

## Keeping and Preservation of Records

### SEC Rule 17a-4. Records to Be Preserved by Certain Exchange Members, Brokers and Dealers

*Cross Reference- Memorandum of the Board of Governors re: Rule 17a-3*

**Reg. §240.17a-4.** (a) Every member, broker and dealer subject to §240.17a-3 shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs §240.17a-3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph §240.17a-3(f).

(b) Every member, broker and dealer subject to §240.17a-3 shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to §240.17a-3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(16), (a)(18), (a)(19), (a)(20), and analogous records created pursuant to §240.17a-3(f).

(2) All check books, bank statements, cancelled checks and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such member, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the member, broker or dealer is a member regarding communications with the public. As used in this paragraph, the term communications includes sales scripts.

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to its business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X-17A-5 (§249.617 of this chapter) Part II or Part IIA or Part IIB and in the annual financial statements required by §240.17a-5(d) and §240.17a-12(b).

(i) Money balance position, long or short, including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts and in securities accounts payable to customers;

(ii) Money balance and position, long or short, including description, quantity, price and valuation of each security, including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts and in securities accounts payable to non-customers;

(iii) Position, long or short, including description, quantity, price and valuation of each security, including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(iv) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(v) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

- (vi) Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;
- (vii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and non-customers' accounts;
- (viii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;
- (ix) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;
- (x) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;
- (xi) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker or dealer has an interest, including each participant's interest and margin deposit;
- (xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to §240.15c3-1;
- (xiii) Detail relating to information for possession or control requirements under §240.15c3-3 and reported on the schedule in Part II or IIA of Form X-17A-5 (§249.617 of this chapter);
- (xiv) Detail of all items, not otherwise substantiated which are charged or credited in the Computation of Net Capital pursuant to §240.15c3-1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and
- (xv) other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by Rule 17a-5 and Rule 17a-12.
- (9) The records required to be made pursuant to §240.15c3-3(d)(4) and (o).
- (10) The records required to be made pursuant to §240.15c3-4 and the results of the periodic reviews conducted pursuant to §240.15c3-4(d).
- (11) All notices relating to an internal broker-dealer system provided to the customers of the broker or dealer that sponsors such internal broker-dealer system, as defined in paragraph (a)(16)(ii)(A) of §240.17a-3. Notices, whether written or communicated through the internal broker-dealer trading system or other automated means, shall be preserved under this paragraph (b)(11) if they are provided to all customers with access to an internal broker-dealer system, or to one or more classes of customers. Examples of notices to be preserved under this paragraph (b)(11) include, but are not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, and instructions pertaining to access to the internal broker-dealer system.
- (c) Every member, broker and dealer subject to §240.17a-3 shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.
- (d) Every member, broker and dealer subject to §240.17a-3 shall preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§249.501 of this chapter), all Forms BDW (§249.501a of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker or dealer with any securities regulatory authority.
- (e) Every member, broker and dealer subject to §240.17a-3 shall maintain and preserve in an easily accessible place:
- (1) All records required under paragraph (a)(12) of §240.17a-3 until at least three years after the associated person's employment and any other connection with the member, broker or dealer has terminated.

- (2) All records required under paragraph (a)(13) of §240.17a-3 until at least three years after the termination of employment or association of those persons required by §240.17f-2 to be fingerprinted; and
- (3) All records required pursuant to paragraph (a)(15) of §240.17a-3 for the life of the enterprise.
- (4) All records required pursuant to paragraph (a)(14) of §240.17a-3 for three years.
- (5) All account record information required pursuant to §240.17a-3(a)(17) until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated.
- (6) Each report which a securities regulatory authority has requested or required the member, broker or dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report.
- (7) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the member, broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the member, broker or dealer until three years after the termination of the use of the manual.
- (8) All reports produced to review for unusual activity in customer accounts until eighteen months after the date the report was generated. In lieu of maintaining the reports, a member, broker or dealer may produce promptly the reports upon request by a representative of a securities regulatory authority. If a report was generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent eighteen month period in a manner such that the report cannot be reproduced in any format using historical data, the member, broker or dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of a securities regulatory authority, including a record of the frequency with which the reports were generated.
- (f) The records required to be maintained and preserved pursuant to §240.17a-3 and §240.17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this section and be maintained and preserved for the required time in that form.

(1) For purposes of this section:

- (i) The term *micrographic media* means microfilm or microfiche, or any similar medium; and
- (ii) The term *electronic storage media* means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this section (f).

(2) If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

(i) The member, broker, or dealer must notify its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (f)(2).

(ii) The electronic storage media must:

- (A) Preserve the records exclusively in a non-rewriteable, non-erasable format;
- (B) Verify automatically the quality and accuracy of the storage media recording process;
- (C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and
- (D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (f) as required by the Commission or the self-regulatory organizations of

which the member, broker, or dealer is a member.

(3) If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

(i) At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer may request.

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under §240.17a-4 for the time required.

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) The member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §240.17a-3 and §240.17a-4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party ("the undersigned"), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission ("Commission"), its designees or representatives, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer, upon reasonable request, such information as is deemed necessary by the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under Rule 17a-4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934 in a format acceptable to the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the staffs of the

Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the member, broker or dealer may request.

(g) If a person who has been subject to §240.17a-3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 780), such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

(h) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G-9 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.

(i) If the records required to be maintained and preserved pursuant to the provisions of §§240.17a-3 and 240.17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to §240.17a-3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

Agreement with an outside entity shall not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in Section 240.17a-3.

(j) Every member, broker and dealer subject to this section shall furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under this section, or any other records of the member, broker or dealer subject to examination under section 17(b) of the Act (15 U.S.C. 78q(b)) that are requested by the representative of the Commission.

(k) *Exchanges of futures for physical.*

(1) Except as provided in paragraph (k)(2), upon request of any designee or representative of the Commission or of any self-regulatory organization of which it is a member, every member, broker or dealer subject to this section shall request and obtain from its customers documentation regarding an exchange of security futures products for physical securities, including documentation of underlying cash transactions and exchanges. Upon receipt of such documentation, the member, broker or dealer shall promptly provide that documentation to the requesting designee or representative.

(2) This paragraph (k) does not apply to an underlying cash transaction(s) or exchange(s) that was effected through a member, broker or dealer registered with the Commission and is of a type required to be recorded pursuant to §240.17a-3.

(l) Records for the most recent two year period required to be made pursuant to §240.17a-3(g) and paragraphs (b)(4) and (e)(7) of this section which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one associated person (or multiple associated persons who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the member, broker or dealer handled there, the member, broker or dealer need not maintain records at that office, but the records must be maintained at another location within the same State as the member, broker or dealer may select. Rather than maintain the records at each office, the member, broker or dealer may choose to produce the records promptly at the request of a representative of a securities regulatory authority at the office to which they relate or at another location agreed to by the representative.

(m) When used in this section:

(1) The term *office* shall have the meaning set forth in §240.17a-3(h)(1).

(2) The term *principal* shall have the meaning set forth in §240.17a-3(h)(2).

(3) The term *securities regulatory authority* shall have the meaning set forth in §240.17a-3(h)(3).

(4) The term *associated person* shall have the meaning set forth in §240.17a-3(h)(4).

[As last amended in Release No. 34-44992A, effective May 2, 2003, 68 F.R. 15354 (see also Release No. 34-44992, noted above).]

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## Memorandum of the Board of Governors

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### Rule 17a-3

The rule applies not only to all members of national securities exchanges, brokers or dealers who transact a business in securities through the medium of such members, but also to all brokers and dealers registered with the S. E. C.

Generally speaking, the rule represents a codification of bookkeeping practices now followed by many exchange firms and over-the-counter brokers and dealers in that it specifies the various items of information which must be reflected upon the firm's books. The rule does not, however, require that the various books or records specified therein must be kept on any prescribed form or type of book, ledger or card system. Nor does the rule regulate accounting practices.

#### *Blotters or similar records*

**Paragraph 1** of the rule requires that "blotters," or other records of original entry, contain an itemized daily record of all purchases and sales as well as receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and all other debits and credits. Such blotters, or comparable records of original entry, should show the account for which each such transaction was effected, number of shares (or principal amount in the case of bonds), the name of the security, the unit and aggregate purchase or sales price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

The "blotter," as it is often called, is a broker's or dealer's book of original entry and contains an historical account of *all* the daily transactions of the firm or its customers. The term "blotter" is often used synonymously with "diary," "journal," or "day book." Larger firms may keep a number of different blotters, each to record a separate type of transaction. For instance, a member firm of a securities exchange ordinarily maintains a clearing house blotter in which are recorded the purchases and sales of cleared securities in lots of 100 shares or more and an "ex-clearing blotter" or several other blotters in which are recorded transactions in odd lots, unlisted securities, bonds, cash, receipts and deliveries, and journal entries. Over-the-counter houses may also keep separate blotters for special kinds of business such as a "cash book" showing only payments and receipts of cash. Blotters are either "To Receive" blotters, in which are recorded purchases, receipt of securities and payments of cash, or "To Deliver" blotters, in which are recorded sales, deliveries of securities and receipts of cash.

The blotter is usually a loose-leaf affair showing on the bought (to receive) side, of whom bought, quantity, security, certificate numbers, price, amount, interest (if any), commission (if any), trade date, and the account for which bought.

The sold (to deliver) side shows to whom sold, quantity, security, certificate numbers, price, amount, tax, interest (if any), commission (if any), trade date, account for which sold. Blotters or similar records, besides being occasionally kept in bound ledgers, may also be kept on cards separated by days or may consist of carbon copies of customers' confirmations, arranged and bound by days, provided that all of the information specified by paragraph 1 of the rule is contained with respect to each entry.

#### *Firm's general ledgers*

**Paragraph 2** requires that ledgers or other records be maintained reflecting all of the firm's assets and liabilities, and its income and expense and capital accounts. This refers to what is usually known as the general ledger in which a record of all asset, liability and nominal accounts are kept and from which a trial balance can be abstracted in order to prepare financial statements showing the broker's or dealer's financial condition. Under present day double entry systems, this record requires but little explanation.

### *Customers' accounts*

**Paragraph 3** requires ledger accounts (or other records) itemized separately as to *each* cash and margin account of every customer (regardless of the frequency of transactions with or for the customer), and as to each account (if any) of the firm and of its partners which should show all purchases and sales, and where securities or commodities are otherwise received in or delivered out of the account, all such receipts and deliveries. The records should also itemize all other debits and credits to each such account.

This item thus calls for what is commonly termed an account for each customer. Whether the bookkeeping system is maintained on machines, or the ledger is handwritten, the account pages, or account cards in the case of card systems, usually consist of columns for the date, number of shares bought or received into the account, number of shares sold or delivered out of the account, name of security, money debits and credits and usually a balance column and columns for calculating interest on balances. At the end of each month it is customary to bring down the debit or credit balance and the long and short position in each customer's account. Of course, it is not necessary under the rule even that a full page be devoted to each such account. It is only required that in some way the required information as to each account (whether it be kept in the form of a single record or several related secondary records) be kept separately as to that account.

### *Secondary or subsidiary records*

**Paragraph 4** requires that ledgers or other records be maintained reflecting the following:

- (A) Securities in transfer;
- (B) Dividends and interest received;
- (C) Securities borrowed and securities loaned;
- (D) Monies borrowed and monies loaned, together with a record of the collateral therefor and any substitutions in such collateral;
- (E) Securities failed to receive and failed to deliver.

All of the above are "secondary" or, as they are sometimes called, "subsidiary" records and are not records of original entry. These records are made up from the blotters or other records of original entry. Hence, the data appearing in such records is generally posted daily or at such intervals as the business requires. There follows a brief description of such subsidiary records.

### *Securities in transfer*

**(A)** The certificates of stock which a broker or dealer receives upon consummation of purchases may often be in a "street" name or in the names of individuals who may previously have owned the stock. When a broker or dealer receives instructions to have certificates registered in the name of the purchaser the certificates are sent to the transfer agent. The purpose of this paragraph of the rule is to require the keeping of a record showing all stocks "in transfer." This record usually shows the number borne by the transfer receipt received from the transfer agent, the number of shares, name of security, name in which it was registered, new name (i.e., the new name in which new certificates will be registered), date sent out to transfer, old certificate number, date received back from transfer, and new certificate number.

### *Dividends and interest received*

**(B)** For the purpose of this item of the rule it is necessary that a record be maintained by the firm with respect to dividends or interest paid by corporations on stock or bonds, respectively, carried by the broker for the account of customers but registered in some name other than that of the customer. The general practice, which would represent compliance with the rule, is to set up a sheet showing the name of the security, the ex-dividend date (or interest date), the rate per share and the payable date. Information is obtained from the "stock record" or, as it is sometimes called, the "securities position record," (the nature of which is explained hereafter) showing the names of both "long" and "short" customers. This information is then recorded on the dividend and interest register. All customers who are "long" are credited with their proportionate interest in monies received by the firm on account of the dividend or interest to which such customers are entitled. All customers who are "short" on the record dividend date, or the interest date in the case of bonds, are charged with the amount of the dividend or interest payable on their short position.

### *Securities borrowed and securities loaned*

**(C)** In borrowing securities to make deliveries against sales or in lending securities to other brokers or dealers, it is necessary, under paragraph 1 of the rule, to enter such transactions in the blotters, day book or other records of original entry. The requirements of paragraph 4(C) of the rule can be complied with by posting from the blotters or other records of original entry onto the securities borrowed and loaned records the date borrowed or date loaned, name of broker from whom borrowed or to whom loaned, number of shares, name of security, price, amount, and the date returned. In some cases securities borrowed and loaned records also provide an additional column showing the interest rate or premium on stock borrowed or loaned. The information may be kept on cards, in a loose-leaf or in a bound record, and the "date returned" may be stamped in with a regular date stamp.

*Monies borrowed, Monies loaned, etc.*

**(D)** A record must be kept of all borrowings, regardless of whether customers' or the firm's securities are pledged as collateral. This record should show the name of the bank, the date, the interest rate, the amount of the loan, terms of the loan, and date when paid. Usually a separate page is made up for each loan. In connection with this information there must be kept a collateral record consisting of the number of shares, or principal amount in the case of bonds, name of the security, and certificate numbers in respect of all collateral pledged to secure the particular loan. Substitutions in collateral are usually shown on an additional column on the page or card kept for the particular loan. This information is obtained from the blotter, cash book, day book or other record of original entry and is transferred to the subsidiary record. Many houses find it convenient (and the rule so permits) to keep their loan records on a card index system which reflects the above information. Others keep only their record of collateral substitutions on cards, maintaining a loose-leaf or bound ledger for the other required details on such loans.

*Securities failed to receive or deliver*

**(E)** These are also subsidiary records and are constructed from information contained on the blotters or other records of original entry. Upon learning that a broker or dealer on the other side of a transaction will fail to deliver on the date upon which delivery is due, either under clearing house rules or under the agreement between the buyer and the seller, this item requires that records must be made which should show the "fail date" (i.e., the date on which delivery was due but not made), number of shares (or principal amount of bonds), name of security, purchase price, broker or dealer from whom delivery is due, and date received. Conversely, when the firm fails to deliver it must set up records which should show the date on which delivery was due, number of shares (or principal amount of bonds), name of security, to whom sold, sales price and date on which delivery is made. An additional column may also provide for any remarks pertinent to the failure to receive or failure to deliver of that particular security. The total amount of open items in the "fail to receive" or "fail to deliver" records should agree with the "fail to receive" or "fail to deliver" account in the firm's general ledgers kept pursuant to paragraph 2 of the rule.

*Securities record or ledger*

**Paragraph 5** requires that a securities record or ledger (often called a "position book") be kept (or some comparable group of related secondary records), which will reflect separately for each security all long or short positions (including securities in safe-keeping) carried by the member broker or dealer either for his account or for the account of his customers or partners, and showing the location of all securities "long," and the offsetting position to all securities "short," and in all cases the name or designation of the account in which each position is carried. The rule requires that the securities record be posted currently so as to show all positions as of "clearance dates." The term "clearance date" refers to the date agreed upon by the buyer and seller (or the date fixed by applicable clearing house rules, if any) as the date upon which delivery is due. The securities record may, of course, be posted on the "trade" or execution date or any other date prior to the clearance date.

Houses which handle a large volume of business may keep separate "securities records" or "position records" as they are often called, for stocks and for bonds. The stock or securities record is seldom a bound record but it is usually kept in a loose-leaf book, or in the form of a group of cards or of related groups of cards, containing the above information. The typical stock record is a columnar record with a page or portion thereof for each security. The page should show the name of the security, the customers' and other accounts which are "long" and "short" that security, the daily changes in their position, the location of each security, and the total of the long or short position for the account of customers and the firm and partners. The more frequently recurring items often are printed on the form for speed in recording and in order to eliminate the necessity of writing in each item. Many forms for stock or securities position records are printed with or otherwise contain an appropriate space for the name of the account and a column for each business day in the month. The month-end securities balances may be carried forward to new sheets at the beginning of each new month.

In those houses which use the manifold or accounting machine methods of bookkeeping, the posting to the stock

record is made from information typed simultaneously with the blotter.

#### *Memoranda of brokerage orders*

**Paragraph 6** requires that *brokers* maintain a memorandum of each *brokerage* order and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memoranda must show the terms and conditions of the Order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed, and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker or dealer, or any employee thereof, shall be so designated.

The rule provides that the term "instruction" shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term "time of entry" is specified to mean the time when the member, broker or dealer transmits the order or instruction for execution, or if it is not so transmitted, the time when it is received.

It is the usual practice (and probably the more desirable) to record all of the required information upon the face of the order ticket or other slip which records the brokerage order or instruction. If such order tickets or slips be filed together, they would themselves constitute the required record in respect of orders or instructions for the purchase or sale of securities.

#### *Memoranda of purchases and sales*

**Paragraph 7** which applies to *dealer transactions* requires a memorandum for each *purchase* and *sale* of securities for the account of such member, broker or dealer showing the price, and *to the extent feasible*, the time of execution. Paragraph 7, we understand, also serves to make it clear that memoranda or other records need not be made of dealers' quotations, or bids or offers made in the course of trading.

#### *Confirmations and notices*

**Paragraph 8** requires that brokers and dealers must make copies of confirmations of all purchases and sales of securities and copies of notifications of all other debits and credits for cash securities, or other items for the account of customers including partners of the member, broker or dealer. Note that paragraph 4 of Rule 17a-4 requires that the broker or dealer preserve copies of such confirmations or notices which he sends to his customers. In the event a firm uses the manifold system of bookkeeping, one of the several carbon copies so made would meet the above requirements provided it contained all the material information as contained on the simultaneously typed customer's copy of the confirmation.

#### *Records re cash and margin accounts*

**Paragraph 9** requires that a record in respect of each cash and margin account with such member, broker or dealer contain the name and address of the beneficial owner of such account, and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account. This provision refers to what is commonly known as the customers' account card; many houses use an ordinary 3 x 5 card with the required data printed thereon and filled out at the time of opening the account with a customer.

Some questions have been raised in connection with "omnibus accounts" or similar accounts in which a bank, trustee or another broker or dealer effects transactions which the bank, trustee or broker or dealer may later allocate to the particular beneficiary or customer for whom it is acting. Where such an account is carried with the member, broker or dealer by a second party, such as a bank, trust company or another broker, the second party only, generally speaking, should be regarded as the "beneficial owner" of that account for purposes of this paragraph of the rule. In other words, the customers of the second party, at least under normal circumstances, are not regarded as the customers of the member, broker or dealer with whom the second party carries such an omnibus or general account. The phrase in paragraph 9 of Rule 17a-3 "a record in respect of each cash or margin account with such member, broker or dealer" has reference to accounts only of customers of that member, broker or dealer. Consequently, this item does not require broker or dealer "A" to make records with respect to the customers of broker or dealer "B" whose transactions may be effected by "A" in one or more accounts which "B" carries with "A." However, "B" must of course keep the specified information with respect to the accounts of his customers.

Where, on the other hand, a trustee, nominee or other fiduciary opens and maintains an account with a member, broker or dealer as a representative of one or more particular beneficiaries and where all transactions effected in that trust account are solely for the particular predetermined beneficiaries for whom the account is maintained, such

beneficiaries (who thus have ownership of *the account itself* as distinguished from an interest in particular *securities or credits* which may happen to be recorded therein) should be regarded as beneficial owners of the account. Consequently, in this latter situation where the agent's or trustee's transactions on behalf of a trust or particular individuals are of such volume and importance as to warrant the opening of a separate account for the particular trust or individuals, it is our understanding that paragraph 9 of Rule 17a-3 does apply, and that the name and address either of the particular trust or of the beneficiaries should be obtained.

*Puts, calls, straddles and other options*

**Paragraph 10** requires the record of all puts, calls, spreads, straddles and other options in which such member, broker or dealer has any direct or indirect interest, or which such member, broker or dealer has granted or guaranteed containing at least an identification of the security and the number of units involved. Such a memorandum may be kept in any suitable record which shows the date, details regarding the option, name of security, number of shares, expiration date. Letters pertaining to such options, including those received from and addressed to customers, should be kept together with the memorandum.

*Monthly trial balances and net capital computations*

**Paragraph 11** requires the preparation of a record of the proof of money balances in all ledger accounts in the form of trial balances currently at least once a month, and the preparation of a record of the computation of aggregate indebtedness and net capital as of the trial balance date currently at least once a month. Such trial balances and computations will serve as a check upon the current status and accuracy of the ledger accounts which members are required to maintain and keep current and will also help to keep members currently informed of their capital positions.

*Employment applications*

**Paragraph 12** requires a questionnaire or employment application for each "associated person" which must list various items of information with respect to such person, and must be approved in writing by an authorized representative of the member. Retention of a complete copy of a registration application filed by the member on behalf of such person with the Association or certain securities exchanges will satisfy this requirement.

*Inquiries concerning rules*

Any inquiries with respect to the provisions of Rules 17a-3 and 4 and whether or not the bookkeeping system now in use by your firm meets the requirements of the rule should be addressed either to the National Association of Securities Dealers, Inc., 1735 K Street, N. W., Washington, D. C. 20006, or to the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth St., N.W., Washington, D. C. 20549.

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