

§ 404.5

17 CFR Ch. IV (4-1-97 Edition)

(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]

EFFECTIVE DATE NOTE: At 62 FR 7155, Feb. 18, 1997, § 404.4 was amended by revising paragraph (a)(1), effective Apr. 30, 1997. For the convenience of the user, the superseded text is set forth as follows:

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

(a) * * *

(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), *provided however*, that the records required to be made and kept by those regulations shall be made or kept without regard to the exemptions for transactions in U.S. government or Federal agency obligations provided in 12 CFR 12.7(a), 12 CFR 208.8(k)(6)(i), and 12 CFR 344.7(a);

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§ 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) 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.

§ 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]

§ 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 inter-dealer 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-

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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.”

(7) Paragraph 240.17h-2T(f) of this title is modified to read as follows:

“(f) *Implementation schedule.* Every registered government securities broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 (in Part I) of Form 17-H by July 31, 1995. Commencing September 30, 1995,

the provisions of this section shall apply in their entirety.”

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

[60 FR 20401, Apr. 26, 1995]

PART 420—LARGE POSITION REPORTING

Sec.

420.1 Applicability.

420.2 Definitions.

420.3 Reporting.

420.4 Recordkeeping.

420.5 Effective Date.

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: 61 FR 48348, Sept. 12 1996, unless otherwise noted.

§ 420.1 Applicability.

(a) This part, including the Appendices, 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 reportable 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, foreign central banks, foreign governments and international monetary authorities are exempt from this part. This exemption is not applicable to a broker, dealer, financial institution or other entity that engages primarily in commercial transactions and that may be owned in whole or in part by a foreign government.

(c) Notwithstanding paragraph (a) of this section, Federal Reserve Banks are exempt from this part for the portion of any reportable position they control for their own account.

§ 420.2 Definitions.

For the purposes of this part: