

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of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this rule, may consider to be no longer applicable the exemption provided in paragraph (a)(3) of this rule with respect to the subsequent activities of the foreign broker or dealer or class of foreign brokers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]

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.

402.2e Appendix E—Temporary minimum requirements.

AUTHORITY: 15 U.S.C. 78o-5(b)(1)(A), (b)(4).

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 $\frac{1}{4}$ of 1 percent of the contract value of

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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) *Effective date.* This part shall be effective July 25, 1987, *provided however*, that until the last business day in October 1987, registered government securities brokers and dealers need not comply with § 402.2 (a), (b), and (c) as long as:

(1) A registered government securities broker or dealer that acts solely as an introducing broker within the meaning of § 240.15c3-1(a)(2) of this title has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than \$5,000; and

(2) Any other registered government securities broker or dealer has and maintains liquid capital, as defined in § 402.2(d), in an amount of not less than \$50,000.

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

§ 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 (see paragraph (a) of appendix E to this section, §402.2e, for temporary minimum requirements), 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 chapter, 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 (see paragraph (b) of appendix E to this section, §402.2(e), for temporary minimum requirements), 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 (see paragraph (c) of appendix E to this section, §402.2(e), for temporary minimum requirements), 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 (see paragraph (d) of appendix E to this section, §402.2(e), for temporary minimum requirements), 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 rated in one of the three highest categories by at least two nationally recognized statistical rating organizations;

(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.	

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(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

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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]

§ 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

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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

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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.

(I) 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.

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(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 capital¹

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**SCHEDULE A—LIQUID CAPITAL REQUIREMENT,
SUMMARY COMPUTATION—Continued**

[In thousands of dollars]

- 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)

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**SCHEDULE A—LIQUID CAPITAL REQUIREMENT,
SUMMARY COMPUTATION—Continued**

[In thousands of dollars]

- 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)

¹Identical 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/ A B C D E F G H I J MB AR	Financings		Securities Positions		Total Securities and Financing Positions (+)	Offset Portions (+)	Net Immediate Positions (+/-)	
	Long 2/ (+)	Short 2/ (-)	Long (+)	Short (-)				
0-45 days							A	
45-135 days							B	
135 days- 9 months							C	
9-18 months							D	
1.5-3.5 years (1.5-3 years)							E	
3.5-7.5 years (3-5.5 years)							F	
7.5-15 years (5.5-9 years)							G	
15-30 years (9-12 years)							H	
(12-21 years) over)							I	
mortgage-backed adjustable rate mortgage-backed							J MB 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. 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			Net Immediate Position		
		\$ Amounts (+)	Factors	Haircuts (+)	\$ Amounts (+/-)	Factors	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		Aggregate Interim Haircuts (+)		Futures & Options Offset Portions 2/ (+)		Residual Position Interim Haircuts (+/-)		
	Futures & Forward (+)	Options (-)	Futures & Forward (+)	Options (-)	Futures & Forward (+)	Options (-)	Futures & Forward (+)	Options (-)	Futures & Forward (+)	Options (-)	
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 adjustable rate											MB
AR mortgage-backed											AR

Total Futures and Options Offset Portion:	\$											
Factor:	x20%											
Total Futures and Options Offset Haircut:	\$											
Column Number	12	13	14	15	16	17	18	19	20##			
	(Note 1)							(Note 2)	(17+18)			

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

Total Hedging Disallowance Haircut: \$

Column Number	20 (Note 1)	21 (Note 2)	22 (Note 2)	23 (Note 2)	24 (Note 2)	25 (Note 2)	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).								
<u>1/</u>	See Sec 402.2(f)(3) for category pair hedging disallowance haircut factors.								
<u>2/</u>	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

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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.

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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 which has no more than one year to maturity and is rated in one of the three highest categories by at least two nationally recognized statistical rating organizations.

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

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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;

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(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 rated in one of the three highest categories by at least two nationally recognized statistical rating organizations; 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.

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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

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(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]

§ 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

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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

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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]

§ 402.2e Appendix E—Temporary minimum requirements.

(a) A government securities broker or dealer that falls within the provisions of paragraph (b)(1) of § 402.2 shall maintain not less than the greater of:

- (1) The amount of liquid capital required under paragraph (a) of § 402.2; or
- (2) The amount of liquid capital, after deducting total haircuts, of:
 - (i) \$25,000 through June 30, 1995;
 - (ii) \$100,000 from July 1, 1995 through December 31, 1995;
 - (iii) \$175,000 from January 1, 1996 through June 30, 1996; and
 - (iv) \$250,000 from July 1, 1996 and thereafter.

(b) A government securities broker or dealer that falls within the provisions of paragraph (b)(2) of § 402.2 shall maintain not less than the greater of:

- (1) The amount of liquid capital required under paragraph (a) of § 402.2; or
- (2) The amount of liquid capital, after deducting total haircuts, of:
 - (i) \$25,000 through June 30, 1995;
 - (ii) \$50,000 from July 1, 1995 through December 31, 1995;
 - (iii) \$75,000 from January 1, 1996 through June 30, 1996; and
 - (iv) \$100,000 from July 1, 1996 and thereafter.

(c) A government securities broker that falls within the provisions of paragraph (c)(1) of § 402.2 shall maintain not less than the greater of:

- (1) The amount of liquid capital required under paragraph (a) of § 402.2; or
- (2) The amount of liquid capital, after deducting total haircuts, of:
 - (i) \$5,000 through June 30, 1995;
 - (ii) \$20,000 from July 1, 1995 through December 31, 1995;
 - (iii) \$35,000 from January 1, 1996 through June 30, 1996; and

(iv) \$50,000 from July 1, 1996 and thereafter.

(d) A government securities broker that falls within the provisions of paragraph (c)(2) of §402.2 shall maintain not less than the greater of:

(1) The amount of liquid capital required under paragraph (a) of §402.2; or

(2) The amount of liquid capital, after deducting total haircuts, of:

(i) \$5,000 through June 30, 1995;

(ii) \$11,000 from July 1, 1995 through December 31, 1995;

(iii) \$18,000 from January 1, 1996 through June 30, 1996; and

(iv) \$25,000 from July 1, 1996 and thereafter.

[60 FR 11026, Mar. 1, 1995; 60 FR 12825, Mar. 8, 1995]

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 de-

rivatives 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.