CHAPTER IV—DEPARTMENT OF THE TREASURY

SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

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SUBCHAPTER A—REGULATIONS UNDER SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

PART 400—RULES OF GENERAL APPLICATION

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AUTHORITY: 15 U.S.C. 78*o*–5.

SOURCE: 52 FR 27926, July 24, 1987, unless otherwise noted.

§ 400.1 Scope of regulations.

(a) Title I of the Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat. 3208) amends the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. chapter 2B) (''Act'') by adding section 15C, authorizing the Secretary of the Treasury to promulgate regulations concerning the financial responsibility, protection of customer securities and balances, recordkeeping and reporting of brokers and dealers in government securities. Those regulations constitute subchapter A of this chapter. Unless otherwise explicitly provided, all regulations in this subchapter apply to all government securities brokers or dealers, including registered brokers or dealers and financial institutions. Registered brokers or dealers include OTC derivatives dealers.

(b) Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) requires all government securities brokers and government securities dealers, except those who are brokers or dealers registered pursuant to section 15 or section 15B of the Act or financial institutions, to register with the Securities and Exchange Commission (''Commission''). Regulations concerning registration are at § 240.15Ca2–1 *et seq.* of this title. The Commission is responsible for the interpretation of the definitions of government securities broker and government securities dealer and of the regulations at § 240.15Ca2–1 *et seq.*

(c) Section 15C(a)(1)(B)(i) of the Act (15 U.S.C. 78o–5(a)(1)(B)(i)) requires all government securities brokers or dealers that are also registered brokers or dealers to notify the Commission of their status as government securities brokers or dealers. Regulations concerning notice are at § 240.15Ca1–1 of this title.

(d) Section 15C(a)(1)(B)(i) of the Act also requires all government securities brokers or dealers that are financial institutions to notify the appropriate regulatory agency, as defined in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), of their status as government securities brokers or dealers. The form of notice, Form G-FIN, is at § 449.1 of this chapter. Forms are available from the appropriate regulatory agency.

(e) Section 104 of the Government Securities Act Amendments of 1993 (Pub. L. 103–202, 107 Stat. 2344) amended Section 15C of the Act (15 U.S.C. 78*o*–5) by adding a new subsection (f), authorizing the Secretary of the Treasury to adopt rules to require specified persons holding, maintaining or controlling a large position in to-be-issued or recently-issued Treasury securities to report such a position and make and keep records related to such a position. Part 420 of this subchapter contains the rules governing large position reporting.

[52 FR 27926, July 24, 1987, as amended at 61 FR 48348, Sept. 12, 1996; 71 FR 54410, Sept. 15, 2006]

§ 400.2 Office responsible for regulations; filing of requests for exemptions, for interpretations and of other materials.

(a) *Office responsible.* The regulations in this chapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the

Treasury. The office responsible for implementing the regulations, including interpretations and action on requests for exemption, classification, or modification, is the Office of the Commissioner, Bureau of the Fiscal Service.

(b)(1) *Exemptions and classifications.* Section 15C(a)(4) of the Act (15 U.S.C. 78o–5(a)(4)) authorizes the Secretary to exempt any government securities broker or dealer or class thereof, conditionally or unconditionally, from the requirements of registration or regulations promulgated under section 15C. In addition, section 15C(b)(3) of the Act (15 U.S.C. 78o–5(b)(3)) provides for classification, by the Secretary, of government securities brokers or dealers and authorizes the whole or partial exemption of classes from rules under section 15C or the application of different standards to different classes.

(2) *Interpretations.* Although the appropriate regulatory agencies, as defined in § 400.3, and the self-regulatory organizations, as defined in section 3(a)(26) of the Act (15 U.S.C. 78c(a)(26)), have enforcement responsibility under section 15C of the Act, Treasury is responsible for interpretation of section 15C(b) of the Act (15 U.S.C. 78o–5(b)) and related sections and for interpretation and amendment of the regulations under this chapter (with the exception of Forms G-FIN and G-FINW, §§ 449.1 and 449.2 of this chapter, which are the responsibility of the Board of Governors of the Federal Reserve System [''Board'']).

(c) *Requests for interpretations, exemptions, classifications.* (1) Interpretations under this chapter may be provided, at the discretion of the Department, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(2) Exemptions and classifications under sections 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), and (d)) and related sections and Treasury regulations thereunder may be provided at the discretion of the Department and after consultation with the SEC and the Board, to firms or individuals actually or potentially affected by the Act or regulations, or to their representatives.

(3) All requests for exemptions and classifications, and all requests for binding interpretations, shall be in writing, and shall conform to the following procedures.

(i) The names of the company or companies and all other persons involved shall be stated. Letters pertaining to unnamed companies or persons or hypothetical situations will not be answered.

(ii) The letter must contain a concise but complete statement of all material facts, a complete and accurate description of the entire transaction if the request is transactional (even though a request may apply to only a portion of a transaction), and a concise and unambiguous statement of the request, including precise statutory and regulatory citations.

(iii) The letter shall indicate why the writer believes a problem exists or interpretation is needed, the writer's opinion on the matter, and the basis for such opinion.

(iv) In addition to requests for confidential treatment under paragraph (c)(7)(ii) of this section, a person may request confidential treatment of information that is submitted as part of, or in support of, a request for interpretation, exemption, or classification. A separate request for confidential treatment and the basis for such request shall be submitted at the time the information for which confidential treatment is requested is submitted. The request for confidential treatment must specifically identify the information for which such confidential treatment is requested. To the extent practicable, the information should be segregated from information for which confidential treatment is not requested and should be clearly marked as confidential.

(v) Information designated as confidential in accordance with paragraph (c)(3)(iv) of this section shall not be disclosed to a person requesting such information other than in accordance with the procedures outlined in the Department's regulations published at 31 CFR 1.6.

(vi) An original and two copies of each request letter shall be submitted to the Office of the Commissioner, Government Securities Regulations Staff, Bureau of the Fiscal Service, 5th Floor, 401 14th Street SW., Washington, DC

20227. The envelope shall be marked ''Government Securities Act Request.'' The letter shall indicate in the upper right hand corner of the first page the particular sections of the Act and of the regulations at issue.

(4) A written response by the Department to a request filed as stated in paragraph (c)(3) of this section shall be binding, with respect to the requester, on the Department, but shall cease to be binding if the facts are not as stated in the request or, prospectively, if the Department issues a superseding interpretation. In responding to such a request, the Department will, where appropriate, consult with and may obtain the formal concurrence of the appropriate regulatory agencies or their staffs. The Department understands that even if formal concurrence is not received the appropriate regulatory agencies and self-regulatory organizations will give appropriate deference to binding interpretations of the Department. The Department also expects the SEC staff to reflect such interpretations in responding, pursuant to the established procedures of the Commission, to no-action requests concerning rules the SEC enforces.

(5) The Department may decline to issue an interpretation for any reason and, in particular, may require that a requester make inquiry of its appropriate regulatory agency, the Commission or designated examining authority before the Department responds to a request.

(6) The Department will also provide informal oral and written advice, but such advice is not binding on the Department or on any other agency or organization.

(7)(i) Except as provided in paragraphs (c)(3)(iv) and (c)(7)(ii) of this section, every letter or other written communication requesting the Department to provide interpretive legal advice under the Act or to grant, deny or modify an exemption, classification or modification of the regulations, together with any written response thereto, shall be made available for inspection and copying as soon as practicable after the response has been sent or given to the person requesting it. These documents will be made available at the following location: Treasury Department Library, 1500 Pennsylvania Avenue NW., Annex, Room 1020, Washington, DC 20220.

(ii) Any person submitting a letter or communication may also simultaneously submit a request that the letter or communication and the Department's response be accorded confidential treatment for a specified period of time not to exceed 120 days from the date the response has been made or given to such person. The request shall state the basis upon which the request for confidential treatment has been made. If the Department determines that the request for confidential treatment should be denied, the requester will be given 30 days to withdraw either the request for confidential treatment or the letter or communication requesting an interpretation, classification, or exemption.

(d) *Effect of Commission interpretations.* Interpretations of the Commission and its staff (including no-action positions) and of the designated examining authorities, of any Commission regulation expressly adopted by reference in these regulations shall be of the same effect as if the regulation being interpreted were solely the Commission's regulation. However, in the event the Treasury has issued a formal interpretation on the subject, the Treasury understands that the Commission will give that interpretation appropriate deference, particularly with respect to both subsequent no-action positions and the continued validity of prior no-action positions.

[52 FR 27926, July 24, 1987, as amended at 53 FR 28984, Aug. 1, 1988; 72 FR 54410, Sept. 15, 2006; 79 FR 38454, July 8, 2014]

§ 400.3 Definitions.

Unless otherwise explicitly provided, in this subchapter and for the purposes of these regulations:

Act means the Securities Exchange Act of 1934 (48 Stat. 881, 15 U.S.C. chapter 2B, as amended);

Appropriate regulatory agency has the meaning set out in section 3(a)(34)(G) of the Act (15 U.S.C. 78c(a)(34)(G)), and, with respect to a financial institution for which an appropriate regulatory agency is not explicitly designated, the appropriate regulatory agency is the SEC;

Associated person means a person other than a person whose functions are solely clerical or ministerial:

(1) Directly engaged in any of the following activities in either a supervisory or non-supervisory capacity:

(i) Underwriting, trading or sales of government securities;

(ii) Financial advisory or consultant services for issuers in connection with the issuance of government securities;

(iii) Research or investment advice, other than general economic information or advice, with respect to government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section;

(iv) Activities other than those specifically mentioned which involve communication, directly or indirectly, with public investors in government securities in connection with the activities described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; or

(2) Directly engaged in the following activities in a supervisory capacity:

(i) Processing and clearance activities with respect to government securities;

(ii) Maintenance of records involving any of the activities described in paragraph (c)(1) of this section;

Provided, however,

(3) That in the case of a financial institution,

(i) Persons whose government securities functions: (A) Consist solely of carrying out the financial institution's activities in a fiduciary capacity and (B) are subject to examination by the appropriate regulatory agency for compliance with requirements applicable to activities by the financial institution in a fiduciary capacity, shall not be considered ''associated persons'';

(ii) Persons whose sole government securities activities are, without exercising any investment discretion and solely at the direction of customers, to receive and/or transmit customer orders to purchase or sell government securities, but who do not give investment advice or receive transaction-based compensation shall not be considered ''associated persons''; and

(iii) Directors and senior officers of the financial institution who may from time to time set broad policy guidelines affecting the financial institution as a whole that are not directly related to the conduct of the financial institution's government securities business are not considered to be ''directly engaged'' in the activities described in this paragraph (c);

Board means the Board of Governors of the Federal Reserve System;

Branch or agency of a foreign bank means a Federal branch or Federal agency of a foreign bank or a State branch or State agency of a foreign bank as such terms are used in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607;

CFTC means the Commodity Futures Trading Commission;

Commission or *SEC* means the Securities and Exchange Commission;

Designated examining authority and *Examining Authority* mean (1) in the case of a registered government securities broker or dealer that belongs to only one self-regulatory organization, such self-regulatory organization, and (2) in the case of a registered government securities broker or dealer that belongs to more than one self-regulatory organization, the self-regulatory organization designated by the Commission pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) as the entity with responsibility for examining such registered government securities broker or dealer;

Fiduciary capacity includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a financial institution having fiduciary powers that is supervised by a Federal or state financial institution regulatory agency;

Financial institution has the meaning set out in section 3(a)(46) of the Act (15 U.S.C. 78c(a)(46)), and such term explicitly does not include a subsidiary or affiliate of an institution described in such section unless such subsidiary or affiliate is itself described in such section;

Government securities broker has the meaning set out in section 3(a)(43) of the Act (15 U.S.C. 78c(a)(43)), and explicitly includes not only registered government securities brokers, but

also registered brokers and financial institutions;

Government securities dealer has the meaning set out in section 3(a)(44) of the Act (15 U.S.C. 78c(a)(44)), and explicitly includes not only registered government securities dealers, but also registered dealers and financial institutions;

Government securities has the meaning set out in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42));

OTC derivatives dealer has the same meaning set out in 17 CFR 240.3b–12.

Registered broker or dealer means a broker or dealer registered pursuant to section 15 or section 15B of the Act (15 U.S.C. 78o, 78o–4)) but does not include a municipal securities dealer that is a bank or a separately identifiable department or division of a bank;

Registered government securities broker or dealer means a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A));

Secretary means the Secretary of the Treasury; and

Treasury or *Department* means the Department of the Treasury, including in particular the Bureau of the Fiscal Service.

[52 FR 27926, July 24, 1987, as amended at 55 FR 6604, Feb. 26, 1990; 71 FR 54410, Sept. 15, 2006; 79 FR 38455, July 8, 2014]

§ 400.4 Information concerning associated persons of financial institutions that are government securities brokers or dealers.

(a) Every associated person of a financial institution that is a government securities broker or dealer that is not exempt pursuant to Part 401 of this chapter shall file with such financial institution a completed Form G-FIN-4 (§ 449.4 of this chapter) unless such person has on file with such financial institution a completed and current Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers).

(b) To the extent any information furnished by an associated person pursuant to paragraph (a) of this section (including information on a Form U–4 or Form MSD–4) is or becomes materially inaccurate or incomplete, such associated person shall promptly furnish in writing to such financial institution, in a form acceptable to the appropriate regulatory agency for such financial institution, a statement correcting such information.

(c) For the purpose of verifying the information furnished by an associated person pursuant to paragraph (a) of this rule, every government securities broker or dealer that is a financial institution shall make inquiry of all other employers of such associated person during the immediately preceding three years concerning the accuracy and completeness of such information.

(d) Every government securities broker or dealer that is a financial institution not exempt from this section pursuant to Part 401 of this chapter shall:

(1) Promptly obtain and, within 10 days thereafter, file with the appropriate regulatory agency, in a form acceptable to such appropriate regulatory agency, the information required by paragraph (a) of this section (which shall consist of all Forms G-FIN–4 filed and a list of all associated persons who have filed Forms MSD–4 or U–4 with the financial institution since the last such filing, designating whether the associated person is serving in a supervisory or non-supervisory capacity) and by paragraph (b) of this section; and

(2) File with the appropriate regulatory agency within 30 days after the termination of the status of an individual as an associated person a Form G-FIN-5 (§ 449.4 of this chapter), unless—

(i) The financial institution is required to and has filed a Form U–5 or Form MSD–5 with respect to such person; or

(ii) The financial institution notifies the appropriate regulatory agency that the individual will remain in the financial institution's employment and the financial institution will continue to update the information about such individual as provided in paragraph (b) of this section and will file a Form G-FIN-5 within 30 days after the termination of such individual's employment with the financial institution.

(e) Every notice and form filed pursuant to this section shall constitute a

''report'' within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27926, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

§ 400.5 Amendments to application for registration and to notice of status as a government securities broker or dealer.

(a)(1) If the information contained in any application for registration as a government securities broker or dealer (other than the statements required by § 240.15Ca2–2 of this title) or in any amendment thereto, becomes inaccurate for any reason, the registered government securities broker or dealer shall file within 30 days thereafter an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(2) If the information contained in any notice of status as a government securities broker or dealer filed by a registered broker or dealer, or in any amendment thereto, becomes inaccurate for any reason, the registered broker or dealer shall file within 30 days an amendment on Form BD (§ 249.501 of this title) correcting such information, in accordance with the instructions provided therein.

(b) If the information contained in any notice of status as a government securities broker or dealer filed by a financial institution, or any amendment thereto, becomes inaccurate for any reason, the financial institution shall file within 30 days an amendment on Form G-FIN (§ 449.1 of this chapter) correcting such information, in accordance with the instructions provided therein.

(c) Every amendment filed pursuant to this section shall constitute a ''report'' within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27926, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

§ 400.6 Notice of withdrawal from business as a government securities broker or dealer by a financial institution.

(a) Whenever a financial institution that is a government securities broker or dealer that is not exempt from the notice requirements of section 15C(a)(1)(B)(i) of the Act (15 U.S.C. 78o–5(a)(1)(B)(i)) and of § 400.5 pursuant to part 401 of this chapter, ceases to act as a government securities broker or dealer, it shall file with the appropriate regulatory agency notice of such cessation on Form G-FINW (§ 449.2 of this chapter) in accordance with the instructions contained therein.

(b) Except as provided in paragraph (c) of this section, a notice that a financial institution has ceased to act as a government securities broker or dealer shall become effective for all purposes on the 60th day after the filing thereof with the appropriate regulatory agency or within such shorter period of time as the appropriate regulatory agency determines.

(c) If the notice described in paragraph (a) of this section is filed with the appropriate regulatory agency any time after the date of the issuance of a notice or order by the appropriate regulatory agency instituting proceedings pursuant to section 15C(c)(2)(A) of the Act (15 U.S.C. 78o–5(c)(2)(A)) to censure, suspend, limit, or bar from acting as a government securities broker or government securities dealer the entity filing such notice, or if the appropriate regulatory agency has instituted any action against the entity filing such notice pursuant to section 15C(2)(B) of the Act (15 U.S.C. § 78o–5(c)(2)(B)), the notice shall become effective pursuant to paragraph (b) of this section at such time and upon such terms and conditions as the appropriate regulatory agency deems necessary or appropriate in the public interest for the protection of investors.

(d) Every notice filed pursuant to this section shall constitute a ''report'' within the meaning of sections 15, 15C and 32(a) of the Act (15 U.S.C. 78o, 78o–5, 78ff(a)).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27926, July 24, 1987, as amended at 60 FR 18734, Apr. 13, 1995]

PART 401—EXEMPTIONS

Sec.

401.1 Exemption for organizations handling transactions in United States Savings Bonds.
401.2 Exemtion for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.
401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.
401.4 Exemption for financial institutions engaged in limited government securities dealer activities.
401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.
401.6 Exemption for branches and agencies of foreign banks that deal solely with non-United States citizens resident offshore.
401.7 Exemption for certain foreign government securities brokers or dealers.

AUTHORITY: Sec. 101, Pub. L. 99–571, 100 Stat. 3209 (15 U.S.C. 78o–5(a)(4)).

SOURCE: 52 FR 27930, July 24, 1987, unless otherwise noted.

§401.1 Exemption for organizations handling transactions in United States Savings Bonds.

An organization that handles United States Savings Bond transactions, including a qualified issuing or paying agent or an organization that accommodates customers or employees by forwarding requested transactions to qualified issuing or paying agents or the Treasury and whose transactions in government securities are limited to these transactions and such other activities that are exempted by the regulations under this subchapter, shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter. For the purposes of this section, the term ''United States Savings Bond'' means any savings-type security offered by the Treasury, including all series of United States Savings Bonds, United States Savings Notes and United States Savings Stamps.

§401.2 Exemption for depository institutions that submit tenders for the account of customers for purchase on original issue of United States Treasury securities.

(a) Subject to the requirements of paragraph (b) of this section, a depository institution that submits tenders or subscriptions for purchase on original issue of United States Treasury securities for the account of customers on a fully disclosed basis, whose transactions in government securities are limited to such transactions and such other activities as have been exempted by regulation under this subchapter shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter.

(b) A depository institution that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of part 450 of this chapter concerning custodial holdings of government securities.

(c) For the purposes of this section, ''depository institution'' has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are used in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607).

§401.3 Exemption for financial institutions that are engaged in limited government securities brokerage activities.

(a)(1) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter, unless it acts as a government securities broker by:

(i) Holding itself out as a government securities broker or interdealer broker; or

(ii) Actively soliciting purchases or sales of government securities on an agency basis;

(2) Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution shall not be regarded as acting as a government securities broker within the meaning of this section if it:

(i) Effects fewer than 500 government securities brokerage transactions (other than transactions described in §§ 401.1 or 401.2) per year; or

(ii) Effects all such transactions (other than transactions described in §§ 401.1 or 401.2) pursuant to a contractual or other arrangement with one or more government securities brokers or dealers each of which has registered or filed notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)) (each referred to as the ''transacting government securities broker or dealer'') under which the transacting government securities broker or dealer will offer securities services on or off the premises of the financial institution, provided that:

(A) The transacting government securities broker or dealer is clearly identified to customers as the person performing the securities services;

(B) Financial institution employees perform only clerical and ministerial or order-taking functions in connection with government securities transactions unless such employees are associated persons (as defined in § 400.3 of this chapter) or registered representatives of the transacting government securities broker or dealer;

(C) Financial institution employees do not receive compensation for government securities activities other than clerical or ministerial functions unless such employees are associated persons (as defined in § 400.3 of this chapter) or registered representatives of the transacting government securities broker or dealer; and

(D) Such services are provided on a fully disclosed basis by the transacting government securities broker or dealer, i.e., the transacting government securities broker or dealer receives and maintains all required information concerning each customer, its trading and account.

(b)(1) A financial institution that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of part 450 of this chapter concerning custodial holdings of government securities for customers.

(2) A branch or agency of a foreign bank that relies on the exemption contained in paragraph (a) of this section is in addition required to comply with § 403.5(e) of this chapter.

(c) For the purposes of this section ''financial institution'' includes an insured credit union, as defined in 12 U.S.C. 1752(7).

[52 FR 27930, July 24, 1987, as amended at 71 FR 54411, Sept. 15, 2006]

§ 401.4 Exemption for financial institutions engaged in limited government securities dealer activities.

(a) Subject to the requirements of paragraph (b) of this section, a financial institution shall be exempt from the provisions of sections 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter if its government securities dealer activities are limited to one or more of the following activities:

(1) Sales or purchases in a fiduciary capacity;

(2) The sale and subsequent repurchase and the purchase and subsequent resale of government securities pursuant to a repurchase or reverse repurchase agreement; and

(3) Such other activities as have been exempted by regulation under this subchapter.

(b)(1) A financial institution that relies on the exemption contained in paragraph (a) of this section is required to comply with:

(i) The regulations of part 450 of this chapter concerning custodial holdings of government securities for customers; and

(ii) Section 403.5(d) of this chapter concerning certain repurchase transactions with customers.

(2) A branch or agency of a foreign bank that relies on the exemption contained in paragraph (a) of this section is in addition required to comply with § 403.5(e) of this chapter.

(c) For the purposes of this section ''financial institution'' includes an insured credit union, as defined in 12 U.S.C. 1752(7).

§401.5 Exemption for corporate credit unions transacting limited government securities business with other credit unions.

(a)(1) Subject to the requirements of paragraph (b) of this section, a corporate credit union shall be exempt from the provisions of section 15C (a), (b) and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations thereunder if its government securities dealer activities are limited to the sale and subsequent repurchase and the purchase and subsequent resale, each pursuant to a repurchase or reverse repurchase agreement, of government securities to other credit unions and such other activities as have been exempted by regulation under this part.

(2) For the purposes of this section, ''corporate credit union'' means a credit union whose membership consists primarily of other credit unions and that is (i) a Federal credit union as defined in 12 U.S.C. 1752(1), (ii) an insured credit union as defined in 12 U.S.C. 1752(7), or (iii) a member of the National Credit Union Administration Central Liquidity Facility.

(b) A credit union that relies on the exemption contained in paragraph (a) of this section is required to comply with:

(1) The regulations of part 450 of this chapter concerning custodial holdings of government securities; and

(2) Section 403.5(d) concerning certain repurchase transactions with customers.

§401.6 Exemption for branches and agencies of foreign banks that deal solely with non-United States citizens resident offshore.

(a) Subject to the requirements of paragraph (b) of this section, a branch or agency of a foreign bank shall be exempt from the provisions of section 15C (a), (b), and (d) of the Act (15 U.S.C. 78o–5 (a), (b), (d)) and the regulations of this subchapter, if all the customers with or on behalf of whom it engages in government securities transactions are limited to foreign governments, agencies of foreign governments and other persons and entities who are not citizens of the United States and who reside or, in the case of a corporation, partnership or other entity, have their principal place of business, outside of the United States.

(b) A branch or agency that relies on the exemption contained in paragraph (a) of this section is required to comply with the regulations of part 450 of this chapter concerning custodial holdings of government securities.

§401.7 Exemption for certain foreign government securities brokers or dealers.

A government securities broker or dealer (excluding a branch or agency of a foreign bank) that is a non-U.S. resident shall be exempt from the provisions of sections 15C(a), (b), and (d) of the Act (15 U.S.C. 78o–5(a), (b) and (d)) and the regulations of this subchapter provided it complies with the provisions of 17 CFR 240.15a–6 (SEC Rule 15a–6) as modified in this section.

(a) For purposes of this section, *non-U.S. resident* means any person (including any U.S. person) engaged in business as a government securities broker or dealer entirely outside the U.S. that is not an office or branch of, or a natural person associated with, a registered broker or dealer, a registered government securities broker or dealer or a financial institution that has provided notice pursuant to §400.1(d) of this chapter.

(b) Within §240.15a–6 of this title, references to ''security'' and ''securities'' shall mean ''government securities'' as defined in §400.3 of this chapter.

(c) Section 240.15a–6(a) of this title is modified to read as follows:

''(a) A foreign broker or dealer shall be exempt from the registration or notice requirements of section 15C(a)(1) of the Act to the extent that the foreign broker or dealer:''

(d) Paragraph 240.15a–6(a)(2)(iii) of this title is modified to read as follows:

''(iii) If the foreign broker or dealer has established a relationship with a registered broker or dealer for the purpose of compliance with paragraph (a)(3) of this rule, this relationship is disclosed in all research reports and all transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3); and''

(e) Paragraph 240.15a–6(a)(3)(i)(B) of this title is modified to read as follows:

''(B) Provides its appropriate regulatory agency (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information, documents, or records within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the appropriate regulatory agency requests and that relates to transactions under paragraph (a)(3) of this rule, except that if, after the foreign broker or dealer has exercised its best efforts to provide this information, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide this information to its appropriate regulatory agency, the foreign broker or dealer is prohibited from providing this information by applicable foreign law or regulations, then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this rule;''

(f) Paragraphs 240.15a–6(a)(3)(iii)(A) (*4*), (*5*) and (*6*) of this title are modified to read as follows:

''(*4*) Maintaining required books and records relating to the transactions, including those required by § 404.1 of this title for registered brokers and dealers (excluding registered government securities brokers and dealers and noticed financial institutions), §§ 404.2 and 404.3 of this title for registered government securities brokers or dealers, and § 404.4 of this title for noticed financial institutions;

''(*5*) Complying with part 402 of this title with respect to the transactions; and

''(*6*) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with § 403.1 of this title for registered brokers and dealers (excluding registered government securities brokers and dealers and noticed financial institutions); §§ 403.2, 403.3, 403.4 and 403.6 of this title for registered government securities brokers and dealers, and § 403.5 of this title for noticed financial institutions.''

(g) Paragraph 240.15a–6(a)(3)(iii)(C) of this title is modified to read as follows:

''(C) Has obtained from the foreign broker or dealer, with respect to each foreign associated person, the types of information specified in Rule 17a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including, without limitation, those described in paragraph (a)(3)(ii)(B) of this rule. Notwithstanding the above, a registered broker or dealer that is a noticed financial institution shall comply with the provisions of paragraphs 404.4(a)(3)(i) (B) and (C) of this title, in lieu of Rule 17a–3(a)(12), provided that the information required by paragraphs 404.4(a)(3)(i) (B) and (C) of this title shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including, without limitation, those described in (a)(3)(ii)(B) of this rule;''

(h) Paragraph 240.15a–6(a)(3)(iii)(D) of this title is modified to read as follows:

''(D) Has obtained from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before its appropriate regulatory agency or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD or other appropriate procedure as specified by the appropriate regulatory agency; and''

(i) Paragraph 240.15a–6(a)(3)(iii)(E) of this title is modified to read as follows:

''(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this rule, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the

foreign broker or dealer conducted under paragraph (a)(3) of this rule, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a–7(a) under the Act (17 CFR 240.17a–7(a)), provided that in Rule 17a–7(a) references to broker or dealer shall include government securities brokers or dealers, as those terms are defined in §§400.3 of this title), and makes these records available to the appropriate regulatory agency upon request; or''

(j) Paragraph 240.15a–6(a)(4)(i) of this title is modified to read as follows:

''(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a financial institution acting pursuant to §§401.3(a)(2)(ii) or 401.4(a)(1) of this title;''

(k) Paragraph 240.15a–6(b)(2) of this title is modified to read as follows:

''(2) The term *foreign associated person* shall mean any natural person domiciled outside the United States who is an associated person (a person associated with a government securities broker or a government securities dealer as defined in section 3(a)(45) of the Act) of the foreign broker or dealer and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this rule.''

(l) Paragraph 240.15a–6(b)(3) of this title is modified to read as follows:

''(3) The term ''foreign broker or dealer'' shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by the definition of ''government securities broker'' or ''government securities dealer'' in sections 3(a)(43) and 3(a)(44) of the Act.''

(m) Paragraph 240.15a–6(b)(5) of this title is modified to read as follows:

''(5) Only for the purposes of this rule, the term ''registered broker or dealer'' shall mean a person that is registered with the Commission under section 15C(a)(2) of the Act or a broker or dealer or a financial institution who has provided notice to its appropriate regulatory agency under section 15C(a)(1)(B)(ii) of the Act.''

(n) For the purposes of this section, §240.15a–6(b) of this title shall include a new paragraph (8) to read as follows:

''(8) The term *registered government securities broker or dealer* has the meaning set out in §400.3 of this title.''

(o) For the purposes of this section, 240.15a–6(b) of this title shall include a new paragraph (9) to read as follows:

''(9) The term *noticed financial institution* means a financial institution as defined at §400.3 of this title that has provided notice to its appropriate regulatory agency pursuant to §400.1(d) of this title.''

(p) For the purposes of this section, §240.15a–6(b) of this title shall include a new paragraph (10) to read as follows:

''(10) The term *appropriate regulatory agency* has the meaning set out in §400.3 of this title.''

(q) Section 240.15a–6(c) of this title is modified to read as follows:

''(c) The Secretary of the Treasury, upon receiving notification from an appropriate regulatory agency that the laws or regulations of a foreign country have prohibited a foreign broker or dealer, or a class of foreign brokers or dealers, engaging in activities exempted by paragraph (a)(3) of this rule, from providing, in response to a request from an appropriate regulatory agency, information, documents, or records within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this rule, may consider to be no longer applicable the exemption provided in paragraph (a)(3) of this rule with respect to the subsequent activities of the foreign broker or dealer or class of foreign brokers or dealers if the Secretary finds that continuation of the exemption is inconsistent with the public interest, the

protection of investors and the purposes of the Government Securities Act.''

(Approved by the Office of Management and Budget under control number 1535–0089)

[55 FR 27462, July 3, 1990; 55 FR 29293, July 18, 1990, as amended at 60 FR 11026, Mar. 1, 1995; 71 FR 54411, Sept. 15, 2006. Redesignated at 79 FR 38455, July 8, 2014]

PART 402—FINANCIAL RESPONSIBILITY

Sec.

402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.
402.2 Capital requirements for registered government securities brokers and dealers.
402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).
402.2b [Reserved]
402.2c Appendix C—Consolidated computations of liquid capital and total haircuts for certain subsidiaries and affiliates.
402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

AUTHORITY: 15 U.S.C. 78o–5(b)(1)(A), (b)(4), Pub. L. 111–203, 124 Stat. 1376.

SOURCE: 52 FR 27931, July 24, 1987, unless otherwise noted.

§ 402.1 Application of part to registered brokers and dealers and financial institutions; special rules for futures commission merchants and government securities interdealer brokers; effective date.

(a) *Application of part.* This part applies to all government securities brokers and dealers, except as otherwise provided herein.

(b) *Registered brokers or dealers.* This part does not apply to a registered broker or dealer (including an OTC derivatives dealer) that is subject to § 240.15c3–1 of this title (SEC Rule 15c3–1).

(c) *Financial institutions.* This part does not apply to a government securities broker or dealer that is a financial institution and that is:

(1) Subject to the rules and regulations of its appropriate regulatory agency concerning capital requirements, or

(2) A branch or agency of a foreign bank subject to regulation, supervision, and examination by state or Federal authorities having regulatory or supervisory authority over commercial bank and trust companies.

(d) *Futures commission merchants.* A futures commission merchant subject to § 1.17 of this title that is a government securities broker or dealer but is not a registered broker or dealer shall not be subject to the limitations of § 402.2 but rather to the capital requirement of § 1.17 or § 240.15c3–1, except paragraph (e)(3) thereof, of this title, whichever is greater.

(e) *Government securities interdealer broker.* (1) A government securities interdealer broker, as defined in paragraph (e)(2) of this section, may, with the prior written consent of the Secretary, elect not to be subject to the limitations of § 402.2 but rather to be subject to the requirements of § 240.15c3–1 of this title (SEC Rule 15c3–1), except paragraphs (c)(2)(ix) and (e)(3) thereof, and paragraphs (e)(3) through (8) of this section by filing such election in writing with its designated examining authority. A government securities interdealer broker may not revoke such election without the written consent of its designated examining authority.

(2)(i) *Government securities interdealer broker* means an entity engaged exclusively in business as a broker that effects, on an initially fully disclosed or identified group basis, transactions in government securities for counterparties that are government securities brokers or dealers who have registered or given notice pursuant to section 15C(a)(1) of the Act (15 U.S.C. 78o–5(a)(1)), and that promptly transmits all funds and delivers all securities received in connection with its activities as a government securities interdealer broker and does not otherwise hold funds or securities for or owe money or securities to its counterparties and, except as provided in paragraph (e)(2)(ii) of this section, does not have or maintain any government securities in its proprietary or other accounts. For the purpose of this paragraph (e)(2)(i), ''identified group basis'' means that a counterparty has consented to the

identity of the specific group of entities from which the other counterparty is chosen.

(ii) A government securities interdealer broker may have or maintain government securities in its proprietary or other accounts only as a result of:

(A) Engaging in overnight reverse repurchase or securities borrowed transactions solely for the purpose of facilitating the process of clearing government securities transactions;

(B) Engaging in overnight repurchase or securities loaned transactions solely for the purpose of reducing its financing expense in connection with the clearance of government securities transactions;

(C) Subordinated loans subject to satisfactory subordination agreements pursuant to §240.15c3–1(d) of this title;

(D) Collateral or depository requirements of a clearing corporation or association with which it participates in the clearance of government securities transactions; or

(E) The investment of its excess cash.

The maturities of any government securities held or maintained under paragraph (e)(2)(ii) (C), (D), or (E) of this section may not exceed one year.

(3) In order to qualify to operate under this paragraph (e), a government securities interdealer broker shall at all times have and maintain net capital, as defined in §240.15c3–1(c)(2) of this title with the modifications of this paragraph (e), of not less than $1,000,000.

(4) For purposes of this paragraph (e), a government securities interdealer broker need not deduct loans to commercial banks for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities interdealer broker in connection with the clearance of securities on the day the loan is made.

(5) For purposes of this paragraph (e), a government securities interdealer broker need not deduct net pair-off receivables and money differences until the close of business of the third business day following the day the funds are due and give-up receivables outstanding no more than 30 days from the billing date, which shall be no later than the last day of the month in which they arise, as otherwise would be required under §240.15c3–1(c)(2)(iv)(B) of this title.

(6) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth ¼ of 1 percent of the contract value of each government securities failed-to-deliver contract which is outstanding 5 business days or longer. Such deduction shall be increased by any excess of the contract price of the failed-to-deliver contract over the market value of the underlying security.

(7) For purposes of this paragraph (e), a government securities interdealer broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by government securities outstanding for not more than one business day and offset by government securities failed to deliver of the same issue and quantity. In no event may a government securities interdealer broker exclude any overnight bank loan attributable to the same government securities failed-to-deliver contract for more than one business day. A government securities interdealer broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by §240.15c3–1(c)(2)(iv)(E) of this title.

(8)(i) For purposes of this paragraph (e), a government securities interdealer broker shall deduct from net worth 5 percent of its net exposure to each counterparty.

(ii) *Net exposure.* For purposes of this paragraph (e), net exposure shall equal:

(A) The sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the government securities interdealer broker in the event of the counterparty's default,

(B) Reduced, but not to less than zero, by the sum of:

(*1*) The dollar amount of funds, debt instruments, other securities, and other inventory at risk, in the first instance, to the counterparty in the event of the government securities interdealer broker's default;

(*2*) The deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty;

(*3*) Demand deposits in the case where the counterparty is a commercial bank;

(*4*) Loans for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities interdealer broker in connection with the clearance of securities on the day the loan is made in the case where the counterparty is a commercial bank;

(*5*) Custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities interdealer broker; and

(*6*) Exposure to a counterparty due to holding marketable instruments subject to market risk haircuts under appendix A to this section (§ 402.2a) for which the counterparty is the obligor.

(9) On the application of the government securities interdealer broker, the designated examining authority may extend the periods of time in this paragraph (e) if it determines that the extension is warranted because of exceptional circumstances and that the government securities interdealer broker is acting in good faith.

(f) This part shall be effective July 25, 1987.

[52 FR 27931, July 24, 1987, as amended at 60 FR 11024, Mar. 1, 1995; 71 FR 54411, Sept. 15, 2006; 79 FR 38455, July 8, 2014]

§ 402.2 Capital requirements for registered government securities brokers and dealers.

(a) *General rule*. No government securities broker or dealer shall permit its liquid capital to be below an amount equal to 120 percent of total haircuts as defined in paragraph (g) of this section.

(b)(1) *Minimum liquid capital for brokers or dealers that carry customer accounts*. Notwithstanding the provisions of paragraph (a) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and receives or holds funds or securities for those persons within the meaning of § 240.15c3–1(a)(2)(i) of this title, shall have and maintain liquid capital in an amount not less than $250,000, after deducting total haircuts as defined in paragraph (g) of this section.

(2) *Minimum liquid capital for brokers or dealers that carry customer accounts, but do not generally hold customer funds or securities*. Notwithstanding the provisions of paragraphs (a) and (b)(1) of this section, a government securities broker or dealer that carries customer or broker or dealer accounts and is exempt from the provisions of § 240.15c3–3 of this title, as made applicable to government securities brokers and dealers by § 403.4 of this part, pursuant to paragraph (k)(2)(i) thereof (17 CFR 240.15c3–3(k)(2)(i)), shall have and maintain liquid capital in an amount not less than $100,000, after deducting total haircuts as defined in paragraph (g) of this section.

(c)(1) *Minimum liquid capital for introducing brokers that receive securities*. Notwithstanding the provisions of paragraphs (a) and (b) of this section, a government securities broker or dealer that introduces on a fully disclosed basis transactions and accounts of customers to another registered or noticed government securities broker or dealer but does not receive, directly or indirectly, funds from or for, or owe funds to, customers, and does not carry the accounts of, or for, customers shall have and maintain liquid capital in an amount not less than $50,000, after deducting total haircuts as defined in paragraph (g) of this section. A government securities broker or dealer operating pursuant to this paragraph (c)(1) may receive, but shall not hold customer or other broker or dealer securities.

(2) *Minimum liquid capital for introducing brokers that do not receive or handle customer funds or securities*. Notwithstanding the provisions of paragraphs (a), (b), and (c)(1) of this section, a government securities broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers, and does not carry accounts of, or for, customers and that effects ten or fewer transactions in securities in

any one calendar year for its own investment account shall have and maintain liquid capital in an amount not less than $25,000, after deducting total haircuts as defined in paragraph (g) of this section.

(d) *Liquid capital.* ''Liquid capital'' means net capital as defined in § 240.15c3–1(c)(2) of this title with the following modifications:

(1) The percentages used to calculate the deductions for failed to deliver contracts required by § 240.15c3–1(c)(2)(ix) of this title when the underlying instrument is a Treasury market risk instrument as defined in paragraph (e) of this section are the appropriate net position haircut factors specified in paragraph (f)(2) of this section;

(2) The percentages used to calculate deductions required by § 240.15c3–1(c)(2)(iv)(B) of this title for securities that are Treasury market risk instruments are the appropriate net position haircut factors specified in paragraph (f)(2) of this section;

(3) The deduction required by § 240.15c3–1(c)(2)(iv)(F)(*3*)(*i*) of this title relating to repurchase agreement deficits shall be determined without reference to § 240.15c3–1(c)(2)(iv)(F)(*3*)(*i*)(*B*) or § 240.15c3–1(c)(2)(iv)(F)(*3*)(*i*)(*C*);

(4) The deductions from net worth required by §§ 240.15c3–1 (c)(2)(vi) and (c)(2)(viii) of this title and the adjustments to net worth set forth in § 240.15c3–1a and § 240.15c3–1b of this title (Appendices A and B to SEC Rule 15c3–1) are omitted;

(5) Net pair-off receivables and money differences need not be deducted as otherwise would be required under § 240.15c3–1(c)(2)(iv)(B) of this title until the close of business of the third business day following the day the funds are due;

(6) Give-up receivables outstanding no more than 30 days from the billing date, which shall be no later than the last day of the month in which they arise, need not be deducted as otherwise would be required under § 240.15c3–1(c)(2)(iv)(B) of this title;

(7) Loans to commercial banks for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities broker or dealer in connection with the clearance of securities on the day the loan is made need not be deducted; and

(8) In determining net worth, all long and short positions in unlisted options that are Treasury market risk instruments shall be evaluated in the manner set forth in § 240.15c3–1(c)(2)(i)(B)(*1*) and not in the manner set forth in § 240.15c3–1(c)(2)(i)(B)(*2*) of this title.

(e) *Treasury market risk instruments.* (1) For purposes of this part, the term ''Treasury market risk instrument'' means the following dollar-denominated securities, debt instruments, and derivative instruments:

(i) Government securities, except equity securities and those mortgage-backed securities described in paragraph (e)(2) of this section;

(ii) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(iii) Marketable certificates of deposit of no more than one year to maturity;

(iv) Bankers acceptances;

(v) Commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as determined by the government securities broker or dealer pursuant to reasonably designed written policies and procedures the government securities broker or dealer establishes, maintains, and enforces to assess and monitor creditworthiness. These policies and procedures should result in creditworthiness assessments that typically are consistent with market data;

(vi) Securities, other than equity securities, issued by international organizations that have a statutory exemption from the registration requirements of the Securities Act of 1933 and the Securities Exchange Act of 1934 provided their changes in yield are closely correlated to the changes in yield of similar Treasury securities, including STRIPS;

(vii) Futures, forwards, and listed options on Treasury market risk instruments described in paragraphs (e)(1)(i)-(vi) of this section or on time deposits whose changes in yield are closely correlated with the Treasury market risk instruments described in paragraph (e)(1)(iii) of this section, settled on a cash or delivery basis;

(viii) Options on those futures contracts described in paragraph (e)(1)(vii) of this section, settled on a cash or delivery basis; and

(ix) Unlisted options on marketable Treasury bills, notes or bonds.

(2) ''Treasury market risk instrument'' does not include mortgage-backed securities that do not pass through to each security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses.

(f)(1) *Haircut categories.* For purposes of this part, the applicable categories within which non-zero-coupon and zero-coupon Treasury market risk instruments are classified are:

Category	Term or type for non-zero-coupon instruments	Term for zero-coupon instruments
A	Less than 45 days	Less than 45 days.
B	At least 45 days but less than 135 days	At least 45 days but less than 135 days.
C	At least 135 days but less than 9 months	At least 135 days but less than 9 months.
D	At least 9 months but less than 1 year, 6 months	At least 9 months but less than 1 year, 6 months.
E	At least 1 year, 6 months but less than 3 years, 6 months.	At least 1 year, 6 months but less than 3 years.
F	At least 3 years, 6 months but less than 7 years, 6 months.	At least 3 years but less than 5 years, 6 months.
G	At least 7 years, 6 months but less than 15 years	At least 5 years, 6 months but less than 9 years.
H	15 years and over	At least 9 years but less than 12 years.
I		At least 12 years but less than 21 years
J		21 years and over.
MB	All fixed rate mortgage-backed securities that are Treasury market risk instruments..	
AR	All adjustable rate mortgage-backed securities that are Treasury market risk instruments.	

(2) *Haircut factors.* For purposes of this part, the applicable net position and offset haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Haircut factors	
	Net position haircuts (percent)	Offsets (percent)
A	None	None
B	0.12	0.02
C	0.20	0.03
D	0.45	0.07
E	1.10	0.22
F	2.20	0.44
G	3.30	0.50
H	4.50	0.90
I	7.75	1.55
J	11.25	3.38
MB	3.30	0.66
AR	1.10	0.22

(3) *Category pair hedging disallowance haircut factors.* For purposes of this part, the applicable category pair hedging disallowance haircut factors to be used in the calculation of the Treasury market risk haircut are as follows:

Category	Percent disallowed								
	C	D	E	F	G	H	I	J	MB
B	30	40							
C	....	20	30						
D	....	....	20	30	40				
E	....	....	....	20	30	40			
F	....	....	....	....	20	30	40	....	30
G	....	....	....	....	....	20	30	....	30
H	....	....	....	....	....	....	20	40	40
I	....	....	....	....	....	....	....	40	

(g) *Total haircuts.* ''Total haircuts'' equals the sum of the credit risk haircut and the market risk haircut.

(1) *Credit risk haircut.* The ''credit risk haircut'' equals the sum of the total counterparty exposure haircut, the total concentration of credit haircut and the credit volatility haircut.

(i) *Net credit exposure.* For purposes of this part, net credit exposure shall equal:

(A) The sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default and the market value of purchased unlisted options written by the counterparty that are Treasury market risk instruments,

(B) Reduced, but not to less than zero, by the sum of:

(*1*) The dollar amount of funds, debt instruments, other securities, and other inventory at risk to the counterparty in the event of the government securities broker's or dealer's default and the market value of unlisted options written by the government securities broker or dealer and held by the counterparty that are Treasury market risk instruments;

(*2*) The deductions taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty;

(*3*) Demand deposits in the case where the counterparty is a commercial bank;

(*4*) Loans for one business day of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities broker or dealer in connection with the clearance of securities on the day the loan is made in the case where the counterparty is a commercial bank;

(*5*) Custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities broker or dealer; and

(*6*) Exposure to a counterparty due to holding marketable instruments subject to market risk haircuts under appendix A to this section (§ 402.2a) for which the counterparty is the obligor.

(ii) *Total counterparty exposure haircut*. The ''total counterparty exposure haircut'' equals the sum of the counterparty exposure haircuts taken for all counterparties except a Federal Reserve Bank, of the government securities broker or dealer. The ''counterparty exposure haircut'' equals the product of a counterparty exposure haircut factor of 5 percent and the net credit exposure to a single counterparty not in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(iii) *Total concentration of credit haircut*. The ''total concentration of credit haircut'' equals the sum of the concentration of credit haircuts taken for all counterparties of the government securities broker or dealer. The ''concentration of credit haircut'' equals the product of a concentration of credit haircut factor of 25 percent and the amount by which the net credit exposure to a single counterparty is in excess of 15 percent of the government securities broker's or dealer's liquid capital.

(iv) *Credit volatility haircut*. The ''credit volatility haircut'' equals the product of a credit volatility haircut factor of 0.15 percent and the dollar amount of the larger of the gross long position or gross short position in those Treasury market risk instruments described in paragraphs (e)(1)(iii), (iv) and (v) of this section that have a term to maturity greater than 44 days, including futures and forwards thereon, settled on a cash or delivery basis, and futures and forwards on time deposits described in paragraph (e)(1)(vii) of this section, that have a term to maturity greater than 44 days, settled on a cash or delivery basis.

(2) *Market risk haircut*. The ''market risk haircut'' equals the sum of the Treasury market risk haircut and the other securities haircut, calculated in accordance with the provisions of appendix A of this section, § 402.2a.

(h) *Debt-equity requirements*. No government securities broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements as defined in § 240.15c3–1d of this title (appendix D to SEC Rule 15c3–1) modified as provided in appendix D to this section, § 402.2d, to exceed the allowable levels set forth in § 240.15c3–1(d) of this title.

(i) *Provisions relating to the withdrawal of equity capital*—(1) *Notice provisions*. No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without providing written notice, given in accordance with paragraph (i)(1)(iv) of this section, when specified in paragraphs (i)(1) (i) and (ii) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the government securities broker's or dealer's excess liquid capital. A government securities broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the government securities broker's or dealer's excess liquid capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its designated examining authority. When a government securities broker or dealer makes a withdrawal with the consent of its designated examining authority, it shall in any event comply with paragraph (i)(1)(ii) of this section; and

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the government securities broker's or dealer's excess liquid capital.

(iii) This paragraph (i)(1) of this section does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a government securities broker or dealer and an affiliate where the government securities broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any such 30 calendar day period, on a net basis, equal $500,000 or less.

(iv) Each required notice shall be effective when received by the Commission in Washington, DC, the regional or district office of the Commission for the area in which the government securities broker or dealer has its principal place of business, and the government securities broker's or dealer's designated examining authority.

(2) *Withdrawal limitations.* No equity capital of the government securities broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C to this section, § 402.2c, may be withdrawn by action of a stockholder or a partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in § 240.15c3–1d of this title, appendix D to SEC Rule 15c3–1, modified as provided in appendix D to this section, § 402.2d) under satisfactory subordination agreements which are scheduled to occur within 180 calendar days following such withdrawal, advance or loan, either:

(i) The ratio of liquid capital to total haircuts, determined as provided in § 402.2, would be less than 150 percent; or

(ii) Liquid capital minus total haircuts would be less than 120 percent of the minimum capital required by § 402.2(b) or § 402.2(c) as applicable; or

(iii) In the case of any government securities broker or dealer included in such consolidation, the total outstanding principal amounts of satisfactory subordination agreements of the government securities broker or dealer (other than such agreements which qualify as equity under § 240.15c3–1(d) of this title) would exceed 70% of the debt-equity total as defined in § 240.15c3–1(d).

(3) *Miscellaneous provisions.* (i) Excess liquid capital is that amount in excess of the amount required by the greater of § 402.2(a) or, §§ 402.2 (b) or (c), as applicable. For the purposes of paragraphs (i)(1) and (i)(2) of this section, a government securities broker or dealer may use the amount of excess liquid capital, liquid capital and total haircuts reported in its most recently required filed Form G–405 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess liquid capital or total haircuts. The government securities broker or dealer must assure itself that the excess liquid capital, liquid capital

or the total haircuts reported on the most recently required filed Form G–405 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (i)(1) and (i)(2) of this section shall not preclude a government securities broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances or loans for purposes of paragraphs (i)(1) and (i)(2) of this section.

(iv) For the purposes of this subsection (i), any transaction between a government securities broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the government securities broker's or dealer's liquid capital shall be deemed to be an advance or loan of liquid capital.

(j) *Modification of appendices to § 240.15c3–1 of this title.* For purposes of this section, appendix C to this section (§ 402.2c) is substituted for appendix C to Rule 15c3–1 (§ 240.15c3–1c of this title), and appendix D to Rule 15c3–1 (§ 240.15c3–1d of this title), relating to Satisfactory Subordination Agreements, is modified as provided in appendix D to this section (§ 402.2d).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27931, July 24, 1987, as amended at 53 FR 28984, Aug. 1, 1988; 60 FR 11024, Mar. 1, 1995; 79 FR 38455, July 8, 2014]

§ 402.2a Appendix A—Calculation of market risk haircut for purposes of § 402.2(g)(2).

The market risk haircut is the sum of the Treasury market risk haircut and the other securities haircut, calculated as follows.

(a) *Treasury market risk haircut.* The ''Treasury market risk haircut'' equals the sum of the total governments offset portion haircut, the total futures and options offset haircut, the total hedging disallowance haircut, and the residual net position haircut, calculated with respect to financings and positions in Treasury market risk instruments, except to the extent that a permissible election is made pursuant to paragraph (b)(1) of this section to include qualified positions in the calculation of the other securities haircut.

(1) *Total governments offset portion haircut.* The ''total governments offset portion haircut'' equals the sum of the governments offset portion haircuts calculated for each category in § 402.2(f)(1). The ''governments offset portion haircuts'' equal, for each category in § 402.2(f)(1), the product of the offset haircut factor for that category set out in § 402.2(f)(2) and the smaller of the absolute values of the gross long immediate position or gross short immediate position for that category. Schedules B and C in paragraph (c) of this section can be used to make this calculation.

(i)(A) The ''gross long immediate position'' for purposes of this part equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each long immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, the contract values of each reverse repurchase agreement with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category, and the values of the cash collateral of each security borrowing with a term to maturity or time to next scheduled interest rate adjustment, whichever is less, corresponding to such category.

(B) In the case of category MB, the ''gross long immediate position'' equals the sum of the market values of all long immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the ''gross long immediate position'' equals the sum of the market values of all long immediate positions in adjustable

rate mortgage-backed securities which are Treasury market risk instruments.

(ii)(A) The ''gross short immediate position'' for purposes of this section equals, for each category except categories MB and AR in § 402.2(f)(1), the sum of the market values of each short immediate position in Treasury market risk instruments with a term to maturity (or, in the case of a floating rate note, the time to the next scheduled interest rate adjustment or the term to maturity, whichever is less) corresponding to such category, and the values of funds received from each financing transaction (including repurchase agreements, securities lending secured by cash collateral, and term financings, but excluding subordinated debt which meets the requirements of § 240.15c3–1d of this title modified as provided in § 402.2d) with a term to maturity or time to the next scheduled interest rate adjustment, whichever is less, corresponding to that category.

(B) In the case of category MB, the ''gross short immediate position'' equals the sum of the market values of all short immediate positions in fixed rate mortgage-backed securities which are Treasury market risk instruments.

(C) In the case of category AR, the ''gross short immediate position'' equals the sum of the market values of all short immediate positions in adjustable rate mortgage-backed securities which are Treasury market risk instruments.

(iii) The term *long immediate position* in a Treasury market risk instrument means, for purposes of this part:

(A) The net long position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net long when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net long when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net long when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

(iv) The term *short immediate position* on a Treasury market risk instrument means, for purposes of this part:

(A) The net short position in a Treasury market risk instrument as of the trade date, except when the settlement date, in the case of a Treasury market risk instrument except a mortgage-backed security, is scheduled more than five business days in the future, and, in the case of a mortgage-backed security, more than thirty calendar days in the future;

(B) The net short when-issued position in a marketable U.S. Treasury security between announcement and issue date;

(C) The net short when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date; and

(D) The net short when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

(2) *Net immediate position interim haircut.* The ''net immediate position interim haircut'' equals, for each category in § 402.2(f)(1), the product of the net position haircut factor for that category and the sum of the gross long immediate position and the gross short immediate position for that category. For purposes of this part, a gross long immediate position shall be a positive number and a gross short immediate position shall be a negative number. Schedules B and C in paragraph (c) of this section can be used to make this calculation.

(3) *Total futures and options offset haircut.* The ''total futures and options offset haircut'' equals the sum of the futures and options offset haircuts calculated for each category in § 402.2(f)(1). The ''futures and options offset haircut'' equals, for each category in § 402.2(f)(1), the product of a futures and options offset factor of 20 percent and the smaller of the absolute values of the positive and negative aggregate interim haircuts for that category.

Schedule D in paragraph (c) of this section can be used to make this calculation.

(i) *Positive aggregate interim haircut.* The ''positive aggregate interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the positive net immediate position interim haircut (see paragraph (a)(2) of this section), the gross long futures and forward interim haircut, and the positive gross options interim haircut for that category. Schedule D in paragraph (c) of this section can be used to make this calculation.

(A) *Gross long futures and forward interim haircut.* The ''gross long futures and forward interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each long futures position and long forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the *interim haircut on each long futures position and each long forward position* is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the long futures position or long forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross long futures and forward interim haircut shall be a positive number.

(B) *Positive gross options interim haircut.* The ''positive gross options interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each purchased call and sold put placed in the category in which the underlying instrument would be placed.

(*1*) For purposes of this part, the ''interim haircut on each purchased call and sold put'' equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the positive gross options interim haircut is a positive number.

(ii) *Negative aggregate interim haircut.* The ''negative aggregate interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the negative net immediate position interim haircut (see paragraph (a)(2) of this section), the gross short futures and forward interim haircut, and the negative gross options interim haircut for that category. Schedule D in paragraph (c) of this section can be used to make this calculation.

(A) *Gross short futures and forward interim haircut.* The ''gross short futures and forward interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each short futures position and short forward position placed, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, in the category corresponding to the sum of the term to maturity of the contract and the term to maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, in the category corresponding to the type of Treasury market risk mortgage-backed security.

(*1*) For purposes of this part, the ''interim haircut on each short futures position and each short forward position''

is the product of the net position haircut factor for the category corresponding to, in the case of a futures or forward contract which is a Treasury market risk instrument except those on mortgage-backed securities, the maturity of the underlying instrument at the time of the maturity of the contract or, in the case of a futures or forward contract on Treasury market risk mortgage-backed securities, the type of Treasury market risk mortgage-backed security and the value of the short futures position or short forward position evaluated at the current market price for such contract.

(*2*) For purposes of this part, the gross short futures and forward interim haircut is a negative number.

(B) *Negative gross options interim haircut*. The ''negative gross options interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the interim haircuts on each sold call and purchased put placed in the category in which the underlying instrument would be placed.

(*1*) For purposes of this part, the ''interim haircut on each sold call and purchased put'' equals the lesser of the market value of the option or, (*i*) in the case of an option on a cash instrument, the product of the net position haircut factor for the category to which the underlying cash instrument corresponds and the market value of the underlying cash instrument or, (*ii*) in the case of an option on a futures contract, the interim haircut on the underlying futures contract.

(*2*) For purposes of this part, the negative gross options interim haircut is a negative number.

(4) *Total hedging disallowance haircut*. The ''total hedging disallowance haircut'' equals the sum of the hedging disallowance haircuts calculated pursuant to each netting of qualified netting interim haircuts. The ''hedging disallowance haircut'' equals the absolute value of the product of the applicable category pair hedging disallowance haircut factor specified in § 402.2(f)(3) and the smaller in absolute value of any two qualified netting interim haircuts, netted in accordance with the provisions of this paragraph. Schedule E in paragraph (c) of this section can be used to make this calculation.

(i) *Qualified netting interim haircut*. The term ''qualified netting interim haircut'' means a residual position interim haircut or a net residual position interim haircut.

(A) *Residual position interim haircut*. The ''residual position interim haircut'' equals, for each category in § 402.2(f)(1), the sum of the positive aggregate interim haircut and the negative aggregate interim haircut corresponding to the category, calculated in accordance with the provisions of paragraph (a)(3) of this section.

(B)(*1*) *Net residual position interim haircut*. The ''net residual position interim haircut'' equals, for any two categories between which netting is permitted, the sum of (*i*) the residual position interim haircuts calculated for those categories, in the case of the category of the larger in absolute value of the two residual position interim haircuts being netted, and (*ii*) zero, in the case of the category of the smaller in absolute value of the two residual position interim haircuts being netted.

(*2*) For the purposes of this paragraph (a)(4), netting is permitted only between categories for which a category pair hedging disallowance haircut factor has been specified in paragraph § 402.2(f)(3).

(ii) Net residual position interim haircuts shall be substituted for the residual position interim haircuts in the respective categories in which they have been placed and shall be considered as if they were residual position interim haircuts. New net residual position interim haircuts may continue to be calculated until for each category pair for which netting is permitted at least one of the two qualified netting interim haircuts is zero or both qualified netting interim haircuts are of the same sign.

(5) *Residual net position haircut*. The ''residual net position haircut'' equals the sum of the absolute values of all qualified netting interim haircuts remaining in each category after the completion of the calculation of permissible nettings described in paragraph (a)(4) of this section. Schedule E in paragraph (c) of this section can be used to make this calculation.

(b) *Other securities haircut*. The ''other securities haircut'' equals the sum of

all deductions specified in § 240.15c3–1 (c)(2)(vi) and (c)(2)(viii) of this title and §§ 240.15c3–1a and 240.15c3–1b of this title for long and short positions in securities, futures contracts, forward contracts, options, and other inventory which are not Treasury market risk instruments as defined in § 402.2(e).

(1) A registered government securities broker or dealer may elect to exclude from its calculation of the Treasury market risk haircut and include in its calculation of the other securities haircut long and short positions in Treasury market risk instruments if such positions form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options which are not Treasury market risk instruments. Only the portion of the total position in a Treasury market risk instrument that forms part of such hedge may be excluded from the calculation of the Treasury market risk haircut and included in the calculation of the other securities haircut.

(2) For purposes of this paragraph (b), a gross long or short position in Treasury market risk instruments shall be considered part of a hedge if the inclusion of such position in the calculation of the other securities haircut would serve to reduce said haircut.

(3) For purposes of this paragraph (b) as it relates to § 240.15c3–1(c)(2)(vi)(M) (''undue concentration''), references to ''10 percent of the ''net capital''' shall be understood to refer to 10 percent of the liquid capital and references to ''Appendix (D) (17 CFR 240.15c3–1d)'' shall be understood to refer to such section as modified by § 402.2d.

(c) *Schedules.* This paragraph sets forth schedules which may be used by government securities brokers or dealers in the calculation of total haircuts as required by this part 402. The appropriate regulatory agency or designated examining authority may specify other substantially similar forms required to be used by government securities brokers or dealers in the calculation of such haircuts.

SCHEDULE A—LIQUID CAPITAL REQUIREMENT, SUMMARY COMPUTATION

[In thousands of dollars]

1. Liquid capital[1]	_____
2. Haircuts on security and financing positions including contractual commitments:	
a. Total governments offset portion haircut (Schedule C)	_____
b. Total futures and options offset haircut (Schedule D)	_____
c. Total hedging disallowance haircut (Schedule E)	_____
d. Residual net position haircut (Schedule E)	_____
e. Other securities haircut (use SEC factors)	_____
3. Haircuts on credit exposure:	
a. Total counterparty exposure haircut	_____
b. Total concentration of credit haircut	_____
c. Credit volatility haircut	_____
4. Total haircuts (sum of lines 2 a through e, 3 a, b, and c)	_____
5. Capital-to-risk ratio (line 1 divided by line 4)	_____

[1] Identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

Schedule B

Calculation of Net Immediate Positions in Securities and Financings

	Maturity Category 1/	Financings Long 2/ (+)	Financings Short 2/ (-)	Securities Positions Long (+)	Securities Positions Short (-)	Total Securities and Financing Positions (+)	Total Securities and Financing Positions (-)	Offset Portions (+)	Net Immediate Positions (+/-)	
A	0-45 days									A
B	45-135 days									B
C	135 days-9 months									C
D	9-18 months									D
E	1.5-3.5 years (1.5-3 years)									E
F	3.5-7.5 years (3-5.5 years)									F
G	7.5-15 years (5.5-9 years)									G
H	15-30 years (9-12 years)									H
I	(12-21 years)									I
J	(21 years and over)									J
MB	mortgage-backed									MB
AR	adjustable rate mortgage-backed									AR
	Column Number	1	2	3	4	5 (1+3)	6 (2+4)	7# (Note 1)	8# (5+6)	

Carry forward to Schedule C.

Note 1: The offset portion (Column 7) is the smaller of Columns 5 and 6.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in that category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

2/ Long financings are financings which provide securities to a broker or dealer; short financings are those which provide funds.

Schedule C

Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation

	Maturity Category 1/	Governments Offset Portion $ Amounts (+)	Governments Offset Portion Factors	Governments Offset Portion Haircuts (+)	Net Immediate Position $ Amounts (+/-)	Net Immediate Position Factors	Net Immediate Position Interim Haircuts (+/-)
A	0-45 days		None			None	
B	45-135 days		0.0002			0.0012	
C	135 days-9 months		0.0003			0.0020	
D	9-18 months		0.0007			0.0045	
E	1.5-3.5 years (1.5-3 years)		0.0022			0.0110	
F	3.5-7.5 years (3-5.5 years)		0.0044			0.0220	
G	7.5-15 years (5.5-9 years)		0.0050			0.0330	
H	15-30 years (9-12 years)		0.0090			0.0450	
I	(12-21 years)		0.0155			0.0775	
J	(21 years and over)		0.0338			0.1125	
MB	mortgage-backed		0.0066			0.0330	
AR	adjustable rate mortgage-backed		0.0022			0.0110	
	Total Governments Offset Portion Haircut $_____						
	Column Number	7 (Note 1)	9	10# (7x9)	8 (Note 1)	11	12## (8x11)

\# Carry to Schedule A, line 2a

\## Carry forward to Schedule D (or Schedule E, if no forwards, futures, or options).

Note 1: From Schedule B.

1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

Schedule D

Consolidation of Net Immediate Position Interim Haircuts
with Gross Futures and Options Interim Haircuts
(In thousands of dollars)

Maturity Category 1/	Net Immediate Position Interim Haircuts (+/-)	Gross Interim Haircuts: Futures & Forward (+)	Gross Interim Haircuts: Futures & Forward (-)	Gross Interim Haircuts: Options (+)	Gross Interim Haircuts: Options (-)	Aggregate Interim Haircuts (+)	Aggregate Interim Haircuts (-)	Futures & Options Offset Portions 2/ (+)	Residual Position Interim Haircuts (+/-)
B 45-135 days									B
C 135 days-9 months									C
D 9-18 months									D
E 1.5-3.5 years (1.5-3 years)									E
F 3.5-7.5 years (3-5.5 years)									F
G 7.5-15 years (5.5-9 years)									G
H 15-30 years (9-12 years)									H
I (12-21 years)									I
J (21 years and over)									J
MB mortgage-backed									MB
AR adjustable rate mortgage-backed									AR
Column Number	12 (Note 1)	13	14	15	16	17	18	19 (Note 2)	20## (17+18)

Total Futures and Options Offset Portion: $ _____
Factor: x20%
Total Futures and Options Offset Haircut: $ _____ #

\# Carry to Schedule A, line 2b.
\## Carry forward to Schedule E.
Note 1: From Schedule C.
Note 2: Column 19 is the smaller of columns 17 and 18.
1/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year is always considered to be 6 months.
2/ The total futures and options haircut is calculated from the total of column 19.

Schedule E

Calculation of Hedging Disallowance Haircuts
when Netting Haircuts Across Categories 1/
(In thousands of dollars)

	Maturity Category 2/	Residual Position Interim Haircuts (+/-)	20% Disallowance: Hedging Disallowance Haircuts (+)	20% Disallowance: Net Residual Position Interim Haircuts (+/-)	30% Disallowance: Hedging Disallowance Haircuts (+)	30% Disallowance: Net Residual Position Interim Haircuts (+/-)	40% Disallowance: Hedging Disallowance Haircuts (+)	40% Disallowance: Net Residual Position Interim Haircuts (+/-)	Hedging Disallowance Haircuts (+)	Qualified Netting Interim Haircuts (+)	
B	45-135 days										B
C	135 days-9 months										C
D	9-18 months										D
E	1.5-3.5 years (1.5-3 years)										E
F	3.5-7.5 years (3-5.5 years)										F
G	7.5-15 years (5.5-9 years)										G
H	15-30 years (9-12 years)										H
I	(12-21 years)										I
J	(21 years and over)										J
MB	mortgage-backed										MB
AR	adjustable rate mortgage-backed										AR

Total Hedging Disallowance Haircut:$_____

Residual Net Position Haircut:$_____

Column Number	20 (Note 1)	21	22 (Note 2)	23	24 (Note 2)	25	26 (Note 2)	27# (Note 3)	28##

\# Column 27 carries forward to Schedule A, line 2c.

\## Column 28 total carries forward to Schedule A, line 2d.

Note 1: From Schedule D (or Schedule C, if no forwards, futures, or options).

Note 2: Net of two offsetting haircuts of paired maturity categories.

Note 3: For every entry in column 20 there should be an entry in either column 27 or 28 (but never both).

1/ See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.

2/ The categories are designated in Sec. 402.2(f)(1). A category contains all securities with maturities greater than or equal to the lower of the designated maturities, but less than the higher. Maturity designations in parentheses refer to maturities of zero-coupon instruments to be placed in the category. In categories A, B, C, and D, zero-coupon instruments are to be treated in the same manner as all other instruments. A half year (.5) is always considered to be 6 months.

INSTRUCTIONS TO SCHEDULES A THROUGH E

Schedules A through E may be used by government securities brokers or dealers subject to 17 CFR 402 to determine the firm's capital-to-risk ratio. Section 402.2 provides that a government securities broker or dealer must meet the applicable minimum dollar liquid capital requirement and that the firm's ratio of liquid capital to risk (total haircuts) must be at least 1.2:1; liquid capital must exceed risk by at least 20 percent. Total haircuts is the risk measure used in the ratio; it is made up of measures of market risk and measures of credit risk. The market risk of a government securities broker's or dealer's positions is accounted for

through the Treasury market risk haircut and the other securities haircut. Credit risk is accounted for in the counterparty exposure, concentration of credit, and credit volatility haircuts and in the computation of liquid capital through the various deductions and charges.

Only positions in Treasury market risk instruments and financings may be used in the calculation of the Treasury market risk haircut. Treasury market risk instruments and financings are described in 17 CFR 402.2 and in the instructions to the schedule where they are to be first entered. All other types of financial instruments are to be included in the calculation of the other securities haircut. Calculation of the other securities haircut is based on the SEC's Rule 15c3–1 (17 CFR 240.15c3–1).

Treasury market risk instruments may be excluded from the calculation of the Treasury market risk haircut if they are included in the calculation of the other securities haircut as part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options that are not Treasury market risk instruments. Only the portion of the total position in a Treasury market risk instrument that forms part of such a hedge may be excluded, and the result of this transfer of the Treasury market risk instruments must be a reduction in the other securities haircut.

The categories for classifying Treasury market risk instruments are designated in 17 CFR 402.2(f)(1). The categories, which are designated by a maturity range, contain all securities with remaining terms to maturity greater than or equal to the lower end of the range but less than the higher. A half year is always considered to be 6 months. In categories A through D, zero-coupon instruments are to be treated in the same manner as all other instruments. In categories E through J, the maturity designations in parentheses give the maturities of the zero-coupon instruments to be placed in that category. All mortgage-backed securities that are Treasury market risk instruments are to be placed in category MB or category AR, depending on whether they are backed by conventional or adjustable-rate mortgages.

All haircuts may be calculated to the nearest hundred dollars, unless such rounding would materially affect the liquid capital calculation.

Appendix A to the Preamble published with the temporary regulations for 17 CFR part 402 (52 FR 19669, May 26, 1987) contains an example of the capital calculation. It may also be used as an aid in completing these schedules.

Schedule A—Liquid Capital Requirement Summary Computation

Schedule A is used to determine the capital-to-risk ratio by comparing liquid capital to total haircuts. Schedule A will be the last schedule completed as many of the haircuts entered on Schedule A are calculated on Schedules B through E.

Line 1—Enter liquid capital, which is identical to the amount reported on line 3640 of the Report on Finances and Operations of Government Securities Brokers and Dealers, Form G–405.

Line 2—Haircuts on ''Security and Financing Positions'' including contractual commitments:

a. Enter the Total Governments Offset Portion Haircut from column 10 of Schedule C.

b. Enter the Total Futures and Options Offset Haircut from column 19 of Schedule D.

c. Enter the Total Hedging Disallowance Haircut as calculated in Schedule E, column 27.

d. Enter the Residual Net Position Haircut as given in column 28 of Schedule E.

e. Enter the other securities haircut as determined by applying the SEC haircut factors to securities, futures contracts, forward contracts, options and other inventory that are not Treasury market risk instruments as defined in 17 CFR 402.2(e). The other securities haircut is the sum of all applicable deductions as specified in 17 CFR 240.15c3–1 (c)(2)(vi) and (c)(2)(viii) and in 17 CFR 240.15c3–1a and 240.15c3–1b. Any position(s) in Treasury market risk instruments that have been excluded from the calculation of the Treasury market risk haircut because they are part of a hedge with these other instruments are to be included in the calculation of this haircut.

Line 3—Haircuts on credit exposure:

a. Enter the total counterparty exposure haircut which is the sum of the counterparty exposure haircut with each counterparty, except a Federal Reserve Bank. A counterparty exposure haircut is equal to 5 percent of the net credit exposure to a single counterparty which is not in excess of 15 percent of the government securities broker's or dealer's liquid capital. If the net credit exposure to a counterparty does exceed 15 percent of liquid capital, the excess will be used in calculating the total concentration of credit haircut on line 3b.

Net credit exposure equals the difference between the government securities broker's or dealer's credit exposure to a single counterparty and that counterparty's credit exposure to the government securities broker or dealer. The government securities broker's or dealer's credit exposure to a counterparty is equal to the sum of the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the government securities broker or dealer in the event of the counterparty's default and the market value of purchased unlisted options that are Treasury market risk instruments and were written by the counterparty.

It does not include, however, (1) the deduction taken from net worth for unsecured receivables, repurchase and reverse repurchase agreement deficits, aged fails to deliver, and aged fails to receive arising from transactions with the counterparty; (2) demand deposits in the case where the counterparty is a commercial bank; (3) loans of immediately available funds (commonly referred to as ''sales of federal funds'') held by the government securities broker or dealer in connection with the clearance of securities on the day the loan is made in the case where the counterparty is a commercial bank; (4) custodial holdings of securities in the case where the counterparty is a clearing bank or clearing broker of the government securities broker or dealer; or (5) credit exposure to the counterparty due to holding marketable instruments for which the counterparty is the obligor.

The counterparty's credit exposure to the government securities broker or dealer equals the dollar amount of funds, debt instruments, other securities, and other inventory at risk to the counterparty in the event of the government security broker's or dealer's default and any unlisted options written by the government securities broker or dealer and held by the counterparty.

b. Enter the total concentration of credit haircut which is the sum of all concentration of credit haircuts applied in cases where the net credit exposure (as defined above) to a single counterparty is in excess of 15 percent of the government securities broker's or dealer's liquid capital. The concentration of credit haircut is 25 percent of the amount of net credit exposure in excess of 15 percent of the government securities broker's or dealer's liquid capital.

c. Enter the credit volatility haircut which equals a factor of 0.15 percent applied to the larger of the gross long or gross short position in money market instruments qualifying as Treasury market risk instruments which mature in 45 days or more, in futures and forwards on these instruments that are settled on a cash or delivery basis, and in futures and forwards on time deposits described in § 402.2(e)(1)(vii), that mature in 45 days or more, settled on a cash or delivery basis. Money market instruments qualifying as Treasury market risk instruments are (1) marketable certificates of deposit with no more than one year to maturity, (2) bankers acceptances, and (3) commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as determined by the government securities broker or dealer pursuant to reasonably designed written policies and procedures the government securities broker or government securities dealer establishes, maintains, and enforces to assess and monitor creditworthiness. These policies and procedures should result in creditworthiness assessments that typically are consistent with market data.

Line 4—Enter total haircuts which is the sum of lines 2 a through e, and 3 a, b, and c.

Line 5—Enter the capital-to-risk ratio which is found by dividing line 1, ''Liquid capital,'' by line 4, ''Total haircuts.'' The capital-to-risk ratio must be at least equal to 1.2:1.

Schedule B—Calculation of Net Immediate Position in Securities and Financings

Schedule B is used to calculate the net immediate position in and offset portion of securities and financings. The results are then carried over to Schedule C for initial haircut calculations. Futures, forwards, and options which are Treasury market risk instruments are to be entered on Schedule D.

Positions in and financings on debt instruments other than mortgage-backed or adjustable rate mortgage-backed securities should be placed in the category corresponding to their remaining term to maturity. In the case of a floating rate note, however, the note should be placed in the category corresponding to the time to the next scheduled interest rate adjustment or remaining term to maturity, whichever is less.

Column 1—Under ''Financings-Long'' report in the appropriate category the contract value of reverse repurchase agreements and the value(s) of cash collateral on security borrowings. Financings so reported should be placed in the category corresponding to the remaining term to maturity or time to the next scheduled interest rate adjustment, whichever is less.

Column 2—Under ''Financings-Short'' report in the appropriate category as a negative number the values of funds received from financing transactions. Include repurchase agreements, securities lending secured by cash collateral, and term financings, but exclude subordinated debt which meets the requirements of 17 CFR 240.15c3–1d as modified by 17 CFR 402.2d. Financings so reported should be placed in the category corresponding to the remaining term to maturity or time to the next scheduled interest rate adjustment, whichever is less.

Columns 3 and 4—Report in the appropriate column by maturity or type of mortgage-backed security under ''Securities Positions'' the sum of the market values of immediate positions in Treasury market risk instruments. The net position in each individual Treasury market risk instrument is to be appropriately reported as a long (+) or short (−) position in summation with all other positions of the same category (long/short). Short positions are assigned a negative value. Treasury market risk instruments are defined in 17 CFR 402.2(e). Those to be reported in Schedule B are:

(1) Government securities as defined in 17 CFR 400.3 except equity securities and mortgage-backed securities which do not pass through to the security holder on a pro rata basis a distribution based on the monthly payments and prepayments of principal and interest on the underlying pool of mortgage collateral less fees and expenses;

(2) Zero-coupon receipts or certificates based on marketable Treasury notes or bonds;

(3) Marketable certificates of deposit of no more than one year to maturity;

(4) Bankers acceptances;

(5) Commercial paper of no more than one year to maturity and which has only a minimal amount of credit risk as determined by the government securities broker or dealer pursuant to reasonably designed written policies and procedures the government securities broker or dealer establishes, maintains, and enforces to assess and monitor creditworthiness. These policies and procedures should result in creditworthiness assessments that typically are consistent with market data; and

(6) Securities described in § 402.2(e)(1)(vi).

Report all positions as of the trade date. If the settlement date is scheduled for more than five business days in the future (or, in the case of a mortgage-backed security, more than thirty calendar days in the future), then report the position as a forward contract on Schedule D. Also, under ''Securities Positions'' in the appropriate column and category, report any when-issued position in a marketable Treasury security between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date.

Exclude positions in Treasury market risk instruments which form part of a hedge against long and short positions in securities, futures contracts, forward contracts, or options that are not Treasury market risk instruments and are to be included in the calculation of the other securities haircut. Only that portion of the total position in a Treasury market risk instrument that forms part of such a hedge may be excluded, and the inclusion of the Treasury market risk instruments must reduce the other securities haircut.

Column 5—Under ''Total Securities and Financing Positions (+)'' report in the appropriate category the sum of the long financings (column 1) and long securities positions (column 3).

Column 6—Under ''Total Securities and Financing Positions (−)'' report in the appropriate category the sum of the short financings (column 2) and short securities positions (column 4).

Column 7—Under ''Offset Portions'' report in the appropriate category the lesser of the absolute values of the positive (column 5) or negative (column 6) total securities and financing positions.

Column 8—Under ''Net Immediate Positions'' report in the appropriate category the sum, or net value, of the positive (column 5) and negative (column 6) total securities and financing positions.

Columns 7, ''Offset Portions,'' and 8, ''Net Immediate Positions,'' are to be carried to Schedule C.

Schedule C—Governments Offset Portion and Net Immediate Position Interim Haircuts Calculation

Schedule C is used to calculate the total governments offset portion haircut and net immediate position interim haircuts by applying offset and net position haircut factors to the offset portions and net immediate positions in Treasury market risk instruments and financings. The total governments offset portion haircut is then carried to Schedule A, and the net immediate position interim haircuts are carried to Schedule D or E.

Column 7—Transfer to column 7, ''Governments Offset Portion—$ Amounts,'' column seven from Schedule B, ''Offset Portions.''

Column 9—These are the governments offset portion haircut factors given at 17 CFR 402.2(f)(2). They may be updated from time to time.

Column 10—Under ''Governments Offset Portion—Haircuts'' report in the appropriate category the product of the corresponding values in column 7, ''$ Amounts,'' and in column 9, ''Factors.''

To determine the total governments offset portion haircut, sum the values under ''Governments Offset Portion—Haircuts'' in column 10, and enter this number in the appropriate space. Carry this value to Schedule A, line 2a, converting, if necessary, to thousands of dollars.

Column 8—Transfer to column 8, ''Net Immediate Positions—$ Amounts,'' column eight from Schedule B, ''Net Immediate Positions.''

Column 11—These are the net immediate position haircut factors given at 17 CFR 402.2(f)(2). They may be updated from time to time.

Column 12—Under ''Net Immediate Positions—Interim Haircuts'' place in the appropriate category the product of the corresponding values in column 8, ''$ Amounts,'' and in column 11, ''Factors.'' A haircut on a short position remains negative.

Carry column 12 to Schedule D, or, if there are no futures, forwards, or options positions, to Schedule E.

Schedule D—Consolidation of Net Immediate Position Interim Haircuts with Gross Futures and Options Interim Haircuts

Schedule D is used to enter haircuts on futures, forwards and options positions and to calculate the total futures and options offset haircut and the residual position interim haircuts as needed for Schedules A and E respectively. If there are no futures and options positions, it is not necessary to fill out Schedule D.

Report on Schedule D futures, forwards, and options which are Treasury market risk instruments as defined in § 402.2(e). These futures, forwards, and listed option contracts may be based on any of the Treasury market risk instruments described in the instructions to columns 3 and 4 on Schedule B or on time deposits whose changes in yield are closely correlated with marketable certificates of deposit which are Treasury market risk instruments, as described in § 402.2(e)(1)(vii). Options on Treasury market risk futures contracts and unlisted options on marketable Treasury bills, notes, and bonds are also to be included. Futures contracts may settle on a cash or delivery basis. Any of these contracts which are being included as part of a hedge in the calculation of the other securities haircut must be excluded from Schedule D.

Report as a forward contract any position for which the time between trade date and settlement date is more than five business days (30 calendar days for a mortgage-backed security). Any when-issued position in a marketable Treasury security established between announcement and issue date, any when-issued position in a government agency or a government-sponsored agency debt security established between release date and issue date, and any when-issued position in a security described in § 402.2(e)(1)(vi) between announcement date and issue date is reported in the appropriate category on Schedule B under ''Securities Positions.''

Column 12—Transfer to column 12, ''Net Immediate Position Interim Haircuts,'' column 12 from Schedule C, ''Net Immediate Positions—Interim Haircuts,'' converting, if necessary, to thousands of dollars.

Columns 13 and 14—Under ''Gross Interim Haircuts—Futures and Forward'' enter in the appropriate category the sum of the interim haircuts on the futures or forward positions belonging to that category. The interim haircut on a futures or forward position equals the product of the value of the position evaluated at the current market price for such contract and the net position haircut factor that corresponds to either the term to maturity of the underlying instrument or, for mortgage-backed securities, the type of security. The term to maturity of the underlying instrument is the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract. The haircut on a futures or forward position on a non-mortgaged-backed instrument is to be entered in the category corresponding to the sum of the remaining time to maturity of the futures or forward contract and the maturity of the underlying instrument. Haircuts on futures and forwards on mortgage-backed securities are to be entered in the appropriate mortgage-backed securities category. The interim haircuts on long futures and forwards are positive (column 13), and on short futures and forwards, negative (column 14).

Columns 15 and 16—Under ''Gross Interim Haircuts—Options'' enter, in the category in which the instrument directly underlying the contract would be entered, the lesser of (1) the market value of the option or (2) the net immediate position interim haircut on the underlying cash instrument or gross futures interim haircut on the underlying futures contract. Note that in the case of an option on a futures contract the category in which the option contract is to be entered is the sum of the remaining time to maturity of the futures or forward contract and the maturity of the instrument underlying the futures or forward contract. The haircut factor used to determine the gross futures interim haircut is that factor corresponding to the term to maturity of the deliverable security at the time of the maturity of the futures or forward contract. Gross option haircuts on purchased calls and sold puts are positive, those on sold calls and purchased puts are negative.

Column 17—Under ''Aggregate Interim Haircuts (+)'' enter in the appropriate category, the sum of any positive net immediate position interim haircut (column 12) and the positive gross option (column 15) and gross futures and forward (column 13) interim haircuts for that category.

Column 18—Under ''Aggregate Interim Haircuts (−)'' enter in the appropriate category, the sum of any negative net immediate position interim haircut (column 12) and the negative gross option (column 16) and gross futures and forward (column 14) interim haircuts for that category.

Column 19—Under ''Futures and Options Offset Portions'' enter, in the appropriate category, the lesser of the absolute values of the positive and negative aggregate interim haircuts (columns 17 and 18) for that category.

The total futures and options offset portion is the sum of the values in column 19 under ''Futures and Options Offset Portions.''

The total futures and options offset haircut is the total futures and options offset portion multiplied by a factor of 20 percent and is carried to line 2b, Schedule A.

Column 20—Enter in the appropriate category under ''Residual Position Interim

Haircuts'' the sum, or net value, of the positive and negative aggregate interim haircuts. Carry this to column 20 on Schedule E.

Schedule E—Calculation of Hedging Disallowance Haircuts When Netting Haircuts Across Categories

Schedule E is used to calculate the hedging disallowance and residual net position haircuts which are then carried to Schedule A. The purpose of Schedule E is to hedge positions in different categories in order to reduce total haircuts. Netting the residual position interim haircuts reflects the risk reduction inherent in hedges between positions in different categories where the price volatility is reasonably well correlated.

Section 402.2(f)(3) of the rule specifies the hedging disallowance haircut factors for the category pairs. Netting of residual position interim haircuts is permitted only between any two categories for which a hedging disallowance haircut factor is specified. Hedging disallowance haircuts are similar to offset haircuts in that they are applied to the smaller of the two residual position interim haircuts and represent the portion of the hedge being ''disallowed.'' A hedging disallowance haircut is determined each time two residual position interim haircuts are netted.

There are three levels of permissible netting corresponding to the three hedging disallowance haircut factors: The 20 percent, 30 percent, and 40 percent levels. It is not necessary to net all possible pairs at any one level. A greater reduction in total haircuts can sometimes be obtained by choosing not to net a pair at one level (e.g., the 20 percent level) so that one element of the pair can be netted against a third category at another level (e.g., the 30 percent level).

Column 20—Transfer column 20, ''Residual Position Interim Haircuts,'' from Schedule D. If there are no futures or options positions, transfer instead column 12, ''Net Immediate Positions—Interim Haircuts,'' from Schedule C.

Column 21—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts may be paired at the 20 percent level. For each pair multiply the smaller of the absolute values of the two residual position interim haircuts by the hedging disallowance haircut factor of 20 percent, and, in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 22—For each pair being netted at this level, enter under ''Net Residual Position Interim Haircuts'' (1) the sum, or net value, of the two residual position interim haircuts (and/or net residual position interim haircuts) in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller.

These net residual position interim haircuts replace the residual position interim haircuts (or net residual position interim haircuts) from which they were derived. Net residual position interim haircuts can in turn be used in any other allowable netting exactly as residual position interim haircuts would be. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut in column 22.

Since the net residual position interim haircut in any category containing a hedging disallowance haircut is zero, further netting with any such category is impossible.

After all netting has been completed for category pairs with a 20 percent hedging disallowance haircut factor, move on to column 23.

Column 23—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts and/or net residual position interim haircuts may be paired at the 30 percent level. In each category, the newest (and smallest) net residual position interim haircut determined by netting at the 20 percent level replaces the old value and must be used in hedging in that category at higher levels. For each pair being netted, multiply the smaller of the absolute values of the two (net) residual position interim haircuts by the hedging disallowance haircut factor of 30 percent, and in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 24—For each pair being netted at this level, enter under ''Net Residual Position Interim Haircuts'' (1) the sum, or net value, of the two residual position interim haircuts and/or net residual position interim haircuts in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller.

These net residual position interim haircuts replace the residual position interim haircuts (or net residual position interim haircuts) from which they were derived. Net residual position interim haircuts can in turn be used in any other allowable netting exactly as residual position interim haircuts would be. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut.

After all netting has been completed for category pairs with a 30 percent hedging disallowance haircut factor, continue to column 25.

Column 25—Use the matrix at 17 CFR 402.2(f)(3) to determine the categories from which the residual position interim haircuts and/or net residual position interim haircuts

may be paired at the 40 percent level. In each category, any new net residual position interim haircut determined by netting at the 20 or 30 percent level replaces the old value and must be used in hedging with that category at the 40 percent level. For each pair being netted, multiply the smaller of the absolute values of the two (net) residual position interim haircuts by the hedging disallowance haircut factor of 40 percent and, in the category of the smaller, enter the resulting hedging disallowance haircut.

Column 26—For each pair being netted at this level, enter under ''Net Residual Position Interim Haircuts'' (1) the sum, or net value, of the two (net) residual position interim haircuts in the category of the larger (in absolute value) of the two interim haircuts that were netted, and (2) a zero in the category of the smaller. If further netting of that category at the same level is permissible and possible, it will be necessary to replace the net residual position interim haircut involved with a new (and smaller) net residual position interim haircut.

Column 27—When all possible (net) residual position interim haircuts have been netted, enter under ''Hedging Disallowance Haircuts'' all hedging disallowance haircuts calculated in the netting procedures, each in its appropriate category.

Enter under ''Total Hedging Disallowance Haircut'' the sum of all the hedging disallowance haircuts entered in column 27. Carry to Schedule A, line 2c.

Column 28—Under ''Qualified Netting Interim Haircuts'' enter in the appropriate category the absolute value of the haircut given under ''Net Residual Position Interim Haircut'' at the highest hedging disallowance factor used for that category (columns 26, 24, or 22). This value will also be the smallest of the net residual position interim haircuts in that category. If the position in a given category was not used in hedging then enter the absolute value of the residual position interim haircut from column 20.

Sum the qualified netting interim haircuts, enter this value under ''Residual Net Position Haircut,'' and carry to Schedule A, line 2d.

[52 FR 27931, July 24, 1987, as amended at 53 FR 28985, Aug. 1, 1988; 71 FR 54411, Sept. 15, 2006; 79 FR 38455, July 8, 2014]

§402.2b [Reserved]

§402.2c Appendix C—Consolidated computations of liquid capital and total haircuts for certain subsidiaries and affiliates.

(a) *Consolidation.* (1) A government securities broker or dealer (the ''parent broker or dealer''), in computing its liquid capital and total haircuts pursuant to §402.2:

(i) Shall consolidate in a single computation of liquid capital the assets and liabilities of any subsidiary or affiliate for which the parent broker or dealer guarantees, endorses, or assumes directly or indirectly the obligations or liabilities if the parent broker or dealer has obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate;

(ii) May not consolidate in a single computation of liquid capital the assets and liabilities of any subsidiary or affiliate for which the parent broker or dealer guarantees, endorses, or assumes directly or indirectly the obligations or liabilities if the parent broker or dealer has not obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate, but in that event, the parent broker or dealer shall compute its total haircuts by adding the total haircuts of each such subsidiary or affiliate computed in accordance with the provisions of §402.2 to the haircuts of the parent broker or dealer computed separately in accordance with the provisions of §402.2; and

(iii) May consolidate in its computation of liquid capital the assets and liabilities of any majority owned and controlled subsidiary or affiliate for which the parent broker or dealer does not guarantee, endorse or assume directly or indirectly the obligations or liabilities if the parent broker or dealer has obtained the opinion of counsel described in paragraph (b) of this section with respect to such subsidiary or affiliate.

(2) With respect to any subsidiary or affiliate whose assets and liabilities are consolidated in the parent broker's or dealer's computation of liquid capital according to the provisions of paragraph (a)(1)(i) or (a)(1)(iii) of this section, the parent broker or dealer shall compute its haircuts in accordance with the provisions of §402.2 as if the consolidated entity were one firm, or, in the alternative, shall add the total haircuts of each consolidated subsidiary or affiliate computed in accordance with the provisions of §402.2 to the haircuts of the parent broker or

dealer computed separately in accordance with the provisions of § 402.2.

(b) *Required counsel opinion.* The opinion of counsel referred to in paragraph (a) of this section shall demonstrate to the satisfaction of the Commission, through the Designated Examining Authority, that net asset values, or the portion thereof related to the parent broker's or dealer's ownership interest in a majority owned and controlled subsidiary or affiliate, may be caused by the parent broker or dealer or an appointed trustee to be distributed to the parent broker or dealer within 30 calendar days. Such opinion shall also set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholder employees, litigants and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the Designated Examining Authority by rule or interpretation may require. Such opinion shall be current and periodically renewed in connection with the parent broker's or dealer's annual audit pursuant to § 240.17a–5 of this title, as made applicable to government securities brokers or dealers by § 405.2 of this chapter, or upon any material change in circumstances.

(c) *Principles of consolidation.* The following minimum and non-exclusive requirements shall govern the consolidation of a subsidiary or affiliate in the computation of total liquid capital and total haircuts of a government securities broker or dealer pursuant to this section:

(1) The total liquid capital of the government securities broker or dealer shall be reduced by the estimated amount of any taxes reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(2) Liabilities of a consolidated subsidiary or affiliate that are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall not be added to consolidated net worth unless such subordination extends also to the claims of present or future creditors of the parent broker or dealer and all consolidated subsidiaries.

(3) Subordinated liabilities of a consolidated subsidiary or affiliate that are consolidated in accordance with paragraph (c)(2) of this section may not be prepaid, repaid or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provision of § 240.15c3–1d of this title, as modified by § 402.2d.

(4) Each government securities broker or dealer included within the consolidation shall at all times be in compliance with the liquid capital or net capital requirement to which it is subject.

(d) *Certain Precluded Acts.* Even if consolidation is not required or allowed under paragraph (a) of this section, no parent broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the parent broker's or dealer's computation of liquid capital.

§ 402.2d Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

Section 240.15c3–1d of this title shall apply to government securities brokers and dealers subject to the requirements of § 402.2 with the following modifications.

(a) References to ''broker or dealer'' include government securities brokers and dealers.

(b) References to ''17 CFR 240.15c3–1'' mean § 402.2.

(c) Section 240.15c3–1d(a)(2)(iii) is modified to read as follows:

''(iii) The term ''Collateral Value'' of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the haircuts specified in § 402.2a of this title.''

(d) References to ''17 CFR 240.15c3–1d'' mean that section as modified by this section.

(e) Section 240.15c3–1d(b)(6)(iii) is modified to read as follows:

''(iii) The secured demand note agreement may also provide that, in lieu of

the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender, with the prior written consent of the government securities broker or dealer and the Examining Authority for such broker or dealer, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer may not be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. No single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title as applicable.''

(f) Section 240.15c3–1d(b)(7) is modified to read as follows:

''(7) A government securities broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a ''Prepayment''), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c)(5) of this section. No Prepayment shall be made if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturities or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such government securities broker or dealer.''.

(g) Section 240.15c3–1d(b)(8) is modified to read as follows:

''(i) The Payment Obligation of the government securities broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation), either the liquid capital, as defined in § 402.2(d) of this title, of the government securities broker or dealer would be less than 150% of the government securities broker's or dealer's total haircuts, as defined in § 402.2(g) of this title, or the government securities broker's or dealer's liquid capital after deducting total haircuts would be less than 120% of the minimum dollar amount required by § 402.2(b) or § 402.2(c) of this title, as applicable. The subordination agreement may provide that if the Payment Obligation of the government securities broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the government securities broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.''.

(h) Section 240.15c3–1d(b)(10)(ii)(B) is modified to read as follows:

''(B) The liquid capital, as defined in §402.2(d) of this title, of the government securities broker or dealer being less than 120% of total haircuts, as defined in §402.2(g) of this title, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the government securities broker or dealer, or the Examining Authority or the Commission first determines and notifies the government securities broker or dealer of such fact;''.

(i) Section 240.15c3–1d(c)(2) is modified to read as follows:

''(2) *Notice of Maturity or Accelerated Maturity*. Every government securities broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, the liquid capital, as defined in §402.2(d) of this title, of such government securities broker or dealer, would be less than 150% of total haircuts, as defined in §402.2(g) of this title.''.

(j) Section 240.15c3–1d(c)(5)(i) is modified to read as follows:

''(i) For the purpose of enabling a government securities broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the capital requirements of §402.2 of this title, a government securities broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a government securities broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to §405.3, or if immediately prior to entering into such subordination agreement, the liquid capital, as defined in §402.2(d) of this title, of such broker or dealer would be less than 150% of total haircuts, as defined in §402.2(g) of this title, or the amount of its then outstanding subordination agreements exceeds the limits specified in §240.15c3–1(d). Such temporary subordination agreement shall be subject to all other provisions of this appendix D.''.

(k) Section 240.15c3–1d(c)(5)(ii)(A) is modified to read as follows:

''(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the government securities broker or dealer, the liquid capital, as defined in §402.2(d) of this title, of such broker or dealer, would be less than 180% of total haircuts, as defined in §402.2(g) of this title.''.

[52 FR 27931, July 24, 1987, as amended at 59 FR 53731, Oct. 26, 1994]

PART 403—PROTECTION OF CUSTOMER SECURITIES AND BALANCES

Sec.

403.1 Application of part to registered brokers and dealers.
403.2 Hypothecation of customer securities.
403.3 Use of customers' free credit balances.
403.4 Customer protection—reserves and custody of securities.
403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.
403.6 Compliance with part by futures commission merchants.
403.7 Effective dates.

AUTHORITY: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; sec. 4(b), Pub. L. 101–432, 104 Stat. 963; sec. 102, sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5(a)(5), (b)(1)(A), (b)(4)).

SOURCE: 52 FR 27947, July 24, 1987, unless otherwise noted.

§403.1 Application of part to registered brokers and dealers.

With respect to their activities in government securities, compliance by registered brokers or dealers with §240.8c–1 of this title (SEC Rule 8c–1),

as modified by § 403.2 (a), (b) and (c), with § 240.15c2–1 of this title (SEC Rule 15c2–1), with § 240.15c3–2 of this title (SEC Rule 15c3–2), as modified by § 403.3, and with § 240.15c3–3 of this title (SEC Rule 15c3–3), as modified by § 403.4 (a) through (d), (f)(2) through (3), (g) through (j), and (m), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

[71 FR 54411, Sept. 15, 2006]

§ 403.2 Hypothecation of customer securities.

Every registered government securities broker or dealer shall comply with the requirements of § 240.8c–1 of this title concerning hypothecation of customer securities with the following modifications:

(a) In § 240.8c–1(a), the words ''no government securities broker or dealer'' shall be substituted for the words ''no member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of such member.''

(b) Section 240.8c–1(d) is modified to read as follows:

''(d) *Exemption for clearing liens.* The provisions of paragraphs (a)(2), (a)(3) and (f) of this section shall not apply to any lien or claim of a clearing bank, or the clearing corporation (or similar department or association) of a national securities exchange or a registered national securities association, for a loan made to acquire any securities subject to said lien and to be repaid on the same calendar day, which loan is incidental to the clearing of transactions in securities or loans through such bank, corporation, department or association; *provided, however,* that for the purpose of paragraph (a)(3) of this section, 'aggregate indebtedness of all customers in respect of securities carried for their accounts' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.''

(c) References to ''member, broker or dealer'' mean ''government securities broker or dealer.''

§ 403.3 Use of customers' free credit balances.

Every registered government securities broker or dealer shall comply with the requirement of § 240.15c3–2 of this title concerning the use of customer free credit balances. For purposes of this section, all references to ''broker or dealer'' in § 240.15c3–2 shall include government securities brokers and dealers.

§ 403.4 Customer protection—reserves and custody of securities.

Every registered government securities broker or dealer shall comply with the requirements of §§ 240.15c3–3 and 240.15c3–3a of this title (SEC Rule 15c3–3 and Exhibit A thereto), with the following modifications:

(a) References to ''broker or dealer'' include government securities brokers and dealers.

(b) ''Fully paid securities,'' as defined in § 240.15c3–3(a)(3) of this title, includes all securities held by a government securities broker or a government securities dealer for the account of a customer who has made full payment for such securities.

(c) ''Margin securities,'' as defined in § 240.15c3–3(a)(4) of this title, includes any securities for which a customer has not made full payment and for which the customer has received an extension of credit by a government securities broker or government securities dealer for a portion of the purchase price.

(d) ''Excess margin securities,'' as defined in § 240.15c3–3(a)(5) of this title, includes margin securities carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts with the broker or dealer.

(e) For purposes of this section, § 240.15c3–3(b)(3)(iii)(A) of this title is modified to read as follows:

(A) Must provide to the lender upon the execution of the agreement, or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral that fully secures the loan of securities, consisting exclusively of cash or United States Treasury bills or Treasury notes or an irrevocable letter of

credit issued by a bank as defined in § 3(a)(6)(A)–(C) of the Act (15 U.S.C. 78c(a)(6)(A)–(C)) or such other collateral as the Secretary designates as permissible by order as consistent with the public interest, the protection of investors, and the purposes of the Act, after giving consideration to the collateral's liquidity,

(f)(1) For purposes of this section, § 240.15c3–3(b)(4)(i)(C) is modified to read as follows:

''(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Act of 1970 will not provide protection to the counterparty with respect to the repurchase agreement.''

(2) For purposes of this section, § 240.15c3–3(b)(4)(ii) is modified to read as follows:

''(ii) For purposes of this paragraph (4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3(c)(1), (c)(3), (c)(5), (c)(6), or § 403.4(f) of this title.''

(3) For purposes of this section, § 240.15c3–3(b)(4)(iv) is redesignated § 240.15c3–3(b)(4)(iv)(A) and paragraph (b)(4)(iv)(B) is added to read as follows:

''(B) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (b)(4)(i)(B) of this section.''

(g)(1) Securities under the control of a broker or dealer, as described in § 240.15c3–3(c) of this title, shall include securities maintained by a broker or dealer in an account at a depository institution, as defined in section 19(b)(A)(i)–(vi) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(i)–(vi)), which depository institution has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services (''clearing bank''), provided the securities are maintained in a Segregated Account of the government securities broker or dealer. For purposes of this paragraph (f)(1) and paragraph (h) of this section, a Segregated Account is an account (other than a clearing account) of the government securities broker or dealer maintained on the books of a clearing bank pursuant to a written clearing agreement with such clearing bank which provides that:

(i) Such account is established for the purpose of segregating securities of counterparties or customers of such broker or dealer from proprietary securities of the broker or dealer;

(ii) The broker or dealer is entitled to direct the disposition of the securities; and

(iii) The clearing bank does not have, and will not assert, any claim or lien against such securities nor will the clearing bank grant any third party, including any Federal Reserve Bank, any interest in such securities so long as they are maintained in the segregated account.

(2) For purposes of this section, § 240.15c3–3(c)(2) of this title is redesignated as paragraph (c)(2)(i) and new paragraph (c)(2)(ii) is added to read as follows:

''(ii) Are carried for the account of any customer by a government securities broker or dealer in an account designated exclusively for customers of the government securities broker or dealer with a registered broker or dealer or another registered government securities broker or dealer (the ''carrying broker or dealer'') in compliance with instructions of the registered government securities broker or dealer to the carrying broker or dealer that the securities are to be maintained free of any charge, lien or claim of any kind in favor of the carrying broker or dealer or any persons claiming through such carrying broker or dealer; or''.

(h) For the purposes of this section, § 240.15c3–3(d)(2) of this title is modified to read as follows:

''(2) Securities included on its books or records as failed to receive more than 30 calendar days, or in the case of mortgage-backed securities, more than 60 calendar days, then the government securities broker or government securities dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain possession or control of securities so failed to receive through a buy-in procedure or otherwise; or''

(i) In addition to the notification required by § 240.15c3–3(i) of this title, whenever any government securities broker or dealer instructs its clearing bank to place securities in a Segregated Account (as defined in paragraph (f)(1) of this section), and the clearing bank refuses to do so as of the close of business on that day, the broker or dealer shall, in accordance with § 240.17a–11(f) of this title, give telegraphic notice of the notification by the clearing bank within 24 hours and within 48 hours of the telegraphic notice, file a report stating what steps are being taken to correct the situation.

(j) For purposes of this section, § 240.15c3–3(l) of this title is modified to read as follows:

''(l) *Delivery or disposition of securities.* Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

''(1) Fully-paid securities to which the customer is entitled;

''(2) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

''(3) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.''.

(k) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, § 240.15c3–3(e)(3) is modified for purposes of this section to read as follows:

''(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5 (a)(1)(A)) which has a ratio of liquid capital to total haircuts (calculated in accordance with part 402 of this chapter) of 1.8 or greater and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a registered government securities broker or dealer, computing on a monthly basis, has, at the time of any required computation, a ratio of liquid capital to total haircuts of less than 1.8, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when its ratio of liquid capital to total haircuts was less than 1.8. Computations in addition to the computation required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The registered government securities broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve such record in accordance with § 240.17a–4.''.

(l) Except with respect to a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, Note E(5) of § 240.15c3–3a of this title is modified for purposes of this section to read as follows:

''(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the government securities broker's or dealer's liquid capital unless such broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer's accounts for purposes of this provision.''.

(m) For purposes of this section, the suspension of § 240.15c3–3(m) of this title (38 FR 12103, May 9, 1973) is no longer effective and the paragraph is modified to read as follows: ''(m) If a government securities broker or government securities dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the government securities broker or dealer) and if for any reason whatever the government securities broker or government securities dealer has not obtained possession of the government securities, other than mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the government securities broker or government securities dealer shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity. For purposes of this paragraph (m), the term ''customer'' shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T (12 CFR 220.4(b)).

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 59 FR 9406, Feb. 28, 1994; 60 FR 18734, Apr. 13, 1995; 69 FR 33259, June 14, 2004]

§ 403.5 Custody of securities held by financial institutions that are government securities brokers or dealers.

(a) A government securities broker or dealer that is a financial institution shall:

(1) Comply with part 450 with respect to all government securities held for the account of customers of the financial institution in its capacity as a fiduciary or custodian (unless otherwise exempt pursuant to § 450.3); and

(2) Comply with part 450 and with paragraphs (b), (c) and (d) of this section with respect to all fully paid and excess margin government securities held for customers of the financial institution in its capacity as government securities broker or dealer, and government securities that are the subject of a repurchase agreement between the financial institution and certain counterparties as described in paragraph (d) of this section.

(b) A financial institution shall not be in violation of the possession or control requirements of paragraphs (c) and (d) of this section if, solely as the result of normal business operations, temporary lags occur between the time when a security is first required to be in the financial institution's possession or control and the time when it is actually placed in possession or control, provided that the financial institution takes timely steps in good faith to establish prompt possession or control. In the event that a financial institution has accepted funds from a customer for the purchase of securities and the financial institution does not initiate the purchase of the specified securities by the close of the next business day after receipt of such customer's funds, the financial institution shall immediately deposit or redeposit the funds in an account belonging to such customer and send the customer notice of such deposit or redeposit.

(c)(1) On each business day a financial institution shall determine the quantity and issue of such securities, if any, that are required to be but are not in the financial institution's possession or control. As appropriate to bring such securities into possession or control, the financial institution shall:

(i) Promptly obtain the release of any lien, charge, or other encumbrance against such securities;

(ii) Promptly obtain the return of any securities loaned;

(iii) Take prompt steps to obtain possession or control of securities failed to receive for more than 30 calendar days, or in the case of mortgage-backed securities, for more than 60 calendar days; or

(iv) Take prompt steps to buy in securities as necessary to the extent any shortage of securities in possession or control cannot be resolved as required by any of the above procedures.

(2) The financial institution shall prepare and maintain a current and detailed description of the procedures and internal controls that it utilizes to comply with the possession or control requirements of this paragraph (c), which shall be made available upon request to its appropriate regulatory agency.

(3) Nothing stated in this section shall be construed as affecting the absolute right of a customer of a government securities broker or dealer, unless otherwise agreed in writing, in the normal course of business operations following demand made on the broker or dealer, to receive the physical delivery of certificates if the securities are issued in certificated form, or to direct a transfer of or otherwise to exercise control over any securities if they are:

(i) Fully-paid securities to which the customer is entitled;

(ii) Margin securities upon full payment by such customer to the broker or dealer of the customer's indebtedness to the broker or dealer; or

(iii) Excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(d)(1) A financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty shall:

(i) Obtain the repurchase agreement in writing;

(ii) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the day of initiation of the transaction and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate specified in the previous confirmation;

(iii) Advise the counterparty in the repurchase agreement that the funds held by the financial institution pursuant to a repurchase transaction are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation, or the National Credit Union Share Insurance Fund, as applicable;

(iv) If the counterparty agrees to grant the financial institution the right to substitute securities, include in the written repurchase agreement the provision by which the financial institution retains the right to substitute securities;

(v) If the counterparty agrees to grant the financial institution the right to substitute securities, include in the written repurchase agreement the following disclosure statement, which must be prominently displayed in the written repurchase agreement immediately preceding the provision governing the right to substitution:

''REQUIRED DISCLOSURE

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day. The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they may be subject to liens granted by the [seller] to third parties and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer]

will be subject to the [seller's] ability to satisfy any lien or to obtain substitute securities.''; and

(vi) Maintain possession or control of securities that are the subject of the agreement in accordance with § 450.4(a) of this chapter, except when exercising its right of substitution in accordance with the provisions of the agreement and paragraph (d)(1)(iv) of this section.

(2)(i) A confirmation issued in accordance with paragraph (d)(1)(ii) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (d)(2), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(ii) A person that is a non-U.S. citizen residing outside of the United States or a foreign corporation, partnership, or trust may waive, but only in writing, the right to receive the confirmation required by paragraph (d)(1)(ii) of this section.

(3) This paragraph (d) shall not apply to a repurchase agreement between the financial institution and a broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a director or principal officer of the financial institution or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the financial institution.

(e)(1) A government securities broker or dealer that is a branch or agency of a foreign bank shall keep on deposit with an insured bank (as that term is defined in 12 U.S.C. 1813(h)) an amount equal to the amount that would be required to be set aside pursuant to § 240.15c3–3(e)(1) of this title with respect to government securities of customers of such branch or agency that are citizens or residents of the United States. The amount required to be deposited pursuant to this § 403.5(e)(1) may be reduced by the amount of assets pledged or deposited by the branch or agency pursuant to regulations promulgated by a Federal or State banking regulatory agency that are attributable to liabilities to customers which are included both in the calculation of the required pledge or deposit of assets and in the calculation of the amount to be set aside pursuant to § 240.15c3–3(e)(1) of this title.

(2) The amount deposited in accordance with this section shall be pledged to the appropriate regulatory agency of the branch or agency making the deposit for the exclusive benefit of the customers to whom the credit balances are owed.

(3) For purposes of making the calculation pursuant to § 240.15c3–3(e)(1) of this title, the terms ''free credit balances,'' ''other credit balances'' and ''credit balances'' shall not include any funds placed in deposits or accounts enumerated at 12 CFR 204.2.

(4) For purposes of making the calculation pursuant to § 240.15c3–3(e)(1) of this title, the formula set forth at § 240.15c3–3a of this title shall be modified as follows:

(i) For purposes of this section, references to ''securities account,'' ''cash account,'' ''margin account'', or other customer accounts for purposes of this section shall not include any deposits or accounts enumerated at 12 CFR 204.2;

(ii) References to ''security or ''securities shall mean U.S. government securities;

(iii) References to net capital shall be inapplicable;

(iv) Item 2 is modified to read as follows:

''2. Monies borrowed by the branch or agency collateralized by securities carried for the account of customers. (See Note B.)'';

(v) Item 4 is modified to read as follows:

''4. Customers' securities failed to receive only with respect to transactions for which payment has been received by and is under the control of the branch or agency. (See Note D.)'';

(vi) Note B is modified to read as follows:

''NOTE B. Item 2 shall include the principal amount of Restricted Letters of Credit obtained by members of Options Clearing Corporation which are collateralized by customers' securities. Item 2 shall not include bank loans to customers in the ordinary course collateralized by the customers' U.S. government securities.''; and

(vii) Note C is modified to read as follows:

''NOTE C. Item 3 shall include in addition to monies payable against customers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities. Item 3 shall exclude cash collateral received pursuant to a written securities lending agreement that complies fully with the supervisory guidelines of its appropriate regulatory agency that expressly govern securities lending practices.''.

(5) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of this week, and the deposit so computed shall be made no later than one hour after the opening of banking business on the second following business day.

(6) A government securities broker or dealer that is a branch or agency of a foreign bank shall make and maintain a record of each computation made pursuant to paragraph (e)(5) of this section and preserve each such record for a period of not less than three years, the first two years in an easily accessible place.

(f)(1) For purposes of this section, the terms ''fully paid securities,'' ''margin securities,'' and ''excess margin securities'' shall have the meanings described in §403.4 (b), (c) and (d).

(2) For purposes of this section, the term ''customer'' shall include any person from whom or on whose behalf a financial institution that is a government securities broker or dealer has received or acquired or holds securities for the account of that person or funds resulting from transactions in securities for or with such person or that represent principal, interest, or other proceeds of such securities. The term shall not include a broker or dealer that is registered pursuant to section 15, 15B or 15C (a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(1)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) except with respect to securities maintained by such broker or dealer in a Segregated Account as defined in §403.4(f)(1) and with respect to securities otherwise identified by such broker or dealer as customer securities for purposes of maintaining possession or control of such securities as required by this part. The term ''customer'' shall not include a director or principal officer of the financial institution or any other person to the extent that that 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 financial institution or is subordinated to the claims of creditors of the financial institution.

(g) If a financial institution executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own, which for the purposes of this paragraph shall mean that the customer placing the sell order has identified the sale as a short sale to the financial institution) and if for any reason whatever the financial institution has not obtained possession of the government securities, except mortgage-backed securities, from the customer within 30 calendar days, or in the case of mortgage-backed securities within 60 calendar days, after the settlement date, the financial institution shall immediately thereafter close the transaction with the customer by purchasing, or otherwise obtaining, securities of like kind and quantity.

(h) The appropriate regulatory agency of a financial institution that is a government securities broker or dealer may extend the period specified in paragraphs (c)(1)(iii) and (g) of this section on application of the financial institution for one or more limited periods commensurate with the circumstances, provided the appropriate regulatory agency is satisfied that the financial institution is acting in good faith in making the application and

that exceptional circumstances warrant such action. Each appropriate regulatory agency should make and preserve for a period of not less than three years a record of each extension granted pursuant to this paragraph, which contains a summary of the justification for the granting of the extension.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 55 FR 6604, Feb. 26, 1990; 59 FR 9406, Feb. 28, 1994; 60 FR 11026, Mar. 1, 1995]

§ 403.6 Compliance with part by futures commission merchants.

A registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the provisions of this part with respect to all customer funds and securities except those that are incidental to the broker's or dealer's futures-related business, as defined in § 240.3a43–1(b) of this title. For purposes of the preceding sentence, the term ''customer'' shall have the meaning set forth in § 240.15c3–3(a)(1) of this title.

§ 403.7 Effective dates.

(a) *General*. Except as provided in paragraphs (b) through (e) of this section, this part shall be effective on the last business day in October 1987.

(b) *Confirmations*. The requirements of §§ 403.4 and 403.5(d) to describe the specific securities that are the subject of a repurchase transaction, including the market value of such securities, on a confirmation at the initiation of a repurchase transaction or on substitution of other securities shall be effective January 31, 1988.

(c) *Written repurchase agreements*. The requirement to obtain a repurchase agreement in writing with the provisions described in §§ 403.4 and 403.5(d) shall be effective October 31, 1987, in the case of new customers of a government securities broker or dealer and shall be effective January 31, 1988, in the case of existing customers of a government securities broker or dealer. For purposes of this paragraph, an ''existing customer'' of a government securities broker or dealer is any counterparty with whom the government securities broker or dealer has entered into a repurchase transaction on or after January 1, 1986, but before July 25, 1987. For purposes of this paragraph, a ''new customer'' of a government securities broker or dealer is any counterparty other than an existing customer.

[52 FR 27947, July 24, 1987, as amended at 53 FR 28986, Aug. 1, 1988; 79 FR 38456, July 8, 2014]

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

Sec.

404.1 Application of part to registered brokers and dealers.
404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.
404.3 Records to be preserved by registered government securities brokers and dealers.
404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.
404.5 Securities counts by registered government securities brokers and dealers.

AUTHORITY: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27952, July 24, 1987, unless otherwise noted.

§ 404.1 Application of part to registered brokers and dealers.

Compliance by a registered broker or dealer with § 240.17a–3 of this title (pertaining to records to be made), § 240.17a–4 of this title (pertaining to preservation of records), § 240.17a–13 of this title (pertaining to quarterly securities counts) and § 240.17a–7 of this title (pertaining to records of non-resident brokers or dealers), including provisions in those rules relating to OTC derivatives dealers, constitutes compliance with this part.

[71 FR 54411, Sept. 15, 2006]

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply

with the requirements of § 240.17a–3 of this title (SEC Rule 17a–3), with the following modifications:

(1) References to ''broker or dealer'' and ''broker or dealer registered pursuant to Section 15 of the Act'' include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, 240.17a–4, 240.17a–5, and 240.17a–13 mean such sections as modified by this part and part 405 of this chapter.

(3) (i) Except in the case of a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter and a registered government securities broker or dealer that is a futures commission merchant registered with the CFTC, paragraph 240.17a–3(a)(11) is modified to read as follows:

''(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of liquid capital and total haircuts, as of the trial date, determined as provided in § 402.2 of this title; *provided however,* that such computation need not be made by any registered government securities broker or dealer unconditionally exempt from part 402 of this title. Such trial balances and computations shall be prepared currently at least once a month.''.

(ii) For a government securities interdealer broker who is subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3–1 include modifications contained in § 402.1(e) of this chapter.

(4) Paragraph 240.17a–3(b)(1) is modified to read as follows:

''(1) This section shall not be deemed to require a government securities broker or dealer registered pursuant to section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) to make or keep such records of transactions cleared for such government securities broker or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided,* that the clearing broker or dealer has and maintains net capital of not less than $250,000 (or, in the case of a clearing broker or dealer that is a registered government securities broker or dealer, liquid capital less total haircuts, determined as provided in § 402.2 of this title, of not less than $250,000) and is otherwise in compliance with § 240.15c3–1, § 402.2 of this title, or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof.''

(5) The undertaking in § 240.17a–3(b)(2) is modified to read as follows:

''The undersigned hereby undertakes to maintain and preserve on behalf of [registered government securities broker or dealer] the books and records required to be maintained by [registered government securities broker or dealer] pursuant to 17 CFR 404.2 and 404.3 and Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.''.

(6) Section 240.17a–3(c) is modified to read as follows:

''(c) This section shall not be deemed to require a government securities broker or dealer to make or keep such records as are required by paragraph (a) reflecting the sale and redemption of United States Savings Bonds, United States Savings Notes and United States Savings Stamps.''.

(b) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h–1T of this title (SEC Rule 17h–1T), with the following modifications:

(1) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered with the Commission pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§ 240.17h–1T and 240.17h–2T of this title mean those sections as modified by §§ 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, ''associated person'' has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraphs 240.17h–1T(a)(1)(iii) through (vi) of this title are modified to read as follows:

''(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the registered government securities broker or dealer that are required to be disclosed, under generally accepted accounting principles on a consolidated basis, by the highest level holding company that is a Material Associated Person.

''(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter-end for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

''(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

''(vi) The amount as of quarter-end, and at month-end if greater than quarter-end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. Treasury securities, that exceeds the Materiality Threshold at any month-end;''

(5) Paragraphs 240.17h–1T(a)(3) and (a)(4) of this title are modified to read as follows:

''(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of § 404.3 of this title and shall be kept for a period of not less than three years in an easily accessible place.

''(4) For the purposes of this section and § 405.5 of this title, the term ''Materiality Threshold'' shall mean the greater of:

''(i) $100 million; or

''(ii) 10 percent of the registered government securities broker's or dealer's liquid capital based on the most recently filed Form G–405 (or, in the case of futures commission merchants and interdealer brokers subject to the capital rules in §§ 402.1(d) and 402.1(e), respectively, tentative net capital based on the most recently filed Form X–17A–5) or 10 percent of the Material Associated Person's tangible net worth, whichever is greater.''

(6) Paragraph 240.17h–1T(b) of this title is modified to read as follows:

''(b) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if: * * * ''

(7) Paragraph 240.17h–1T(c) of this title is modified to read as follows:

''(c) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if such registered government securities broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act.''

(8) Paragraph 240.17h–1T(d) of this title is modified to read as follows:

''(d) *Exemptions.* (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

''(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

''(ii) If the registered government securities broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

''(iii) In the case of paragraphs (d)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2.

''(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

''(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

''(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T and § 240.17h–2T of this title, and

''(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T and § 240.17h–2T of this title.

''(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall not be included in the capital computation.

''(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term ''Reporting Registered Government Securities Broker or Dealer'' shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers.''

(9) Paragraph 240.17h–1T(g) of this title is modified to read as follows:

''(g) *Implementation schedule.* Every registered government securities broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing June 30, 1995. Commencing September 30, 1995, the provisions of this section shall apply in their entirety.''

(c)(1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to Section 15C of the Act shall comply with § 240.17a–7 of this title, provided that:

(i) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered or applying for registration pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers; and

(ii) For the purposes of this section, references to ''any rule or regulation of the Commission'' and ''any rule or regulation of the Securities and Exchange Commission'' mean any rule or regulation of the Secretary.

(2) For the purposes of this section, the term ''non-resident government securities broker or dealer'' means:

(i) In the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(d) *Effective date.* Paragraph (a) of this section shall be effective on October 31, 1987, *except that* registered government securities brokers and dealers are required to maintain the records specified in § 240.17a–3(a) (12), (13), (14) and (15) beginning July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995; 60 FR 20399, Apr. 26, 1995]

§ 404.3 Records to be preserved by registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–4 of this title (SEC Rule 17a–4), with the following modifications:

(1) References to ''broker or dealer'' and ''broker and dealer registered pursuant to Section 15 of the Act'' include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, .17a–4, and .17a–5 mean such sections as modified by this part and part 405 of this chapter.

(3) References to § 240.15c3–1, relating to net capital, and ''Computation for Net Capital'' thereunder mean § 402.2 of this chapter and the computation of the ratio of liquid capital to total haircuts required thereunder.

(4) References to § 240.15c3–3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(5) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(6) The computation described in § 240.17a–4(b)(8)(x) is not required.

(b) A government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) and a registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–4 of this title (SEC Rule 17a–4), with the following modifications:

(1) References to ''broker or dealer'' and ''broker and dealer'' include registered government securities brokers or dealers.

(2) References to §§ 240.17a–3, 240.17a–4, and 240.17a–5 mean such sections as modified by this part and part 405 of this chapter.

(3) With respect to a government securities interdealer broker subject to the financial responsibility rules of § 402.1(e) of this chapter, references to § 240.15c3–1, relating to net capital, and ''Computation for Net Capital'' thereunder include the modifications contained in § 402.1(e) of this chapter.

(4) References to § 240.15c3–3, relating to possession or control of customer securities and balances, mean § 403.4 of this chapter.

(c) This section shall be effective on July 25, 1987.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

§ 404.4 Records to be made and preserved by government securities brokers and dealers that are financial institutions.

(a) *Records to be made and kept.* Every financial institution that is a government securities broker or dealer and that is not exempt from this part pursuant to part 401 of this chapter shall comply with the requirements of §§ 404.2 and 404.3 unless such financial institution:

(1) Is subject to 12 CFR part 12 (relating to national banks), 12 CFR part 208 (relating to state member banks of the Federal Reserve System) or 12 CFR part 344 (relating to state banks that are not members of the Federal Reserve System), or is a United States branch or agency of a foreign bank and complies with 12 CFR part 12 (for federally licensed branches and agencies of foreign banks) or 12 CFR part 208 (for uninsured state-licensed branches and agencies of foreign banks) or 12 CFR part 344 (for insured state licensed branches and agencies of foreign banks);

(2) Complies with the recordkeeping requirements of § 450.4(c), (d) and (f) of this chapter; and

(3) Makes and keeps current:

(i)(A) A securities record or ledger reflecting separately for each government security as of the settlement dates all ''long'' or ''short'' positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institution for its own account or for the account of its customers or others (except securities

held in a fiduciary capacity) and showing the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried;

(B) A complete and current Form G-FIN-4 (§ 449.3 of this chapter) or Form U–4 (promulgated by a self-regulatory organization) or Form MSD–4 (as required for associated persons of bank municipal securities dealers) for each associated person as defined in § 400.3 of this chapter;

(C) A Form G-FIN-5 (§ 449.4 of this chapter) or Form U–5 (promulgated by a self-regulatory organization) or Form MSD–5 (as required for associated persons of bank municipal securities dealers) for each associated person whose association has been terminated as provided in § 400.4(d)(2) of this chapter; and

(D) A complete and current Form G-FIN (§ 449.1 of this chapter) and, if applicable, a Form G-FINW (§ 449.2 of this chapter).

(ii) For purposes of paragraph (a)(3)(i)(A) of this section, ''safekeeping'' may be shown as a location of any securities long as long as the financial institution complies with the requirements of part 450 of this chapter with respect to such securities.

(b) *Preservation of records.* (1) The records required by paragraph (a)(3)(i)(A) of this section shall be preserved for not less than six years, the first two years in an easily accessible place.

(2) The records required by paragraphs (a)(3)(i) (B) and (C) of this section shall be preserved for at least three years after the person who is the subject of the record has terminated his employment and any other association with the government securities broker or dealer function of the financial institution.

(3) The records required by paragraph (a)(3)(i)(D) of this section shall be preserved for at least three years after the financial institution has notified the appropriate regulatory agency that it has ceased to function as a government securities broker or dealer.

(c) *Effective date.* This section shall be effective on July 25, 1987, *except that* until October 31, 1987, a financial institution government securities broker or dealer is not required to make and keep current the securities position record required by paragraph (a)(3)(i)(A) of this section.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27952, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988; 60 FR 11026, Mar. 1, 1995; 62 FR 7155, Feb. 18, 1997; 72 FR 54411, Sept. 15, 2006]

§ 404.5 Securities counts by registered government securities brokers and dealers.

(a) *Securities counts.* Every registered government securities broker or dealer shall comply with the requirements of § 240.17a–13 of this title (Commission Rule 17a–13), with the modification that references to ''broker or dealer'' and ''broker and dealer registered pursuant to Section 15 of the Act'' include registered government securities brokers or dealers.

(b) *Effective date.* This section shall be effective on October 31, 1987.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27952, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

PART 405—REPORTS AND AUDIT

Sec.

405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.
405.2 Reports to be made by registered government securities brokers and dealers.
405.3 Notification provisions for certain registered government securities brokers and dealers.
405.4 Financial recordkeeping and reporting of currency and foreign transactions by registered government securities brokers and dealers.
405.5 Risk assessment reporting requirements for registered government securities brokers and dealers.

AUTHORITY: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

SOURCE: 52 FR 27954, July 24, 1987, unless otherwise noted.

§ 405.1 Application of part to registered brokers and dealers and to financial institutions; transition rule.

(a) Compliance by registered brokers or dealers with §§ 240.17a–5, 240.17a–8, and 240.17a–11 of this title (Commission Rules 17a–5, 17a–8 and 17a–11), including provisions of those rules relating to OTC derivatives dealers, constitutes compliance with this part.

(b) A government securities broker or dealer that is a financial institution and is subject to financial reporting rules of its appropriate regulatory agency is exempt from the provisions of §§ 405.2 and 405.3.

(c) This part shall be effective July 25, 1987, *Provided however*,

(1) That registered government securities brokers or dealers shall first be required to file the reports required by § 240.17a–5(a), by virtue of § 405.2, for the month and the quarter during which they were first required to comply with part 402 of this chapter other than the interim liquid capital requirements of § 402.1(f); but that

(2) For any quarter ending prior to the quarter during which they were first required to comply with part 402 of this chapter other than the interim liquid capital requirements of § 402.1(f), registered government securities brokers or dealers shall file with the designated examining authority for such registered broker or dealer, within 17 business days after the close of the quarter, an unaudited balance sheet (with appropriate notes) for such quarter, prepared in accordance with generally accepted accounting principles.

[52 FR 27954, July 24, 1987, as amended at 71 FR 54411, Sept. 15, 2006]

§ 405.2 Reports to be made by registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, except a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of this chapter and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to ''broker or dealer'' include registered government securities brokers and dealers.

(2) References to ''rules of the Commission'' or words of similar import include, where appropriate, the regulations contained in this subchapter.

(3) References to Form X–17A–5 mean Form G–405 (§ 449.5 of this chapter).

(4) For the purposes of § 240.17a–5(a)(4) of this title, the Commission may, on the terms and conditions stated in that subparagraph, declare effective a plan with respect to Form G–405, in which case, that plan shall be treated the same as a plan approved with respect to Form X–17A–5.

(5) References to ''net capital'' mean ''liquid capital'' as defined in § 402.2(d) of this chapter.

(6) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(7) Paragraph 240.17a–5(c)(2)(ii) is modified to read as follows:

''(ii) A footnote containing a statement of the registered government securities broker's or dealer's liquid capital, total haircuts, and ratio of liquid capital to total haircuts, determined in accordance with § 402.2 of this title. Such statement shall include summary financial statements of subsidiaries consolidated pursuant to § 402.2c of this title, where material, and the effect thereof on the liquid capital, total haircuts and ratio of liquid capital to total haircuts of the registered government securities broker or dealer.''.

(8) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(9) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(10) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(11) The statement described in § 240.17a–5(f)(2) of this title shall be headed ''Notice Pursuant to Section 405.2,'' and shall be filed within 30 days

following the effective date of registration as a government securities broker or dealer.

(12) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3(a) of this chapter.

(b) A government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of this chapter shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to ''broker or dealer'' include government securities interdealer brokers;

(2) References to ''rules of the Commission'' or words of similar import include, where appropriate, the regulations contained in this subchapter.

(3) References to ''net capital'' mean net capital calculated as provided in § 402.1(e) of this chapter.

(4) References to § 240.15c3–1, relating to net capital, include the modifications contained in § 402.1(e) of this chapter.

(5) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(6) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(7) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(8) The statement described in § 240.17a–5(f)(2) of this title shall be headed ''Notice Pursuant to Section 405.2'' and shall be filed within 30 days following the effective date of registration as a government securities broker.

(9) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3(b) of this chapter.

(c) A registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the requirements of § 240.17a–5 of this title (SEC Rule 17a–5), with the following modifications:

(1) References to ''broker or dealer'' include registered government securities brokers and dealers.

(2) References to ''rules of the Commission'' or words of similar import include, where appropriate, the regulations contained in this subchapter.

(3) References to § 240.15c3–3 and the exhibits thereto, relating to possession or control of customer securities and reserve requirements, mean § 403.4 of this chapter.

(4) The reference to § 240.15b1–2 of this title, relating to financial statements to be filed upon registration, means § 240.15Ca2–2.

(5) The supplemental report described in § 240.17a–5(e)(4) of this title, concerning the Securities Investor Protection Act, is not required.

(6) The statement described in § 240.17a–5(f)(2) of this title shall be headed ''Notice Pursuant to § 405.2,'' and shall be filed within 30 days following the effective date of registration as a government securities broker or dealer.

(7) References in § 240.17a–5(h)(2) of this title to § 240.17a–11 mean § 405.3(c) of this chapter.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27954, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995; 64 FR 1737, Jan. 12, 1999; 79 FR 38456, July 8, 2014]

§ 405.3 Notification provisions for certain registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer, other than a government securities interdealer broker that is subject to the financial responsibility requirements of § 402.1(e) and a government securities broker or dealer that is also a futures commission merchant registered with the CFTC, shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to ''broker or dealer'' include registered government securities brokers and dealers.

(2) References to § 240.15c3–1, relating to net capital, mean § 402.2 of this chapter.

(3) References to ''net capital'' mean ''liquid capital'' as defined in § 402.2 of this chapter.

(4) References to § 240.17a–5, relating to reports and audit, mean § 405.2(a) of this chapter.

(5) Section 240.17a–11(c), for the purposes of this section, is modified to read as follows:

''(c) Every registered government securities broker or dealer shall send notice promptly (but within 24 hours) in accordance with paragraph (g) of this section if a computation made pursuant to the requirements of § 402.2 of this title shows, at any time during the month, that its liquid capital is less than 150 percent of total haircuts, determined in accordance with § 402.2 of this title, or that its capital after deducting total haircuts from liquid capital is less than 120 percent of the registered government securities broker or dealer's minimum capital requirement specified in § 402.2 (b) or (c) of this title as applicable.''

(6) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(b) A government securities interdealer broker that is subject to the financial responsibility requirements of § 402.1(e) of this chapter shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to ''broker or dealer'' include government securities interdealer brokers;

(2) References to § 240.15c3–1, relating to net capital, include the modifications contained in § 402.1(e) of this chapter.

(3) References to ''net capital'' mean net capital calculated as provided in § 402.1(e) of this chapter.

(4) References to § 240.17a–5, relating to reports and audit, mean § 405.2(b) of this chapter.

(5) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(c) A registered government securities broker or dealer that is also a futures commission merchant registered with the CFTC shall comply with the requirements of § 240.17a–11 of this title (SEC Rule 17a–11), with the following modifications:

(1) References to ''broker or dealer'' include government securities brokers and dealers.

(2) References to § 240.15c3–1, relating to net capital, mean either § 240.15c3–1 or § 1.17 of this title, depending on which computation results in the higher net capital requirement.

(3) References to ''net capital'' mean the higher of net capital calculated under § 240.15c3–1 or § 1.17 of this title.

(4) References to § 240.17a–5, relating to reports and audit, mean § 405.2(c) of this chapter.

(5) Section 240.17a–11(c) for the purposes of this section is modified to read as follows:

''(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section in accordance with paragraph (g) of this section:''

(6) A new paragraph 240.17a–11(c)(4) is added to read as follows:

''(4) If a computation made by a government securities broker or dealer that is not a registered broker or dealer but that is also a futures commission merchant registered with the Commodity Futures Trading Commission shows that:

''(i) The adjusted net capital of such entity is less than the greater of:

''(A) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i), or

''(B) 6 percent of the following amount: The customer funds required to be segregated pursuant to § 4d(2) of the Commodity Exchange Act and § 1.17 of this title, less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or

''(ii) At any point during the month, aggregate indebtedness is in excess of 1200 percent of net capital or total net capital is less than 120 percent of the minimum net capital required.''

(7) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27954, July 24, 1987, as amended at 59 FR 53731, Oct. 26, 1994; 59 FR 55910, Nov. 9, 1994; 60 FR 18734, Apr. 13, 1995]

§ 405.4 Financial recordkeeping and reporting of currency and foreign transactions by registered government securities brokers and dealers.

Every registered government securities broker or dealer who is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 shall comply with the reporting, recordkeeping and record retention requirements of 31 CFR part 103. Where 31 CFR part 103 and § 404.3 of this chapter require the same records to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

§ 405.5 Risk assessment reporting requirements for registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h–2T of this title (SEC Rule 17h–2T), with the following modifications:

(1) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered with the Commission pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§ 240.17h–1T and 240.17h–2T of this title mean those sections as modified by §§ 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, ''associated person'' has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraph 240.17h–2T(b) of this title is modified to read as follows:

''(b) *Exemptions*. (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

''(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

''(ii) If the registered government securities broker or dealer does not qualify for exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

''(iii) In the case of paragraphs (b)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with appendix D of § 240.15c3–1 of this title, as modified by appendix D of § 402.2.

''(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with appendix D of § 240.15c3–1 of this title, as modified by appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

''(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

''(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T and § 240.17h–2T of this title, and

''(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T and § 240.17h–2T of this title.

''(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall

not be included in the capital computation.

''(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term ''Reporting Registered Government Securities Broker or Dealer'' shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers.''

(5) Paragraph 240.17h–2T(c) of this title is modified to read as follows:

''(c) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators*. A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer files Items 1, 2, and 3 (in Part I) of Form 17–H in accordance with paragraph (a) of this section, provided that:

''(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the registered government securities broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or * * * ''

(6) Paragraph 240.17h–2T(d) of this title is modified to read as follows:

''(d) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority*. A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer furnishes, in accordance with the provisions of paragraph (a) of this section, Items 1, 2, and 3 (in Part I) of Form 17–H and copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall file a copy of the original Foreign Financial Regulatory report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act.''

(Approved by the Office of Management and Budget under control number 1535–0089)

[60 FR 20401, Apr. 26, 1995, as amended at 79 FR 38456, July 8, 2014]

PART 420—LARGE POSITION REPORTING

Sec.
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APPENDIX A TO PART 420—SEPARATE REPORTING ENTITY
APPENDIX B TO PART 420—SAMPLE LARGE POSITION REPORT

AUTHORITY: 15 U.S.C. 78o–5(f).

SOURCE: 79 FR 73414, Dec. 10, 2014, unless otherwise noted.

§ 420.1 Applicability.

(a) This part is applicable to all persons that participate in the government securities market, including, but not limited to: Government securities brokers and dealers, depository institutions that exercise investment discretion, registered investment companies, registered investment advisers, pension funds, hedge funds, and insurance companies that may control a position in a recently-issued marketable Treasury bill, note, or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, Treasury requests that central banks (including U.S. Federal

Reserve Banks for their own account), foreign governments, and international monetary authorities voluntarily submit large position reports when they meet or exceed a reporting threshold.

§ 420.2 Definitions.

For the purposes of this part:

Aggregating entity means a single entity (*e.g.*, a parent company, affiliate, or organizational component) that is combined with other entities, as specified in the definition of ''reporting entity'' of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

Control means having the authority to exercise investment discretion over the purchase, sale, retention, or financing of specific Treasury securities.

Large position threshold means the minimum dollar par amount of the specified Treasury security that a reporting entity must control in order for the entity to be required to submit a large position report. It also means the minimum number of futures, options on futures, and exchange-traded options contracts for which the specified Treasury security is deliverable that the reporting entity must control in order for the entity to be required to submit a large position report. Treasury will announce the large position thresholds, which may vary with each notice of request to report large position information and with each specified Treasury security. Treasury may announce different thresholds for certain reporting criteria. Under no circumstances will a large position threshold be less than 10 percent of the amount outstanding of the specified Treasury security.

Recently-issued means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security.

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the new portion of the reopened security is issued by Treasury (or for when-issued securities, the scheduled issue date).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(5) Treasury security issues other than those specified in paragraphs (1) and (2) of this definition, provided that such large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.

Reporting entity means any corporation, partnership, person, or other entity and its affiliates, as further provided herein. For the purposes of this definition, an affiliate is any: Entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in appendix A to this part, one aggregating entity, or a combination of aggregating entities, may be recognized as a separate reporting entity.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of Treasury securities are considered, collectively, to be one reporting entity.

Reporting requirement means that an entity must file a large position report when it meets any one of eight criteria contained in appendix B to this part.

§ 420.3 Reporting.

(a) A reporting entity must file a large position report if it meets the reporting requirement as defined in § 420.2. Treasury will provide notice of the large position thresholds by issuing

a press release and subsequently publishing the notice in the FEDERAL REGISTER. Such notice will identify the Treasury security issue(s) to be reported (including, where applicable, identifying the related STRIPS principal component); the date or dates for which the large position information must be reported; and the large position thresholds for that issue. A reporting entity is responsible for taking reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (*i.e.*, the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by Treasury and for maintaining the additional records prescribed in § 420.4.

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity that controls an amount of the specified Treasury security that equals or exceeds one of the specified large position thresholds stated in the notice shall compile and report the amounts of the reporting entity's positions in the order specified, as follows:

(i) *Part I*. Positions in the Security Being Reported as of the Opening of Business on the Report Date, including positions:

(A) In book-entry accounts of the reporting entity;

(B) As collateral against borrowings of funds on general collateral finance repurchase agreements;

(C) As collateral against borrowings of funds on tri-party repurchase agreements;

(D) As collateral or margin to secure other contractual obligations of the reporting entity; and

(E) Otherwise available to the reporting entity.

(ii) *Part II*. Settlement Obligations Attributable to Outright Purchase and Sale Contracts Negotiated Prior to or on the Report Date (excluding settlement fails), including:

(A) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T + 0);

(B) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T + 1);

(C) Obligations to receive or deliver, on the report date, the security being reported attributable to contracts, including when-issued contracts, for forward settlement (T + n, n>1);

(D) Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards; and

(E) Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued settlement, and forward settlement.

(iii) *Part III*. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to or on the Report Date (excluding settlement fails), including:

(A) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements;

(B) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements due to open on, or due to close on, the report date; and

(C) Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements due to open on, or due to close on, the report date.

(iv) *Part IV*. Settlement Fails from Days Prior to the Report Date (Legacy Obligations), including obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date.

(v) *Part V*. Settlement Fails as of the Close of Business on the Report Date,

including obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date.

(vi) *Part VI.* Positions in the Security Being Reported as of the Close of Business on the Report Date, including positions:

(A) In book-entry accounts of the reporting entity;

(B) As collateral against borrowings of funds on general collateral finance repurchase agreements;

(C) As collateral against borrowings of funds on tri-party repurchase agreements;

(D) As collateral or margin to secure other contractual obligations of the reporting entity; and

(E) Otherwise available to the reporting entity.

(vii) *Part VII.* Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported, including the gross amount of security being reported borrowed or lent out on term delivery-versus-payment repurchase agreements opened before the report date and not due to close until after the report date, and on open delivery-versus-payment repurchase agreements opened before the report date and not closed on the report date.

(viii) *Part VIII.* Futures and Options Contracts, including:

(A)(*1*) Net position, as of the close of market on the business day prior to the report date, in futures, options on futures, and exchange-traded options contracts on which the security being reported is deliverable (report number of contracts); and

(*2*) Net position, as of the close of market on the report date, in futures, options on futures, and exchange-traded options contracts on which the security being reported is deliverable (report number of contracts).

(B)(*1*) Net position, as of the close of market on the business day prior to the report date, in over-the-counter options contracts on which the security being reported is deliverable (report notional amount of contracts regardless of option delta); and

(*2*) Net position, as of the close of market on the report date, in over-the-counter options contracts on which the security being reported is deliverable (report notional amount of contracts regardless of option delta).

(d) An illustration of a sample report is contained in appendix B of this part.

(e) Each of the components of Part I–Part VIII of paragraph (c)(1) of this section shall be reported as a positive number or zero. All reportable amounts should be reported in the order specified above and at par in millions of dollars, except futures, options on futures, and exchange-traded options contracts, which should be reported as the number of contracts. Over-the-counter options contracts should be reported as the notional dollar amount of contracts regardless of option delta.

(f) Each submitted large position report must include the following administrative information: Name of the reporting entity; address of the principal place of business; name and address of the designated filing entity; the Treasury security that is being reported; the CUSIP number for the security being reported; the report date or dates for which information is being reported; the date the report was submitted; name and telephone number of the person to contact regarding information reported; and name and position of the authorized individual submitting this report.

(1) Reporting entities have the option to identify the type(s) of business engaged in by the reporting entity and its aggregating entities with positions in the specified Treasury security by checking the appropriate box. The types of businesses include: Broker or dealer, government securities broker or dealer, municipal securities broker or dealer, futures commission merchant, bank holding company, non-bank holding company, bank, investment adviser, commodity pool operator, pension trustee, non-pension trustee, and insurance company. Reporting entities may select as many business types as applicable. If the reporting entity is engaged in a business that is not listed, it could select ''other'' and provide a description of its business with respect to positions in the specified Treasury security.

(2) Reporting entities also have the option to identify their overall investment strategy with respect to positions in the specified Treasury security by checking the appropriate box. Active investment strategies include those that involve purchasing, selling, borrowing, lending, and financing positions in the security prior to maturity. Passive investment strategies include those that involve holding the security until maturity. A combination of active and passive strategies would involve applying the aforementioned active and passive strategies to all or a portion of a reporting entity's positions in the specified Treasury security. Reporting entities may select the most applicable investment strategy.

(g) The large position report must be signed by one of the following: The chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent of the designated filing entity. The designated filing entity must also include in the report, immediately preceding the signature, a statement of certification as follows:

By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) The information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR part 420.

(h) The report must be filed before noon Eastern Time on the fourth business day following issuance of the press release.

(i) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by the Federal Reserve Bank of New York. The report may be filed by facsimile or delivered hard copy. The Federal Reserve Bank of New York may in its discretion also authorize other means of reporting.

(j) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of Treasury or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.4 Recordkeeping.

(a) *Recordkeeping responsibility of aggregating entities.* Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity that controls a portion of its reporting entity's position in a recently-issued Treasury security, when such position of the reporting entity equals or exceeds $2 billion, shall be responsible for making and maintaining the records prescribed in this section.

(b) *Records to be made and preserved by entities that are subject to the recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions.* As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment adviser, or registered investment company with the applicable recordkeeping provisions of the SEC, Treasury, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that, if such entity is also the designated filing entity, it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1) through (3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) *Records to be made and preserved by other entities.* (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that contribute to a reporting entity's position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: The type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (*e.g.*, a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition it shall make and preserve the following records:

(i) Copies of all large position reports filed pursuant to this part;

(ii) Supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of the reporting entity's position; and

(iii) A chart showing the organizational entities that are aggregated (if applicable) in determining the reporting entity's position.

(3) With respect to the records required by paragraphs (c)(1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.5 Applicability date.

The provisions of this part shall be first applicable beginning March 31, 1997.

APPENDIX A TO PART 420—SEPARATE REPORTING ENTITY

Subject to the following conditions, one or more aggregating entity(ies) (*e.g.*, parent, subsidiary, or organizational component) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from Treasury pursuant to the procedures outlined in § 400.2(c) of this chapter. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in appendix A to 17 CFR part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to trade in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

The above-named entity agrees that it will promptly notify Treasury in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid.

Any entity, including any organizational component thereof, that previously has received recognition as a separate bidder in Treasury auctions from Treasury pursuant to 31 CFR part 356 is also recognized as a separate reporting entity without the need to request such status, provided such entity continues to be in compliance with the conditions set forth in appendix A to 31 CFR part 356.

APPENDIX B TO PART 420—SAMPLE LARGE POSITION REPORT

FORMULA FOR DETERMINING WHETHER TO SUBMIT A LARGE POSITION REPORT

(Report all components as a positive number or zero in millions of dollars at par value)

	Column A	Column B
	Quantity	
Part I. Positions in the Security Being Reported as of the Opening of Business on the Report Date		
1. In book-entry accounts of the reporting entity	_____	
2. As collateral against borrowings of funds on general collateral finance repurchase agreements	_____	
3. As collateral against borrowings of funds on tri-party repurchase agreements	_____	
4. As collateral or margin to secure other contractual obligations of the reporting entity	_____	
5. Otherwise available to the reporting entity	_____	
Part II. Settlement Obligations Attributable to Outright Purchase and Sale Contracts Negotiated Prior to or on the Report Date (excluding settlement fails)	**Obligations to Receive**	**Obligations to Deliver**
6. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for cash settlement (T+0)	_____	_____
7. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts for regular settlement (T+1)	_____	_____
8. Obligations to receive or deliver, on the report date, the security being reported attributable to contracts, including when-issued contracts, for forward settlement (T+n, n>1)	_____	_____

9. Obligations to receive, on the report date, the security being reported attributable to Treasury auction awards		
10. Obligations to receive or deliver, on the report date, principal STRIPS derived from the security being reported attributable to contracts for cash settlement, regular settlement, when-issued settlement, and forward settlement		
Part III. Settlement Obligations Attributable to Delivery-versus-Payment Financing Contracts (including repurchase agreements and securities lending agreements) Negotiated Prior to or on the Report Date (excluding settlement fails)	**Obligations to Receive**	**Obligations to Deliver**
11. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to overnight agreements		
12. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to term agreements due to open on, or due to close on, the report date		
13. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, attributable to open agreements due to open on, or due to close on, the report date		
Part IV. Settlement Fails from Days Prior to the Report Date (Legacy Obligations)		
14. Obligations to receive or deliver, on the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on days prior to the report date		

Part V. Settlement Fails as of the Close of Business on the Report Date

15. Obligations to receive or deliver, on the business day following the report date, the security being reported, and principal STRIPS derived from the security being reported, arising out of settlement fails on the report date	_____	_____

Part VI. Positions in the Security Being Reported as of the Close of Business on the Report Date	**Quantity**
16. In book-entry accounts of the reporting entity	_____
17. As collateral against borrowings of funds on general collateral finance repurchase agreements	_____
18. As collateral against borrowings of funds on tri-party repurchase agreements	_____
19. As collateral or margin to secure other contractual obligations of the reporting entity	_____
20. Otherwise available to the reporting entity	_____

Part VII. Quantity of Continuing Delivery-versus-Payment Financing Contracts for the Security Being Reported	**Quantity Borrowed**	**Quantity Lent**
21. Gross amount of security being reported borrowed or lent out on term delivery-versus-payment repurchase agreements opened before the report date and not due to close until after the report date, and on open delivery-versus-payment repurchase agreements opened before the report date and not closed on the report date		

Part VIII. Futures and Options Contracts	Quantity if Net Long	Quantity if Net Short
22. a) Net position, as of the close of market on the business day prior to the report date, in futures, options on futures, and exchange-traded options contracts on which the security being reported is deliverable (report number of contracts)		
b) Net position, as of the close of market on the report date, in futures, options on futures, and exchange-traded options contracts on which the security being reported is deliverable (report number of contracts)		
23. a) Net position, as of the close of market on the business day prior to the report date, in over-the-counter options contracts on which the security being reported is deliverable (report notional amount of contracts regardless of option delta)		
b) Net position, as of the close of market on the report date, in over-the-counter options contracts on which the security being reported is deliverable (report notional amount of contracts regardless of option delta)		

A reporting entity must submit a large position report if it meets any one of the following criteria:

[ ] A. If the sum of column A in lines 1 through 5 and the gross amount lent in line 21 is greater than or equal to the announced large position threshold.
[ ] B. If the sum of column A in lines 16 through 20 and the gross amount lent in line 21 is greater than or equal to the announced large position threshold.
[ ] C. If the sum of column A in lines 6 through 14 is greater than or equal to the announced large position threshold.
[ ] D. If the sum of column B in lines 6 through 14 is greater than or equal to the announced large position threshold.
[ ] E. If column A in line 15 is greater than or equal to the announced large position threshold.
[ ] F. If column B in line 15 is greater than or equal to the announced large position threshold.
[ ] G. If line 22(a) or line 22(b) is greater than or equal to the announced futures, options on futures and exchange-traded options contract threshold.
[ ] H. If line 23(a) or line 23(b) is greater than or equal to the announced large position threshold.

Please specify which of the above criteria triggered the reporting requirement (check all that apply).

Administrative Information to be Provided in the Report

- Name of Reporting Entity:
- Address of Principal Place of Business:
- Name and Address of the Designated Filing Entity:
- Treasury Security Reported on:
- CUSIP Number:
- Date or Dates for which Information is Being Reported:
- Date Report Submitted:
- Name and Telephone Number of Person to Contact Regarding Information Reported:

Name and Position of Authorized Individual Submitting this Report (Chief Compliance Officer; Chief Legal Officer; Chief Financial Officer; Chief Operating Officer; Chief Executive Officer; or Managing Partner or Equivalent of the Designated Filing Entity Authorized to Sign Such Report on Behalf of the Entity):

(Optional) Identify the business(es) engaged in by the reporting entity and any of its aggregating entities with respect to the specified Treasury security (check all that apply).

[ ] A. Broker or Dealer
[ ] B. Government Securities Broker or Dealer
[ ] C. Municipal Securities Broker or Dealer
[ ] D. Futures Commission Merchant
[ ] E. Bank Holding Company
[ ] F. Non-Bank Holding Company
[ ] G. Bank
[ ] H. Investment Adviser
[ ] I. Commodity Pool Operator
[ ] J. Pension Trustee
[ ] K. Non-Pension Trustee
[ ] L. Insurance Company
[ ] M. Other (specify) _____

(Optional) Do you consider the reporting entity's overall investment strategy with respect to the specified Treasury security to be:

[ ] Active
[ ] Passive
[ ] Combination of Active and Passive

Statement of Certification: "By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify that: (i) the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420."

Signature of Authorized Person:

PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934

Sec.

449.1 Form G-FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

449.2 Form G-FINW, notification by financial institutions of cessation of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

449.3 Form G-FIN-4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.4 Form G-FIN-5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.3 of this chapter.

AUTHORITY: 15 U.S.C. 78o–5(a), (b)(1)(B), (b)(4).

SOURCE: 52 FR 27956, July 24, 1987, unless otherwise noted.

§ 449.1 Form G-FIN, notification by financial institutions of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934.

This form is to be used by financial institutions that are government securities brokers or dealers not exempt under part 401 of this chapter to notify their appropriate regulatory agency of their status. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the SEC.

[52 FR 27956, July 24, 1987, as amended at 79 FR 38456, July 8, 2014]

§ 449.2 Form G-FINW, notification by financial institutions of cessation of status as government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.6 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify their appropriate regulatory agency that they have ceased to function as a government securities broker or dealer. The form is promulgated by the Board of Governors of the Federal Reserve System and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the SEC.

[52 FR 27956, July 24, 1987, as amended at 79 FR 38456, July 8, 2014]

§ 449.3 Form G-FIN-4, notification by persons associated with financial institutions that are government securities brokers and dealers pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by associated persons of financial institutions that are government securities brokers or dealers to provide certain information to the financial institution and the appropriate regulatory agency concerning employment, residence, and statutory disqualification. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the SEC.

[52 FR 27956, July 24, 1987, as amended at 79 FR 38456, July 8, 2014]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form G-FIN-4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

§ 449.4 Form G-FIN-5, notification of termination of association with a financial institution that is a government securities broker or dealer pursuant to section 15C(a)(1)(B)(i) of the Securities Exchange Act of 1934 and § 400.4 of this chapter.

This form is to be used by financial institutions that are government securities brokers or dealers to notify the appropriate regulatory agency of the fact that an associated person is no longer associated with the government securities broker or dealer function of the financial institution. The form is promulgated by the Department of the Treasury and is available from the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the SEC.

[52 FR 27956, July 24, 1987, as amended at 79 FR 38456, July 8, 2014]

§ 449.5 Form G–405, information required of registered government securities brokers and dealers pursuant to section 15C of the Securities Exchange Act of 1934 and §§ 405.2 and 405.3 of this chapter.

This form is to be used by registered government securities brokers and dealers to make the monthly, quarterly and annual financial reports required by part 405 of this chapter. The form is promulgated by the Department of the Treasury and is available from the SEC and the designated examining authorities.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form G–405, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.fdsys.gov*.

SUBCHAPTER B—REGULATIONS UNDER TITLE II OF THE GOVERNMENT SECURITIES ACT OF 1986

PART 450—CUSTODIAL HOLDINGS OF GOVERNMENT SECURITIES BY DEPOSITORY INSTITUTIONS

Sec.
450.1 Scope of regulations; office responsible.
450.2 Definitions.
450.3 Exemption for holdings subject to fiduciary standards.
450.4 Custodial holdings of government securities.
450.5 Effective date.

AUTHORITY: Sec. 201, Pub. L. 99–571, 100 Stat. 3222–23 (31 U.S.C. 3121, 9110); Sec. 101, Pub. L. 99–571, 100 Stat. 3208 (15 U.S.C. 78o-5(b)(1)(A), (b)(4), (b)(5)(B)).

SOURCE: 52 FR 27957, July 24, 1987, unless otherwise noted.

§ 450.1 Scope of regulations; office responsible.

(a) This part applies to depository institutions that hold government securities as fiduciary, custodian, or otherwise for the account of a customer, and that are not government securities brokers or dealers, as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)). Depository institutions exempt under part 401 of this chapter from the requirements of Subchapter A of this chapter must comply with this part. Certain depository institutions that are government securities brokers or dealers must also comply with this part, as well as with additional requirements set forth in § 403.5.

(b) The regulations in this subchapter are promulgated by the Assistant Secretary (Domestic Finance) pursuant to a delegation of authority from the Secretary of the Treasury. The office responsible for the regulations is the Office of the Commissioner, Bureau of the Fiscal Service. Procedures for obtaining interpretations of the regulations are set forth at § 400.2.

[52 FR 27957, July 24, 1987, as amended at 53 FR 28987, Aug. 1, 1988; 79 FR 38456, July 8, 2014]

§ 450.2 Definitions.

For purposes of this subchapter:

(a) *Appropriate regulatory agency* has the meaning set out in section 3(a)(34)(G) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)(G)), except that the appropriate regulatory agency for—

(1) A Federal credit union as defined in 12 U.S.C. 1752(1) and an insured credit union as defined in 12 U.S.C. 1752(7) is the National Credit Union Administration; and

(2) Any depository institution for whom an appropriate regulatory agency is not explicitly specified by either section 3(a)(34)(G) or this paragraph, is the SEC;

(b) *Customer* includes, but is not limited to, the counterparty to a transaction pursuant to a repurchase agreement for whom the depository institution retains possession of the security sold subject to repurchase, but does not include a broker or dealer that is registered pursuant to section 15, 15B or 15C(a)(1)(A) of the Act (15 U.S.C. 78o, 78o–4, 78o–5(a)(l)(A)) or that has filed notice of its status as a government securities broker or dealer pursuant to section 15C(a)(1)(B) of the Act (15 U.S.C. 78o–5(a)(1)(B)) except as provided in § 450.4.

(c) *Depository institution* has the meaning stated in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A) (i)–(vi)) and also includes a foreign bank, an agency or branch of a foreign bank and a commercial lending company owned or controlled by a foreign bank (as such terms are defined in the International Banking Act of 1978, Pub. L. 95–369, 92 Stat. 607);

(d) *Fiduciary capacity* includes trustee, executor, administrator, registrar, transfer agent, guardian, assignee, receiver, managing agent, and any other similar capacity involving the sole or shared exercise of discretion by a depository institution having fiduciary powers that is supervised by a Federal or state financial institution regulatory agency; and

(e) *Government securities* means:

If . . .	Then . . .
(1)(i) A depository institution is a government securities broker or dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	''Government securities'' means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(ii) A depository institution is exempt under Part 401 of this chapter from the requirements of Subchapter A.	''Government securities'' means those obligations described in subparagraphs (A), (B), (C), or (E) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C), (E))
(2) A depository institution is not a government securities broker or dealer as defined in sections 3(a)(43) and 3(a)(44) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(43)–(44)).	''Government securities'' means those obligations described in subparagraphs (A), (B), or (C) of section 3(a)(42) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(42)(A)–(C))

[52 FR 27957, July 24, 1987, as amended at 55 FR 6604, Feb. 26, 1990; 66 FR 28655, May 24, 2001; 66 FR 29888, June 1, 2001]

§ 450.3 Exemption for holdings subject to fiduciary standards.

(a) The Secretary has determined that the rules and standards of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation governing the holding of government securities in a fiduciary capacity by depository institutions subject thereto are adequate. Accordingly, such depository institutions are exempt from this part with respect to their holdings of government securities in a fiduciary capacity and their holdings of government securities in a custodial capacity provided that:

(1) Such institution has adopted policies and procedures that would apply to such custodial holdings all the requirements imposed by its appropriate regulatory agency that are applicable to government securities held in a fiduciary capacity, and

(2) Such custodial holdings are subject to examination by the appropriate regulatory agency for compliance with such fiduciary requirements.

(b) The Secretary expects that each appropriate regulatory agency will notify the Department if it materially revises its rules and standards governing the holding of government securities in a fiduciary capacity.

[52 FR 27957, July 24, 1987, as amended at 70 FR 29446, May 23, 2005; 79 FR 38456, July 8, 2014]

§ 450.4 Custodial holdings of government securities.

Depository institutions that are subject to this part shall observe the following requirements with respect to their holdings of government securities for customer accounts:

(a)(1) Except as otherwise provided in this section, a depository institution shall maintain possession or control of all government securities held for the account of customers by segregating such securities from the assets of the depository institution and keeping them free of any lien, charge or claim of any third party granted or created by such depository institution.

(2)(i) Where customer securities are maintained by a depository institution at another depository institution, including but not limited to a correspondent bank or a trust company (''custodian institution''), the depository institution shall be in compliance with paragraph (a)(1) of this section if:

(A) The depository institution notifies the custodian institution that such securities are customer securities;

(B) The custodian institution maintains such securities in an account that is designated for customers of the depository institution and that does not contain proprietary securities of the depository institution; and

(C) The depository institution instructs the custodian institution to maintain such securities free of any lien, charge, or claim of any kind in favor of such custodian institution or any persons claiming through it.

(ii) To the extent that a custodian institution holds securities that have been identified as customer securities by a depository institution in accordance with paragraph (a)(2)(i) of this section, the custodian institution shall treat such securities as customer securities separate from any other securities held for the account of the depository institution.

(3)(i) Where securities that a depository institution is required, pursuant to this part 450, to keep free of all liens, charges, or other claims (''customer securities'') are maintained by a depository institution at a Federal Reserve Bank, the depository institution shall be in compliance with paragraph (a)(1) of this section if any lien, charge or other claim of such Federal Reserve Bank or any person claiming through it against securities of the depository institution expressly excludes customer securities.

(ii) Notwithstanding paragraph (a)(3)(i) of this section, a depository institution described in that paragraph shall be in compliance with paragraph (a)(1) of this section if a Federal Reserve Bank retains a lien on securities received during the day that are subsequently determined to be customer securities, *provided that*,

(A) On that day, the depository institution:

(*1*) Because of extraordinary circumstances, at the end of that day either requests a discount window advance or is unable to eliminate an overdraft with its Federal Reserve Bank and the Federal Reserve Bank extends credit to the depository institution in order to assure the safety and soundness or liquidity of the depository institution; and

(*2*) After reasonable efforts, is unable to provide the Federal Reserve Bank with an adequate security interest in other collateral that is clearly identifiable as pledgeable by the depository institution sufficient to fully collateralize such extension of credit; and

(B) The depository institution diligently pursues with the Federal Reserve Bank the substitution of other collateral for securities determined to be customer securities; and

(C) The Federal Reserve Bank agrees that to the extent the lien extends to collateral of a value greater than the outstanding balance on the loan, customer securities will be the first collateral released from the lien.

(4)(i) To the extent that a depository institution holds securities that have been identified to such depository institution as customer securities by a government securities broker or dealer, or that the government securities broker or dealer has instructed the depository institution to place in a segregated account, in accordance with part 403 of subchapter A of this chapter, the depository institution shall treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer and shall comply with all of the provisions of this section with respect to such customer securities, except as provided in paragraph (a)(4)(ii) of this section.

(ii) A clearing bank that provides clearing services for a government securities broker or dealer and that maintains a segregated account as described in § 403.4 of this chapter shall not be required to transfer securities to such account upon the instruction of the broker or dealer for whom such account is maintained if the clearing bank determines that such securities continue to be required as collateral for an extension of clearing credit to such dealer. Whenever a clearing bank does not segregate securities as of the close of business upon the instruction of such broker or dealer, it shall send a notification to the appropriate regulatory agency of the broker or dealer for whom such account is maintained. Such securities shall thereafter be segregated pursuant to the instruction of the broker or dealer as soon as they are no longer required by the clearing bank as collateral for the extension of clearing credit.

(5) A depository institution that is subject to part 403 is not required to maintain possession or control of margin securities as that term is defined in § 403.5(f)(1).

(6) Notwithstanding the requirement of paragraph (a)(1) to maintain possession or control of customer securities, a depository institution may lend such

securities to a third party pursuant to the written agreement of the customer, if such loan of securities is carried out in full compliance with supervisory guidelines of its appropriate regulatory agency that expressly govern securities lending practices.

(b)(1) Except as otherwise provided in paragraph (b)(2) of this section, a depository institution shall issue a confirmation or a safekeeping receipt for each security held for a customer in accordance with this section with the exception of securities that are the subject of repurchase transactions which are subject to the requirements of § 403.5(d) of this chapter. The confirmation or safekeeping receipt shall identify the issuer, maturity date, par amount and coupon rate of the security being confirmed. The confirmation may be supplied to the customer in any manner that complies with applicable Federal banking regulations.

(2) A depository institution shall not be required to send the confirmation or safekeeping receipt required by paragraph (b)(1) of this section to a customer that is a non-U.S. citizen residing outside the United States or a foreign corporation, partnership, or trust, if such customer expressly waives in writing the right to receive such confirmation or safekeeping receipt.

(c) Records of government securities held for customers shall be maintained and shall be kept separate and distinct from other records of the depository institution. Such records shall:

(1) Provide a system for identifying each customer, and each government security (or the amount of each issue of a government security issued in book-entry form) held for the customer;

(2) Describe the customer's interest in the government security;

(3) Indicate all receipts and deliveries of government securities and all receipts and disbursements of cash by the depository institution in connection with such securities;

(4) Include a copy of the safekeeping receipt or a confirmation issued for each government security held; and

(5) Provide an adequate basis for audit of such information.

(d) Counts of government securities held for customers in both definitive and book-entry form shall be conducted at least annually and such counts shall be reconciled with customer account records.

(1) Counts of book-entry securities and of definitive securities held outside the possession of the depository institution shall be made by reconciliation of the records of the depository institution with those of any depository, depository institution, or Federal Reserve Bank on whose books the depository institution has securities accounts.

(2) The depository institution conducting the count shall also verify any such securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the depository institution's control or direction that are not in its physical possession, where the securities have been in such status for longer than thirty days.

(3) The dates and results of such counts and reconciliations shall be documented with differences noted in a security count difference account not later than seven business days after the date of each required count and verification as provided in this paragraph (d).

(e) For purposes of this section, a depository institution shall treat a government securities broker or dealer as a customer with respect to securities maintained by such government securities broker or dealer in a Segregated Account as defined in § 403.4(f)(1) of this chapter and with respect to securities otherwise identified to the depository institution as customer securities for purposes of maintaining possession or control of such securities as required by part 403 of this chapter. The recordkeeping requirements of paragraph (c) of this section require the depository institution to treat such securities as customer securities separate from any other securities held for the account of the government securities broker or dealer, but do not require the depository institution to keep records identifying individual customers of the government securities broker or dealer.

(f) The records required by paragraphs (c) and (d)(3) of this section

shall be preserved for not less than six years, the first two years in an easily accessible place.

(Approved by the Office of Management and Budget under control number 1535–0089)

[52 FR 27957, July 24, 1987, as amended at 60 FR 11026, Mar. 1, 1995]

§ 450.5 Effective date.

This part shall be effective October 31, 1987.

PARTS 451–499 [RESERVED]