

(b) It is not currently the subject of any disciplinary action by any Federal or state entity regulating persons dealing in securities or commodities.

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

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

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

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

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

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

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

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

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

“(B) Provides its appropriate regulatory agency (upon request or pursu-

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

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

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

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

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

dealers, and § 403.5 of this title for noticed financial institutions.”

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

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

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

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

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

“(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this rule, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this rule, in an office of the registered broker or dealer located in the United States

(with respect to nonresident registered brokers or dealers, pursuant to Rule 17a-7(a) under the Act (17 CFR 240.17a-7(a)), provided that in Rule 17a-7(a) references to broker or dealer shall include government securities brokers or dealers, as those terms are defined in §§ 400.3 of this title), and makes these records available to the appropriate regulatory agency upon request; or”

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

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

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

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

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

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

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

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

regulatory agency under section 15C(a)(1)(B)(ii) of the Act.”

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

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

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

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

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

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

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

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

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

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

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