of the voting stock. No stock of any class or kind shall be issued without approval of the Exchange.]

[.15 Participating securities - Fixed interest of members and allied members. - Since Rule 314 provides that each member and allied member in a member organization must have a fixed interest in its entire business, it follows that the fixed interest of each member and allied member must extend to the member organization's corporate affiliate. When any of the corporate affiliate's participating stock is owned by the members and allied members in the member organization, such holdings must at all times be distributed among such members and allied members in approximately the same proportions as their respective interests in the profits of the member organization. When a member or allied member's interest in the member organization is changed, a corresponding change must be made in his participating interest in the affiliate.

Where all of the voting stock of a corporate affiliate is owned by a member corporation which has outstanding any freely transferable security, no member, allied member, director or employee of such member corporation shall have any direct or indirect interest in the profits of the corporate affiliate, except as otherwise approved by the Exchange.]

[.16 Holding by estate of decedent. - If a deceased general partner's capital in the member firm continues for a stated period of time at the risk of the continuing or successor partnership under the provisions of the partnership agreement in effect at the time of his death, his holdings of participating securities of the corporate affiliate may be permitted to be held by his estate for the same period of time, provided that voting rights of any such securities, while held by the estate, shall be covered by a voting trust agreement under which a general partner of the member firm shall be the voting trustee. In the event the estate of the deceased general partner becomes a limited partner in the member firm, the voting stock included within such securities must either be sold to the affiliate company, the member firm or the surviving general partners or be converted into a non-voting security, subject to the approval of the Exchange.

In the event of the death of a holder of voting stock in a member corporation who is also a holder of any securities issued by a corporate affiliate, such securities held by such decedent in the affiliate may, unless the Exchange shall otherwise determine, be held by his estate for the same reasonable period of time as his holdings of member corporation voting stock.]

[.17 Non-voting stockholders. - Each holder of non-voting stock of the corporate affiliate must be approved by the Exchange.

If, under the laws governing incorporation, non-voting securities are given rights to vote under certain circumstances, the opinion of counsel required under .35 below, shall state the circumstances under which the holders of non-voting securities are entitled to vote. The



Exchange may, in specific instances, permit the issuance of a non-voting security where the statutory voting rights of the non-voting security are limited.

The Exchange will reserve the right to approve or disapprove the ratio of capital between voting and non-voting securities and to limit the number of security holders, any such limitation to depend upon the circumstances involved in each case.]

[.18 Employees. - With the prior permission of the Exchange, employees may be permitted to own participating securities providing such holdings do not exceed 5% of all participating securities in the case of one employee ]

[.19 Submission of corporate documents. - The charter or certificate of incorporation of the corporate affiliate and all amendments thereto, its by-laws and all amendments thereto, forms of stock certificates and other securities issued or to be issued by the corporate affiliate and any and all agreements or other documents and amendments thereto between a member organization, its partners or stockholders and the proposed corporate affiliate, its stockholders or employees shall be submitted and be acceptable to the Exchange prior to becoming effective.]

[.20 Agreement of security holders. - Each holder of securities issued by a corporate affiliate must agree in writing with the corporation that whenever such holder (1) proposes to sell or dispose of any such securities, (2) retires from the member organization, (3) dies, (4) is declared incompetent or (5) terminates his employment with the member organization and the affiliate, the member organization, the members and allied members therein, the corporate affiliate or its stockholders, or all of them, shall have the prior right to purchase such holder's securities at the price at which they are proposed to be sold or at a price to be determined by a prescribed formula and, further, that so long as the corporation continues as a corporate affiliate such holder will not, without the prior approval of the Exchange, transfer, sell, assign, pledge or otherwise create, or permit to be created, any lien, charge or encumbrance upon his securities in the corporation.

The corporate affiliate and/or the holders of its securities must further agree with the Exchange that, if any of the corporate affiliate's voting stock which is not held by its parent member organization should at any time be acquired, held or owned by a person other than a member or allied member in good standing, or any of its other securities should at any time be held by a person not approved by the Exchange, or if any security holder should violate the agreement entered into by him pursuant to the foregoing paragraph, the member organization may be required by the Exchange to sever any and all connections with the corporate affiliate.]

.13 [.21] Severance of connection with affiliate. - The Exchange may at any time require that the member or member organization and the partners or stockholders thereof sever all connections with the [corporate] affiliate including the disposition of all securities [and dispose of all stock] and other interests therein, or such amount thereof as determined by the Exchange. [and each member organization and the partners or stockholders thereof shall enter into an agreement with the Exchange so providing. At any time] Concurrent with or at any time after

directing such severance, the Exchange may require the member organization to change its name if the Exchange finds that the name of the former [corporate] affiliate may be confused with the name of such member organization.

.14 [.22] List of stockholders. - A list of stockholders or partners of the [corporate] affiliate [and the number of shares of each class of stock held] shall upon request be submitted to [Regulation & Surveillance.] the Exchange.

.15 [.23 Directors, officers and] [e]Employees. - [A person shall not be elected a director or appointed an officer without the prior specific approval of the Exchange and shall retain such position only so long as he shall continue to be approved by the Exchange. The directors and the President and Executive Vice President of a corporate affiliate should be members or allied members in the member organization in good standing and each other officer who is not a member or allied member shall file an U-4 Form with the Exchange.] No employee associated with a non U.S. registered foreign affiliate whose duties [with the corporate affiliate] correspond to those of a registered representative in the solicitation of accounts or orders for the purchase or sale of U.S. securities shall be employed by such affiliate unless such person has been and is continued to be approved by the Exchange as a registered representative of the member or member organization. [With the approval of the Exchange, an employee may function with both the member organization and the affiliate.]

Any filing or submission required under this rule which is made with a properly authorized agent acting on behalf of the Exchange shall for purposes of this rule be deemed to be a filing with the Exchange.

[.24 Changes in capital structure or stock ownership. - No change shall be made in the capital structure of a corporate affiliate or in the ownership of its stock without the prior approval of the Exchange.]

.16 [.25] Capital requirements. - The Exchange will not prescribe capital requirements for an [corporate] affiliate. However, the Exchange will require a pro forma balance sheet of the affiliate to be filed with it before any action is taken on a member or member organization's application to form such an affiliate. The Exchange may, however, require the submission of subsequent financial statements [balance sheets].

[.26 Reports. - Unless otherwise specifically requested by the Exchange, a corporate affiliate will not be required to file with the Exchange weekly reports on commitments.]

[.27 Endorsement or guarantee. - No member organization or member or allied member thereof shall endorse or guarantee any obligations of the organization's corporate affiliate or voluntarily assume directly or indirectly any of the liabilities of any such affiliate.

No affiliate shall become liable jointly and severally, with any member organization with which it is affiliated or any member or allied member in any such organization.]

.17 [.28] Banking commitments. - An [corporate] affiliate's banking and other commitments, loans and obligations shall be kept separate and distinct from those of the member or member organization with which it is affiliated [and neither the organization nor any of its partners or stockholders shall assume any liability for the obligations of the corporate affiliate].

[.29 Customers' positions. - A corporate affiliate shall not hold or carry (except in connection with items pending consummation) any accounts, securities, commodities, moneys, balances, equities, or commitments for customers, other than joint accounts in which the affiliate is interested with brokers, dealers or financial institutions. A corporate affiliate will not be permitted to act as broker.]

.18 [.30] Functions of an affiliate. - An [corporate] affiliate may be formed to do an underwriting, agency or dealer business. It may also be formed to do an investment advisory business] or any other business acceptable to the Exchange, [ , so long as such business does not include dealings on an agency basis. If an affiliate is formed to do an underwriting business, the Exchange will prefer that the member organization cease all underwriting activities. The Exchange might make exceptions to this policy depending upon the circumstances involved. However, if an affiliate is formed to do a dealer business, the Exchange will not object to the member organization also doing a similar type of business. The Exchange will not object to an affiliate being formed for speculative purposes.]

.19 [.31] Offices. - An [corporate] affiliate will be permitted, under the conditions set forth in Rule 343 [#2343] to occupy the same quarters as those of the member organization. [Every office of an affiliate must be approved by the Exchange. (See #2342.10 re: annual fee.)].

.20 [.32] Books and records. - An [corporate] affiliate shall keep books and records separate and distinct from those of the member or member organization with which it is affiliated and such books and records shall, upon request, be made available by the member or member organization [to] for inspection by the Exchange. However, such books and records may be maintained by the member or member organization.

[.33 Advertising. - The advertising of a corporate affiliate shall be subject to the same supervision as that of member organizations. (See Rules 472 and 791.)]

.21 [.34] Transactions between members or member organizations and [corporate] affiliates. - An [corporate] affiliate will not be prohibited by the Exchange from having cash or margin brokerage transactions effected for its account by the member or member organization (see Section 11(a) of the Securities Exchange Act of 1934). The rules and regulations applicable generally to customer's accounts shall be applicable to each such account.

.22 [.35] Conditions to be complied with after organization of [corporate] affiliate but prior to commencement of business. - No [corporate] affiliate shall commence business after its organization without the prior written approval of the Exchange. Before giving such approval

there shall be submitted to the Exchange an opinion of counsel, in form and substance satisfactory to the Exchange, stating (1) that the affiliate is duly organized and existing, and (2) that the stock, if any, of the affiliate has been duly and validly issued and is fully paid and non-assessable, (3) the extent to which the restrictions hereinabove set forth with respect to voting control, ownership of participating securities, change in capital structure and transfer and pledge of stock have been made legally effective, and (4) the extent to which the stock-holders may be individually liable for the obligations of the corporation.]

.23 [.36] New issues. - The provisions of Section 11(d)(1) of the Securities and Exchange Act of 1934, relating to the extension or maintenance of credit in connection with new issues, will apply to transactions by a member or member organization in new issues in the distribution of which its affiliate participated with the same force and to the same extent as if the member or member organization itself had participated in the distribution of such new issues.

.24 [.37] Disclosure. - In connection with any transactions which the member or member organization may have had with its customers, or any recommendation which the member or member organization may make to its customers, involving securities underwritten, distributed or sold by its affiliate, full disclosure shall be made by the member or member organization to its customers of the interest of the affiliate in such securities at that time.

.25 [.38] Off-board transactions. - Except in respect of the so-called Exempt List of Guaranteed and Preferred Stocks, listed in Rule 390, an affiliate must obtain Exchange permission before effecting a transaction in a listed stock off the Floor of the Exchange. An affiliate may participate in a secondary distribution of a listed stock only if the Exchange has approved participation therein by members and member organizations. (See Rule 393 [#2393] and 2393.10-2393.18 for information re; secondary distribution.)

(See also Rules 304, 322 and 342.12.)

Guarantees by, or Flow Through Benefits  
for Members or Member Organizations

New Rule 322. Prior written notice shall be given the Exchange whenever any member not associated with a member organization or any member organization:

- (a) guarantees, endorses or assumes, directly or indirectly, the obligations or liabilities of another person; or
- (b) receives flow through capital benefits in accordance with Appendix C of Rule 15c3-1 under the Securities Exchange Act of 1934.

... Supplementary Material:

- .10 Financial and Operational Impact. - The written notice required by this rule shall be given to the Exchange at least 10 business days prior to entering into such arrangement or relationship with another person and shall include the address and general nature of business conducted by such person, a description of the relationship or arrangement between the parties, details regarding the capitalization of such person (including the percentage of ownership or profits by the member or member organization), as well as the actual and potential effect of the arrangement or relationship on the member or member organization's capital (including net capital) and operations and such other information as the Exchange may require.
- .11 Dealings with member or member organization. - A member or member organization may at any time be required to provide the Exchange with information with respect to the arrangement, relationship and dealings with a person referred to in this rule.
- .12 Books and records. - No member or member organization shall enter into an arrangement described in this rule unless it has the authority to make available promptly the books and records of such person for inspection by the Exchange in the United States. The books and records of such person shall be kept separately from those of the member or member organization.
- .13 FOCUS Reporting Requirements. - For persons referred to in this rule that are registered broker-dealers, the member or member organization shall furnish to the Exchange copies of such person's FOCUS Reports simultaneous with their being filed with the person's designated examining authority. For persons referred to in this rule that are not registered broker-dealers, the Exchange requires, in lieu of FOCUS, submission of financial and operational statements, in such format and at such time periods as may be required by the Exchange, sufficient to gauge the capital and operational effects of the arrangement or relationship. See also Rule 416.10.
- .14 Foreign branch offices. - See Rule 342.12.

- .15 Routine guarantees. - Guarantees executed routinely in the normal course of business such as signature guarantees, endorsement of securities and the writing of options, are not subject to the requirements of this rule provided that, in regard to the guarantee of the writing of options, the transaction is appropriately recorded on the member's or member organization's books and records in accordance with Securities Exchange Act Rule 17a-3(a)(10) and is reflected in its capital computation.
- .16 Severance of connection. - The Exchange may at any time require that the member or member organization and the partners or stockholders thereof sever all connections with a person referred to in this rule including the disposition of all securities and other interests therein, or such amount thereof as determined by the Exchange. Concurrent with or at any time after directing such severance, the Exchange may require the member organization to change its name if the Exchange finds that the name of the former associated organization may be confused with the name of such member organization.

(See also Rule 321)

Underscore reflects additions  
[Brackets] denote deletions

#### Rule 113 - Specialists' Public Customers

(a) No specialist, the [his] member organization with which it is associated, or affiliate [corporate subsidiary] of such organization within the meaning of Rule 321 [322], shall accept an order for the purchase or sale of any stock in which it [he] is registered as a specialist directly (1) from the company issuing such stock; (2) from any officer, director or 10% stockholder of that company; (3) from any pension or profit-sharing fund; (4) from any institution, such as a bank, trust company, insurance company, or investment company.

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#### Rule 122 - Orders With More Than One Broker

No member, member organization or any allied member therein, or affiliate [corporate subsidiary] of such organization within the meaning of Rule 321 [322], shall maintain with more than one broker, for execution on the Exchange, market orders or orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal, unless specific permission has been obtained from a Floor Official.

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#### Rule 342 - Offices - Approval, Supervision and Control

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#### ... Supplementary Material

- .10 Annual fee - Each office of a member organization (including any foreign branch office) [or corporate affiliate], other than the main office of the member organization, shall be subject during its existence to a registration fee as determined by the Exchange [of \$50] for each calendar year or part thereof, unless specifically exempted by the Exchange. [(See para. 2321.34 for corporate affiliate requirements.)]
- .12 Foreign branch offices - With prior approval of [and under the conditions set by] the Exchange, a member or member organization may establish a foreign branch office in corporate or partnership form, provided [all the stock of the corporation is] it is wholly owned by the member or member organization. [Regulation & Surveillance will furnish information concerning these conditions.] Continuance of the arrangement is subject to any changes in the Constitution [,] and Rules [and Regulations] of the Exchange as may be thereafter adopted.

Foreign branch offices approved pursuant to this paragraph .12 and their personnel shall be fully subject to the Constitution and Rules of the Exchange to the same degree and extent as are members and member organizations and their personnel. All obligations and liabilities of such foreign branch office shall be assumed or guaranteed by its parent member or member organization and such member or member organization shall be fully responsible for all acts of such foreign branch office.

For purposes of this Rule 342.12, the term "foreign branch office" shall include any such independently organized foreign location from which the services of the member or member organization are being made available or whose financial resources are being utilized in the operation of the office or as to which either of the above is held out, respectively, as available or being utilized.

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#### Rule 346 - Limitations - Employment and Association with Members and Member Organizations

(a) and (b) No change

(c) Prompt written notice shall be given the Exchange whenever any member or member organization knows, or in the exercise of reasonable care should know, that any person, other than a member, allied member or employee, directly or indirectly, controls, is controlled by or is under common control with such member or member organization. (See also Rule 321).

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#### Rule 416 - Questionnaires and Reports

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.10 Member organizations may be required to provide financial and operational reports as required by paragraph [Section] (a) of this Rule for affiliated [and subsidiary] organizations, including but not limited to, persons referred to in Rules 321 and 322.

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#### Rule 476 - Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, [or] Employees , or Others

(a) If a member, member organization, allied member, approved person, [or] registered or non-registered employee of a member or member organization or



person otherwise subject to the jurisdiction of the Exchange is adjudged guilty in a proceeding under this Rule of any of the following offenses -

(1) to (10) no change

(11) refusing or failing to comply with a request of the Exchange to submit his or its books and records (including those books and records with respect to which such member, member organization, allied member, approved person, [or] registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange has access and control) to the Exchange or any other self-regulatory organization, as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, or to furnish information to or to appear or testify before the Exchange or such other self-regulatory organization, or failing to take any of the foregoing actions on the date or within the time period that the Exchange requires; or

if a member who is registered as a specialist is adjudged guilty in a proceeding under this Rule of substantial or continued failure to engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market in any security in which he is registered;

then, in any such event, the Hearing Panel shall, in accordance with the procedures set forth in this Rule, impose one or more of the following disciplinary sanctions on such member, member organization, allied member, approved person, [or] registered or non-registered employee or person otherwise subject to the jurisdiction of the Exchange: expulsion; suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; or any other fitting sanction. In any proceeding under this Rule, any sanction imposed may be remitted or reduced by the Hearing Panel on such terms and conditions as it deems fair and equitable.

\* \* \*

Member or Member Organization \_\_\_\_\_  
 Subject Company \_\_\_\_\_

As of Date \_\_\_\_\_

**SUMMARY FINANCIAL STATEMENT FOR ENTITIES CONDUCTING A SECURITIES OR KINDRED BUSINESS**

NYSE rules require every member or member organization to furnish a financial statement for each person subject to Rules 321 and 322. This form is to be filed only by a person who falls within the statutory definition of the terms "broker" or "dealer" (set forth in sections 3(a)(4) or 3(a)(5) under the Securities Exchange Act of 1934) and who is not required to be registered as such with the U.S. Securities and Exchange Commission. A completed Form is to accompany the Rule 321 application, the initial notice required by Rule 322.10 and thereafter as may be required by the Exchange.

**ASSETS**

1.	Cash, immediately withdrawable deposits in banks	\$
2.	Cash, restricted by government regulation or other legal covenant	
3.	Due from brokers or dealers and clearing organizations	
4.	Secured receivables from customers	
5.	Securities borrowed	
6.	Securities and commodities owned, at market values	
7.	Securities purchased under agreements to resell	
8.	Investments in and receivables from subsidiaries	
9.	All other assets	
10.	TOTAL ASSETS	\$

**LIABILITIES AND OTHER ASSETS**

11.	Bank loans and other borrowing	\$
12.	Securities sold under repurchase agreements	
13.	Owed to brokers or dealers and clearing organizations	
14.	Payable to customers	
15.	Securities loaned	
16.	Securities sold not yet purchased, at market value	
17.	Payable to affiliates	
18.	Other liabilities	
19.	Liabilities subordinated to claims of general creditors	
20.	TOTAL LIABILITIES	\$

**OWNERSHIP EQUITY**

21.	Sole proprietorship	\$
22.	Partnership - (including limited partners \$ _____)	
23.	Corporation:	
	A. Preferred stock	
	B. Common stock	
	C. Additional paid in capital	
	D. Retained earnings	
	E. TOTAL (Sum of A through E)	\$
	F. Less capital stock in treasury	\$
24.	Total ownership equity (23E minus 23F)	\$
25.	TOTAL LIABILITIES AND OWNERSHIP EQUITY (Line 20 plus 21, 22, or 24)	\$

Member or Member Organization \_\_\_\_\_  
 Subject Company \_\_\_\_\_

As of \_\_\_\_\_

## COMPUTATION OF NET CAPITAL

1. Total ownership equity (From line 21, 22 or 24 of Summary Financial Statement)		\$
2. Deduct: Ownership equity not allowable for net capital		
3. Total ownership equity qualified for net capital		\$
4. Add:		
A. Liabilities subordinated to claims of general creditors allowable in computation of net capital		\$
B. Other (deductions) or allowable credits (List)		
5. Total capital and allowable subordinated liabilities. (Line 3 combined with 4. A and B)		\$
6. Deductions and/or charges (Rule 15c3-1(c)(2)) <sup>1</sup> :		
A. Total non-allowable assets included in Summary Financial Condition (iv)	\$	
1. Additional charges for customers' and non-customers' security accounts (xii)		
2. Additional charges for customers' and non-customers' commodity accounts (APP. B)		
B. Aged fail-to-deliver (ix)		
C. Aged short security differences-less reserve (v)		
D. Secured demand note deficiency (APP. D)		
E. Commodity futures contracts and spot commodities - proprietary capital charges (APP. B)		
F. Other deductions and/or charges		
G. Total deductions and/or charges (Sum of line 6A through F)		(      )
7. Net Capital before haircuts on securities positions (Line 5 minus line 6G plus line 7)		\$
8. Haircuts on securities: (computed pursuant to SEA Rule 15c3-1(c)(2)(vii),(viii),(x) and App. A)		
A. Contractual securities commitments	\$	
B. Trading and investment securities:		
1. Bankers' acceptances, certificates of deposit and commercial paper		
2. U.S. and Canadian government obligations		
3. State and municipal government obligations		
4. Corporate obligations		
5. Stocks and warrants		
6. Options		
7. Arbitrage		
8. Other securities		
C. Undue concentration		
D. Other (list)		
9. Total haircuts (Sum of lines 8A through D)		\$
10. Net Capital (Line 7 minus line 9)		\$

<sup>1</sup> Subparagraphs indicated on lines below.

Member or Member Organization \_\_\_\_\_  
 Subject Company \_\_\_\_\_ As of Date \_\_\_\_\_

**NON SECURITIES OR KINDRED BUSINESS - SUMMARY FINANCIAL STATEMENT**

**PART A**

This Form is to be utilized as a financial report for a person subject to NYSE Rule 322 which is not registered as a "broker" or "dealer" as those terms are defined at Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934. A completed Form is to accompany the initial notice required by Rule 322.1(c) and thereafter as may be required by the Exchange.

**ASSETS**

1. Total of immediately withdrawable cash on deposit in banks	\$
2. Market value of beneficially owned securities	
3. Receivables from:	
a) Parent	
b) Affiliates/subsidiaries	
c) All other receivables (not included in lines a or b above)	
4. All other assets (not included under lines 1, 2, or 3 above)	
5. TOTAL ASSETS (Sum of lines 1 through 4)	\$

**LIABILITIES AND OTHER ASSETS**

6. Market value of securities sold short, not yet purchased	\$
7. Accounts payable to:	
a) Parent	
b) Affiliates/subsidiaries*	
8. All other liabilities (not included in lines 6 or 7 above)	
9. TOTAL LIABILITIES (Sum of lines 6 through 8)	\$

**OWNERSHIP EQUITY**

10. Partnership or other similar entity (other than a broker or dealer):	
a) Member organization's interest	\$
b) Other general or limited partnership interests:	\$
11. TOTAL PARTNERSHIP EQUITY (Sum of lines 10. a and b above)	\$
12. Corporation:	
a) Member organization's equity	\$
b) All other equity interests	
13. TOTAL OWNERSHIP EQUITY (Sum of lines 12. a and b)	\$
14. LIABILITIES AND OWNERSHIP EQUITY (Sum of line 9 and 11 or 13)	\$
15. NET INCOME OR (LOSS) BEFORE FEDERAL INCOME TAXES	\$

\* The term "affiliates/subsidiaries" collectively refers to any person controlled by or under common control with the Rule 322 Person.

Member or Member Organization \_\_\_\_\_

Subject Company \_\_\_\_\_

As of Date \_\_\_\_\_

**PART B****Flow Through Computation**

Appendix C of SEA Rule 15c3-1 allows, in certain circumstances, for flow-through capital benefits to be derived from ownership interests in any entity majority owned and controlled by registered brokers or dealers.

Description	Debit	Credit
A. Total ownership equity Line (11 or 13 from PART A)		\$
B. Securities deductions (applicable to line 2 of PART A)	\$	
C. Non-allowable receivables (applicable to lines 3 a, b and c of PART A)		
D. All other assets (line 4 of PART A)		
E. Haircuts applicable to short positions reported on line 6 of PART A		
F. Enter total debits (Sum of B, C, D and E)		\$
G. Net capital or (Deficit) Net capital (Deduct total debits from ownership equity)		\$
H. Available net capital		\$
I. Flow through amount (line 10a ÷ line 11 or line 12a ÷ line 13) x (Line H)		\$

**Instructions**Line:

- B. Enter as a debit the market value of all securities which are not readily marketable plus all SEA Rule 15c3-1 haircuts or other deductions applicable to the remaining securities. Haircuts applicable to open contractual commitments (SEA Rule 15c3-1(c)(2)(viii)) should also be included on this line.
- C. Enter as a debit the sum of lines 3 a, b and c reduced by amounts that would be allowed for net capital if computed under SEA Rule 15c3-1. Amounts not deducted must be separately explained.
- D. The entire amount is deductible but may be reduced for individual assets which have been approved by the Exchange as allowable.
- E. Rule 15c3-1 haircuts applicable to short positions are included as a debit item.
- G. An excess of debits over credits is deficit net capital. If the broker-dealer is a guarantor of the affiliate/subsidiary, this amount must be deducted in computing the broker-dealer's net capital. No deduction is required if the broker-dealer is not a guarantor of the affiliate/subsidiary. The computation ends here and there is no flow-through benefit.
- H. Enter the amount of net capital (credit balance on line G) of the affiliate/subsidiary which exceeds the greater of any limitation or early warning levels imposed by regulatory authority or legal covenant. This includes such covenants imposed by capital maintenance agreements with creditors, insurers, ratings agencies, bond or common and preferred stockholders.
- I. Determine parent broker-dealer's equity interest in the net capital.

Member or Member Organization \_\_\_\_\_  
 Subject Company \_\_\_\_\_

As of Date \_\_\_\_\_

### FLOW THROUGH CAPITAL COMPUTATION

Appendix C of SEA Rule 15c3-1 allows, in certain circumstances, for flow-through capital benefits to be derived from ownership interests in any entity majority owned and controlled by registered brokers or dealers.

A. Net Capital or (Deficit) (Line 10 from Net Capital Computation)	\$
B. Deduct required net capital (See instruction)	
C. Unrestricted net capital (A minus B)	
D. Deduct (pro rata) minority interests	
E. Flow through amount (line C minus D)	\$

### INSTRUCTIONS

Complete the Assets, Liabilities and Ownerships Equity Statement.

Compute net capital (Page 2) of the Rule 322 entity in accordance with SEA Rule 15c3-1

#### LINE

1. This is from line 21, 22 or 24, as appropriate, from the summary financial statement.
2. Deduct assets included in equity which do not qualify for net capital under the rule. Usually these are capital contributions where full ownership and risk has not fully passed to the broker dealer entity.
4. Include only subordinated liabilities which are in compliance with the conditions of SEA Rule 15c3-1d and include subordination to the creditors of the reporting broker-dealer.
6. Deduct all assets included in the summary statement which are required to be deducted under paragraphs (c)(2)(iv), (v), and (xii) of SEA Rule 15c3-1.

Compute Flow Through Capital Computation (If applicable)

#### LINE

- A. Enter net capital or deficit from line 10 of the computation on page 2

An excess of debits over credits is deficit net capital. If the member broker-dealer is a guarantor of the affiliate/subsidiary broker-dealer, this amount must be deducted in computing the guarantor's net capital. No deduction is required if the parent is not a guarantor of the affiliate/subsidiary. The computation ends here.

- B. The required net capital is the greater of any limitation or early warning levels of required minimum capital imposed by regulatory requirement or legal covenant. This includes such covenants imposed by capital maintenance agreements with creditors, insurers, rating agencies, bond or common and preferred stockholders.
- D. Deduct on a pro rata basis as appropriate: limited partners interests, subordinations under agreements which do not also include subordination to creditors of the member broker or dealer, minority stock holders and other capital interests which cannot directly pass to the member organization.
- E. This is the available net capital which may flow through to the parent broker-dealer.