

# NASD NOTICE TO MEMBERS 96-76

## SEC Approves Amendment To IM-8310-2 Regarding The Availability Of Disciplinary Complaints And Disciplinary Decisions Upon Request

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

On October 9, 1996, the Securities and Exchange Commission (SEC) approved an amendment to IM-8310-2 regarding the availability of disciplinary complaints and disciplinary decisions upon request. The amendment permits the NASD to provide copies of NASD<sup>®</sup> disciplinary complaints and disciplinary decisions upon request and requires that such copies be accompanied by a disclosure statement in certain circumstances. The full text of the amendment, which became effective on an accelerated basis on October 9, 1996, follows the discussion below.<sup>1</sup>

Questions regarding this Notice may be directed to Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, at (202) 728-8247.

### Background And Discussion

Under the Interpretation on the Release of Disciplinary Information (Rule), IM- 8310-2,<sup>2</sup> NASD Regulation, Inc. (NASD Regulation) provides notification to the membership and the press of significant disciplinary decisions when time for appeal and call for review has expired, but the Rule does not specifically authorize NASD Regulation to provide copies of any disciplinary complaint or disciplinary decision, in its entirety, upon request. As a matter of practice, the staff has not provided copies of disciplinary complaints in response to requests. However, the NASD has maintained a policy since 1994 of providing complete copies of disciplinary decisions upon request, pursuant to an interpretation of paragraph (a) of the Rule, which permits the NASD to release information upon request regarding "all pending disciplinary actions ...."

The NASD is amending the Rule to adopt new paragraph (b) to clarify that the NASD shall in response to a

request, release to the requesting party a copy of any NASD disciplinary complaint or disciplinary decision issued by the NASD or any of its subsidiaries or committees.<sup>3</sup> In making a request for a disciplinary complaint or decision, the new rule requires that the requesting party identify the disciplinary complaint or decision that is being requested. This requirement is satisfied where the requesting party identifies a particular broker/dealer or associated person that is a respondent in an NASD disciplinary action (although the date of the complaint or decision may not be known) or identifies an issue or rule that is the subject of one or more complaints or decisions (where the identity of the respondent or respondents is not known). It is also permissible for a request to encompass all disciplinary complaints and decisions related to an identified respondent without reference to a particular time period.

The new provision also requires that copies of disciplinary complaints and decisions be accompanied by certain disclosures, in certain circumstances, that are set forth in subparagraphs (b)(1)-(4). The new provision requires that any copy of a disciplinary complaint be accompanied by a statement that the issuance of a complaint represents the initiation of

<sup>1</sup> Securities and Exchange Act Release No. 34-37797 (October 9, 1996); 61 FR 53984 (October 16, 1996).

<sup>2</sup> The Interpretation was previously cited as "Resolution of the Board of Governors— Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions and Release of Certain Information Regarding Disciplinary History of Members and Their Associated Persons" and appeared after paragraph 2301 of the *NASD Manual*, following Article V, Section 1 of the Rules of Fair Practice.

<sup>3</sup> This amendment addresses only "disciplinary complaints," not "customer complaints."

a formal proceeding by the NASD in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

In addition, any copy of a disciplinary decision issued by a District Business Conduct Committee or the Market Surveillance Committee that is released prior to the expiration of the time for appeal to or call for review by the National Business Conduct Committee, NASD Regulation Board of Directors, or NASD Board of Governors, or while such an appeal or review is pending, is required to be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed if the matter is appealed or called for review.

Any copy of a final decision of the NASD released prior to the expiration of the time period for the filing of an appeal to the SEC or while such an appeal is pending is required to be accompanied by a statement that the findings and sanctions of the NASD are subject to review with the SEC if the decision is appealed. Finally, any copy of a final decision of the NASD released after the decision is appealed to the SEC is required to be accompanied by a statement that the effectiveness of the decision has or has not been stayed pending the outcome of proceedings before the SEC.

The NASD is also amending paragraph (a) of the Rule. Currently, the provision appears to prevent information from being provided through the Public Information Program (Program), i.e., the Central Registration Depository, if it has not been reported on Forms BD or U-4, even though Forms BD or U-4 would require the reporting of such information. This was not the intent of the current rule language. The NASD is, therefore,

amending the provision to clarify that information provided through the Program is the same information that is required to be reported on Forms BD or U-4.

NASD Regulation believes these changes will further protect investors and the public interest by providing more complete information with respect to the issuance of disciplinary complaints and decisions to persons requesting such documents. In addition, providing complete copies of complaints and decisions permits more complete disclosure of the surrounding facts and circumstances, in contrast to the abbreviated descriptions that are available through the Program.

Questions regarding this Notice may be directed to Suzanne E. Rothwell, Associate General Counsel, NASD Regulation, at (202) 728-8247.

### **Text Of Amendment**

(Note: New text is underlined; deletions are bracketed.)

### **IM-8310-2. Release of Disciplinary Information**

(a) The Association shall, in response to a written inquiry or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal or state or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and [have

been] are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that are securities or commodities related and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers.

(b) The Association shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Association or any subsidiary or Committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by a statement that the issuance of a disciplinary complaint represents the initiation of a formal proceeding by the Association in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint;

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Code of Procedure for appeal or call for review within the Association or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Association;

(3) a final decision of the Association that is released prior to the time period provided under the Securities Exchange Act of 1934 for appeal to the Commission or while such an appeal is pending, shall be accompa-

nied by a statement that the findings and sanctions of the Association are subject to review and modification by the Commission; and

(4) a final decision of the Association that is released after the decision is appealed to the Commission shall be

accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

Current paragraphs (b) through (k) are redesignated (c) through (l).

# NASD NOTICE TO MEMBERS 96-77

## CRD Will Provide Firms With Advisory Messages When Significant Disciplinary Actions Require Reentry Of Individuals Into The Regulatory Element Of The Continuing Education Program

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
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- Options
- Registration
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- Systems
- Trading
- Training

### Executive Summary

Effective December 1, 1996, the Central Registration Depository (CRD) will send an individual *Continuing Education Program Advisory Message* for both Regulatory Element Directed Sequences (see Exhibit 1) and Regulatory Element Directed Sessions (see Exhibit 2) to notify member firms of Continuing Education Regulatory Element requirements for their registered employees who have become the subject of a significant disciplinary action as defined in Rule 1120 of the NASD<sup>®</sup> Membership and Registration Rules (formerly Schedule C, Part XII of the NASD By-Laws). Previously, firms were notified of this information only by the monthly Requirement Summary report.

Questions about this Notice may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (301) 208-2932 or to your CRD Quality & Service Team.

Quality & Service Team 1  
(301) 921-9499  
Quality & Service Team 2  
(301) 921-9444  
Quality & Service Team 3  
(301) 921-9445  
Quality & Service Team 4  
(301) 921-6664  
Quality & Service Team 5  
(301) 921-6665.

### Background

A registered person must reenter the Regulatory Element of the Securities Industry Continuing Education Program and satisfy all of its requirements if he or she becomes the subject of a significant disciplinary action. A significant disciplinary action occurs when a registered person:

- becomes subject to a statutory disqualification pursuant to the Securities Exchange Act of 1934. Such

disqualifications include bars, suspensions, and civil injunctions involving securities matters, any felony convictions, or a misdemeanor conviction that involves investments or an investment-related business, any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;

- becomes subject to suspension or is solely or jointly and severally subject to the imposition of a fine of \$5,000 or more for violating any provision of any securities law or regulation, or any agreement with, or rule or standard of conduct of, any securities self-regulatory organization (SRO), or as imposed by any such regulatory or SRO in connection with a disciplinary proceeding; or
- is ordered to reenter the Regulatory Element as a sanction in a disciplinary action by any securities governmental agency or securities SRO.

A significant disciplinary action "resets the clock" for an individual who is already covered by or who has previously met the requirements of the Regulatory Element. Reentry into the Regulatory Element is initiated when certain disciplinary information is posted to CRD creating a Regulatory Element Directed Sequence or Directed Session.

### Directed Sequences

A Directed Sequence is a series of four Regulatory Element computer-based training sessions. The first session is required within 120 days beginning from the Directed Sequence Effective Date. The three subsequent sessions are required within 120 days beginning from the second, fifth, and tenth anniversaries of the Directed Sequence Effective

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Date. The Directed Sequence Effective Date is the 45th day after the Date of Action specified in the official disciplinary decision document. Reentry applies regardless of whether a registered person has fulfilled all or part of an existing Regulatory Element requirement.

#### **Directed Sequence Example**

Michael S. is fined \$5,000 by an SRO in a disciplinary proceeding dated March 1, 1997.

Michael S. receives a Regulatory Element Directed Sequence because of the fine. The effective date of his Directed Sequence is April 15, 1997 (45 days after the Date of Action of the disciplinary ruling). Michael's Directed Sequence requires him to take four sessions of the Regulatory Element computer-based training. The initial requirement is within 120 days beginning April 15, 1997, and then within 120 days beginning April 15, 1999, April 15, 2002, and April 15, 2007.

#### **Directed Sessions**

A securities regulator may require a single Regulatory Element Directed Session as part of a disciplinary action. When information about the disciplinary action is entered into CRD, the Directed Session is recorded with an effective date which is 45 days from the Date of Action. The individual will have 120 days begin-

ning from the Directed Session Effective Date to satisfy the Regulatory Element requirement.

#### **Directed Session Example**

Sarah M. is required by a state securities regulator to complete one Regulatory Element computer-based training session. The date of the state's action is March 1, 1997. The effective date of this Directed Session is April 15, 1997, 45 days after the Date of Action of the disciplinary ruling. Sarah must complete the Directed Session within 120 days beginning April 15, 1997.

#### **Continuing Education Advisory Messages**

Beginning December 1, 1996, CRD will produce Continuing Education Program Advisory Messages in the form of individual notifications about Directed Sequences or Directed Sessions and send them to every firm where CRD shows the person to have an active registration. The firm must notify its employee of the Regulatory Element requirement and monitor compliance. Failure to complete a required Regulatory Element computer-based training session during the prescribed time period will result in a person's registration becoming inactive. A person with an inactive registration cannot conduct a securities business, perform any of the functions of a registered person, or receive compensation for activities

that require registration until the requirements of the Regulatory Element are met.

The individual notification will contain the individual's name, CRD<sup>SM</sup> number and social security number, the regulatory authority initiating the disciplinary action, the action date of the action, the effective date of the action, and the begin and end dates of the directed sequence windows or directed session window. See Exhibits 1 and 2 of this Notice.

A firm's monthly Continuing Education Program Summary Report also shows all of the firm's registered persons who are in open 120-day Regulatory Element windows for any reason.

#### **For More Information**

Questions about this Notice may be directed to John Linnehan, Director, Continuing Education, NASD Regulation, at (301) 208-2932 or to your Quality & Service Team.

Firms should direct their questions for clarification about a Directed Sequence or Directed Session to their Quality & Service Team.

If you are uncertain as to your Quality & Service Team, please contact the NASD at (301) 590-6500.

EXHIBIT I

Advisory Message For A Directed Sequence

CENTRAL REGISTRATION DEPOSITORY

P.O. BOX 9401 \* GAITHERSBURG, MARYLAND 20898-9401 \* (301) 590-6500

CONTINUING EDUCATION PROGRAM ADVISORY MESSAGE

REGISTERED REPRESENTATIVE NAME  
RR CRD#

REPORT DATE 11/01/97

DIRECTED SEQUENCE DISCIPLINARY NOTICE

The individual listed above is subject to the Continuing Education Program due to a  
DISCIPLINARY ACTION. This action has been initiated by <regulatory authority> on 9/6/97.  
The individual is required to comply with the following schedule, starting from 10/21/97.

REQUIREMENT	BEGIN DATE	END DATE
Initial Requirement	10/21/97	2/17/98
2-year Anniversary	10/21/99	2/17/00
5-year Anniversary	10/21/02	2/17/03
10-year Anniversary	10/21/07	2/17/08

\*\*\* Avoid surprises! Always determine a new-hire's CE status \*\*\*

BD NUMBER

BD NAME  
BD STREET ADDRESS  
BD CITY, STATE AND ZIP

ATTN: BD CONTACT

EXHIBIT 2

Advisory Message For A Directed Session

CENTRAL REGISTRATION DEPOSITORY

P.O. BOX 9401 \* GAITHERSBURG, MARYLAND 20898-9401 \* (301) 590-6500

CONTINUING EDUCATION PROGRAM ADVISORY MESSAGE

REGISTERED REPRESENTATIVE NAME  
RR CRD#

REPORT DATE 11/01/97

DIRECTED SESSION DISCIPLINARY NOTICE

The individual listed above is subject to the Continuing Education Program due to a DISCIPLINARY ACTION. This action has been initiated by <regulatory authority> on 9/6/97. The individual will be required to complete the following requirement, starting from 10/21/97.

REQUIREMENT	BEGIN DATE	END DATE
Directed Session	10/21/97	2/17/98

\*\*\* Avoid surprises! Always determine a new-hire's CE status \*\*\*

BD NUMBER  
BD NAME  
BD STREET ADDRESS  
BD CITY, STATE AND ZIP  
ATTN: BD CONTACT

# NASD NOTICE TO MEMBERS 96-78

## Christmas Day And New Year's Day: Trade Date-Settlement Date Schedule

The Nasdaq Stock Market and the securities exchanges will be closed on Wednesday, December 25, 1996, in observance of Christmas Day, and Wednesday, January 1, 1997, in observance of New Year's Day. "Regular way" transactions made on the business days noted below will be subject to the following schedule:

Trade Date	Settlement Date	Reg. T Date*
Dec. 19	Dec. 24	Dec. 27
20	26	30
23	27	31
24	30	Jan. 2, 1997
25	Markets Closed	—
26	31	3
27	Jan. 2, 1997	6
30	3	7
31	6	8
Jan. 1, 1997	Markets Closed	—
2	7	9

## Christmas Day And New Year's Day: Trade Date-Settlement Date Schedule

### Suggested Routing

- Senior Management
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Brokers, dealers, and municipal securities dealers should use the foregoing settlement dates for purposes of clearing and settling transactions pursuant to the NASD<sup>®</sup> Uniform Practice Code and Municipal Securities Rulemaking Board Rule G-12 on Uniform Practice.

Questions regarding the application of those settlement dates to a particular situation may be directed to the NASD Uniform Practice Department at (203) 375-9609.

\*Pursuant to Sections 220.8(b)(1) and (4) of Regulation T of the Federal Reserve Board, a broker/dealer must promptly cancel or otherwise liquidate a customer purchase transaction in a cash account if full payment is not received within five (5) business days of the date of purchase or, pursuant to Section 220.8(d)(1), make application to extend the time period specified. The date by which members must take such action is shown in the column titled "Reg. T Date."





# NASD NOTICE TO MEMBERS 96-79

As of October 28, 1996, the following bonds were added to the Fixed Income Pricing System (FIPS).

Symbol	Name	Coupon	Maturity
VOUT.GB	Universal Outdoor Inc	9.750	10/15/06
GGSY.GA	Gross Graphic System Inc	12.000	10/15/06
AGY.GA	Argosy Gaming Co	13.250	6/1/04
OSIA.GA	Outdoor Systems Inc	9.375	10/15/06
SYGN.GA	Sygnnet Wireless	11.500	10/1/06
FROV.GA	Frontier Vision	11.000	10/15/06
GCS.GA	Gray Communications	10.625	10/1/06

## Fixed Income Pricing System Additions, Changes, And Deletions As Of October 28, 1996

As of October 28, 1996, the following bonds were deleted from FIPS.

Symbol	Name	Coupon	Maturity
EAGI.GB	Eagle Inds Inc Del	10.500	7/15/03

### Suggested Routing

- Senior Management
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As of October 28, 1996, changes were made to the symbols of the following FIPS bonds.

New Symbol	Old Symbol	Name	Coupon	Maturity
PLS.GA	PHCR.GA	Paracelsus Healthcare Corp	9.875	10/15/03

All bonds listed above are subject to trade-reporting requirements. Questions pertaining to FIPS trade-reporting rules should be directed to James C. Dolan, Market Regulation, NASD Regulation, at (301) 590-6460.

Any questions regarding the FIPS master file should be directed to Cheryl Glowacki, Nasdaq Market Operations, at (203) 385-6310.



# DISCIPLINARY ACTIONS

## Disciplinary Actions Reported For November

The NASD has taken disciplinary actions against the following firms and individuals for violations of NASD® Rules; securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board. Unless otherwise indicated, suspensions will begin with the opening of business on Monday, November 18, 1996. The information relating to matters contained in this Notice is current as of October 28, 1996. Information received subsequent to the 28th is not reflected in this edition.

### **Firms Suspended, Individuals Sanctioned**

**Euro-Atlantic Securities Inc. (Boca Raton, Florida)** and **David Paul Melillo (Registered Principal, Pinellas Park, Florida)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were fined \$10,000, jointly and severally. The firm was also suspended from recommending transactions in any penny stocks to customers for two years and required to establish written procedures to govern compliance with Section 15(g) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Melillo, failed to establish, maintain, and enforce adequate written procedures with respect to compliance with the requirements of Section 15(g) and the rules and regulations promulgated thereunder.

### **Firms Fined, Individuals Sanctioned**

**Kessler-Ehrlich Investments, Inc. (Denver, Colorado)** and **Joel Ehrlich (Registered Principal, Denver, Colorado)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which they were

fined \$20,000, jointly and severally. Ehrlich also must requalify as a general securities principal. The firm was required to hire a compliance officer with experience in compliance matters related to sales and trading practices for collateralized mortgage obligations and an independent consultant who shall review and report at three-month intervals on the firm's trading activities and practices and its method of recording the same, for one year. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Ehrlich, failed to maintain accurate books and records.

### **Firms Fined**

**Geneva Securities, Inc. (Schaumburg, Illinois)** was fined \$15,000 and required to have the supervisor of a registered representative qualify by exam as a municipal securities principal or cease acting in such capacity until he so qualifies. The sanctions were based on findings that the firm effected sales and purchases of various municipal bonds with public customers as principal at prices that were unfair and unreasonable taking into consideration all relevant factors.

### **Individuals Barred or Suspended**

**Sotero Reynera Acedo (Registered Representative, El Cajon, California)** was fined \$100,000, barred from association with any NASD member in any capacity, and ordered to reimburse a member firm \$29,431.65. The sanctions were based on findings that Acedo received a \$31,000 check from a public customer made payable to Acedo for the purchase of an annuity. Acedo deposited the check into his personal bank account without the customer's knowledge or consent, applied \$1,568.35 of the funds towards the initial premium of a whole life insurance policy, and

converted \$29,431.65 for his own use.

**Nigel Michael Anderson (Associated Person, Brooklyn, New York)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Anderson effected the purchase of stock on behalf of public customers in violation of the Securities and Exchange Commission (SEC) Penny Stock Rules in that he solicited investors to purchase penny stock and accepted orders from customers without benefit of registration with the NASD in any capacity. Anderson also failed to respond to NASD requests for information.

**Dale Leon Bachman (Registered Representative, San Antonio, Texas)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$11,000 and suspended from association with any NASD member in any capacity for two weeks. Without admitting or denying the allegations, Bachman consented to the described sanctions and to the entry of findings that he participated in a private securities transaction with a customer without obtaining the approval of his member firm.

**Bradley Dean Barnes (Registered Representative, Fresno, California)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Barnes signed insurance customers' signatures to insurance applications and submitted the applications to his member firm. Barnes also signed customers' signatures to checks totaling \$652.03 and deposited the checks in his own bank account.

**Edmund Galvez Barnes (Registered Representative, San Bruno, California)** was fined \$2,500 and

suspended from association with any NASD member in any capacity until such time as the fine has been paid. The National Business Conduct Committee (NBCC) imposed the sanctions following review of a San Francisco District Business Conduct Committee (DBCC) decision. The sanctions were based on findings that Barnes deposited and attempted to deposit checks belonging to his member firm totaling \$2,126.67 into his personal account at his member firm.

Barnes' suspension began August 1, 1996 and will conclude when the fine is paid.

**Thomas Perry Brewer (Registered Representative, Fremont, California)** was fined \$72,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Brewer participated in private securities transactions without providing prior written notification to his member firm. Brewer also failed to respond to NASD requests for information.

**Kitisak B. Chokevakraikij (Registered Representative, Forest Hills, New York)** was fined \$120,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Chokevakraikij received \$112,711.31 from a public customer for the purchase of mutual fund shares and instead, converted the funds for his own use by depositing the funds into his personal account.

**Mara E. Cortes (Registered Representative, Naperville, Illinois)** was fined \$10,000 and suspended from association with any NASD member in any capacity for 30 days and thereafter until such time as she submits proof that an arbitration award has been satisfied or that she has been relieved from further obligation to pay the award. The sanctions were

based on findings that Cortes failed to pay a \$100,000 NYSE arbitration award. Cortes also failed to update her Form U-4 promptly and accurately to reflect the award and a subsequent court order enforcing the award.

Cortes' suspension began on September 12, 1996 and concluded October 25, 1996.

**Roland V. Coston (Registered Representative, Virginia Beach, Virginia)** submitted an Offer of Settlement pursuant to which he was fined \$25,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Coston consented to the described sanctions and to the entry of findings that he engaged in private securities transactions and failed to provide written notice of such transactions to his member firm. The NASD also found that Coston failed to respond to NASD requests for information.

**Richard P. Davis (Registered Representative, Sewell, New Jersey)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 30 days, and required to requalify by exam as an investment company and variable contracts products representative. Without admitting or denying the allegations, Davis consented to the described sanctions and to the entry of findings that he received \$912 from a public customer as an insurance premium payment. According to the findings, Davis lost or misplaced the funds before he submitted the funds to his member firm, causing potential risks to the customer by the nonpayment of the insurance premium and/or lapse of the customer's automobile insurance.

**Paul Anthony Dobyne (Registered Representative, Davis, California)** was fined \$70,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Dobyne effected the purchase and sale of bonds in the accounts of public customers without their knowledge or consent. Dobyne also failed to respond to NASD requests for information.

**James M. Dowdy (Registered Representative, Atlanta, Georgia)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and required to requalify by exam. Without admitting or denying the allegations, Dowdy consented to the described sanctions and to the entry of findings that he solicited investors who purchased shares of common stock, without giving prior written notice to or receiving written approval from his member firm of his proposed participation in said transactions. The NASD also determined that Dowdy failed to provide prompt written notification to his member firm that he was president of another member firm.

**Nicholas Anthony Fegen (Registered Representative, Waukee, Iowa)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$60,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Fegen consented to the described sanctions and to the entry of findings that he executed purchases of common stocks for the securities accounts of public customers without the knowledge or consent of the customers. The findings also stated that Fegen made guarantees to public customers as an inducement to purchase shares of a common stock.

**Joseph D. Fillmore (Registered Representative, Philadelphia, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was suspended from association with any NASD member in any capacity for one year (six months deemed served) and required to requalify by exam as a general securities representative. Without admitting or denying the allegations, Fillmore consented to the described sanctions and to the entry of findings that he recommended to and effected in a customer's account purchases and sales of securities without having reasonable grounds to believe the transactions were suitable for the customer.

**Thomas A. Fisher, Jr. (Registered Representative, Amityville, New York)** submitted an Offer of Settlement pursuant to which he was fined \$6,000 and suspended from association with any NASD member in any capacity for five days. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he sold and purchased stock in a public customer's account without the customer's prior authorization, knowledge, or consent. The findings also stated that Fisher failed to respond to NASD requests for information.

**Eric Charles Foley (Registered Representative, Chesterfield, Missouri)** was fined \$20,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Foley failed to respond to NASD requests for information and to appear for an on-the-record interview at the NASD.

**Charles E. French (Registered Representative, Metairie, Louisiana)** was fined \$15,000, barred from association with any NASD member in any capacity, and

ordered to pay \$50,000 plus interest in restitution to a public customer. The SEC affirmed the sanctions following appeal of a May 1995 NBCC decision. The sanctions were based on findings that French sold a promissory note for \$50,000 to a public customer without prior written notice to and approval from his member firm. French also induced the same customer to purchase the note by making material misrepresentations of fact while failing to provide adequate disclosure to the customer.

**Marvin I. Friedman (Registered Principal, La Jolla, California)** was fined \$120,000, barred from association with any NASD member in any capacity, and ordered to reimburse his member firm \$815,634.94. The sanctions were based on findings that Friedman received \$990,000 from a public customer to form a limited partnership with the customer, misappropriated \$268,000 of the funds, and failed to deposit into a brokerage account or return \$547,634.94 of the original funds the customer contributed to the partnership. Friedman also failed to respond to NASD requests for information.

**Charles E. Geringer (Associated Person, Elon College, North Carolina)** submitted an Offer of Settlement pursuant to which he was fined \$35,000, barred from association with any NASD member in any capacity, and required to pay \$9,134.18 in restitution to a member firm. Without admitting or denying the allegations, Geringer consented to the described sanctions and to the entry of findings that he received checks totaling \$9,620.18 from public customers with instructions to use the proceeds to pay a life insurance premium and to invest in the customers' IRA accounts. The NASD found that contrary to the customers' instructions, Geringer converted

\$9,134.18 of the proceeds for his own use and benefit without the customers' knowledge or authorization.

**Wyatt T. Giardino (Registered Representative, New Haven, Connecticut)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$50,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Giardino consented to the described sanctions and to the entry of findings that he withheld and misappropriated investor funds totaling \$8,731 that were intended for life insurance premium payments.

**Clive Gitlin (Registered Representative, Tinton Falls, New Jersey)** was fined \$636,356.90, barred from association with any NASD member in any capacity, and ordered to pay \$74,404.67 in restitution to a member firm. The sanctions were based on findings that Gitlin misappropriated for his own use and benefit over \$77,000 in customer funds intended for investment purposes. Furthermore, Gitlin sent a letter to a public customer in which he made false and misleading statements about his qualifications and about his member firm. Gitlin also failed to respond to NASD requests for information.

**Charles F. Hoffman (Registered Representative, Eden, Utah)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$100,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Hoffman consented to the described sanctions and to the entry of findings that he obtained funds from public customers by representing that such funds would be invested for their benefit and instead, he used the funds for his own purposes.

**Christopher Jackson (Registered Representative, St. Petersburg, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$80,000, barred from association with any NASD member in any capacity, and required to pay \$12,000 in restitution to a member firm. Without admitting or denying the allegations, Jackson consented to the described sanctions and to the entry of findings that he received checks totaling \$12,000 from a public customer for real estate investments and contrary to the customer's instructions, Jackson converted the proceeds of the checks for his own use and benefit without the customer's knowledge or authorization. Jackson also failed to respond to an NASD request for information.

**Scott S. Kindig (Registered Representative, York, Pennsylvania)** submitted an Offer of Settlement pursuant to which he was fined \$5,000 and barred from being a person associated with a member or an associated person of a member. Without admitting or denying the allegations, Kindig consented to the described sanctions and to the entry of findings that he received premium payments totaling \$252.50 from a policyholder that he failed to remit to his member firm.

**Robert M. Leo (Registered Representative, New York, New York)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Leo opened and signed customer names to Client Agreements without the authorization of the customers and caused the agreements to be filed in his member firm's books and records. Leo also failed to respond to NASD requests for information.

**Curtis O. Minnis, Sr. (Registered Representative, Bronx, New York)**

was fined \$29,500, barred from association with any NASD member in any capacity, and required to pay \$5,900 in restitution to a customer. The sanctions were based on findings that Minnis received an \$8,080 check from a public customer as a premium payment on a variable life insurance policy, deposited the check into his personal bank account, made \$2,180 in payments toward the customer's premium, and used the remaining \$5,900 for his own use and benefit.

**James P. Minsky (Registered Representative, New York, New York)** was fined \$50,000, barred from association with any NASD member in any capacity, and required to pay restitution to public customers. The sanctions were based on findings that Minsky effected purchases of shares of stock in the accounts of public customers without their knowledge, consent, or authorization. Minsky also failed to execute a customer's order to sell shares of stock.

**Michael H. Novick (Registered Principal, Boulder, Colorado)** was fined \$52,754.27 and barred from association with any NASD member in any capacity. The SEC affirmed the sanctions following appeal of a December 1995 NBCC decision. The sanctions were based on findings that a former member firm, acting through Novick, effected principal sales of common stocks to public customers at unfair and unreasonable prices. The markups on these transactions ranged from 6 to 97.2 percent over the prevailing market price.

**Kelly J. O'Connor (Registered Representative, Bozeman, Montana)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000, barred from association with any NASD member in any capacity, and required to pay restitution. Without admitting or denying the allegations,

O'Connor consented to the described sanctions and to the entry of findings that he sold shares in his private corporation to investors and failed to provide prior written notice to his member firm describing in detail the proposed transactions, his proposed role therein, and whether he would receive selling compensation in connection with the transactions.

**David L. Parker (Registered Representative, Plano, Texas)** submitted an Offer of Settlement pursuant to which he was suspended from association with any NASD member in any capacity for 45 days, and required to requalify by exam. Without admitting or denying the allegations, Parker consented to the described sanction and to the entry of findings that he executed unauthorized trades in accounts of public customers. The findings also stated that Parker drafted and submitted a letter to a customer in which he guaranteed the customer against losses.

**Donald G. Paterno (Registered Representative, Englishtown, New Jersey)** was fined \$97,500, barred from association with any NASD member in any capacity, and ordered to pay \$19,500 in restitution to a member firm. The sanctions were based on findings that Paterno forged the signature of a public customer to documents or used a form or forms previously signed in blank by the customer and submitted them to his member firm requesting checks totaling \$19,500 to be issued as partial withdrawals from the customer's annuity, without the customer's knowledge or consent. Paterno thereafter forged the customer's name to the checks, endorsed them, and converted the funds for his own use and benefit.

**William J. Reininger (Registered Representative, Agoura, California)** and **Peter Caraveo, Jr. (Registered Representative, Tarzana,**

**California)**. Reininger was fined \$20,000 and barred from association with any NASD member in any capacity. Caraveo was fined \$2,000 and suspended from association with any NASD member in any capacity for one year. The sanctions were based on findings that Reininger and Caraveo failed to respond to NASD requests for information.

**David M. Rodriguez (Registered Representative, Charlotte, North Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Rodriguez consented to the described sanctions and to the entry of findings that he signed the name of a public customer on forms that initiated loans from a life insurance policy without the customer's prior knowledge or approval.

**Michael D. Sachon (Registered Representative, Nesquehoning, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$20,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sachon consented to the described sanctions and to the entry of findings that he forged a fund withdrawal form requesting the withdrawal of funds from an insurance policy owned by a public customer without the customer's knowledge or authorization. The findings also stated that Sachon obtained possession of checks issued to a public customer, forged the customer's signature on the checks, caused the checks to be applied to payment of a premium on a separate insurance policy, and negotiated one of the checks without the customer's knowledge or consent.

**David J. Salica (Associated Person, Brooklyn, New York)** was fined \$50,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Salica arranged to have an imposter take the Series 62 exam for him. Salica also failed to respond to NASD requests for information.

**Edward R. Schnable (Registered Principal, Souderton, Pennsylvania)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$40,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Schnable consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without providing prior written notice to his member firm of the transactions and his proposed role therein. The findings also stated that Schnable received funds from public customers, failed to invest the full amount of each person's funds in securities, and used a portion of the funds for personal purposes and/or in his business activities. Furthermore, the NASD determined that Schnable solicited public customers to execute a document that falsely reflected that the funds they had given him to invest on their behalf constituted a loan. The NASD also found that Schnable failed to respond to NASD requests for information and failed to notify his member firm in writing that he intended to open or in fact had opened a securities account at another member firm.

**Howard D. Shapiro (Registered Representative, Tallahassee, Florida)** submitted an Offer of Settlement pursuant to which he was fined \$5,000, suspended from association with any NASD member in any capacity for 10 business days, and further suspended until he requalifies by exam. Without admitting or deny-



ing the allegations, Shapiro consented to the described sanctions and to the entry of findings that he forged the signature of a public customer on an insurance form. The findings also stated that Shapiro caused an unregistered assistant under his direction to impersonate a public customer to an insurance company without the knowledge or authorization of the customer.

**Robert J. Silberman (Registered Representative, Jersey City, New Jersey)** was fined \$40,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Silberman engaged in outside business activities and failed to provide prior written notice to his member firm describing the transaction, his proposed role therein, and whether he was receiving compensation for the transaction. Silberman also failed to respond to NASD requests for information.

**Michael Somers (Associated Person, New York, New York)** was fined \$30,000 and barred from association with any NASD member in any capacity. The sanctions were based on findings that during the Series 7 exam, Somers possessed and used certain typewritten materials containing information relevant to the subject matter of the exam. Somers also failed to respond to NASD requests for information.

**Kenneth R. Starnes (Registered Representative, Taylors, South Carolina)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$250,000 and barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Starnes consented to the described sanctions and to the entry of findings that he signed the

names of public customers to wire transfer instructions and wired \$20,000 from the joint account of the customers without their knowledge or authorization. The findings also stated that Starnes received a \$350,000 check from a public customer for deposit into a securities account, deposited the check in the account of a company he owned, opened a securities account at his member firm for the customer with a deposit of \$120,000, and converted the remainder of the funds for his own use and benefit. Furthermore, the NASD determined that Starnes engaged in securities transactions outside the scope of his employment with his member firm and without prior written notification to or written approval from his member firm. The NASD also found that Starnes failed to respond to an NASD request for information.

**John E. Wilson (Registered Representative, St. Joseph, Missouri)** was fined \$83,500 and barred from association with any NASD member in any capacity. The sanctions were based on findings that Wilson received \$25,192.50 from a public customer for the purchase of a variable annuity and to be applied to life insurance premiums. Wilson did not purchase the annuity or apply the monies to the premiums and instead, misused and converted the funds for his own use and benefit without the knowledge or consent of the customer. Wilson also failed to respond to NASD requests for information.

#### **Individuals Fined**

**Forrest Todd Keady (Registered Representative, Hillsboro, Oregon)** submitted an Offer of Settlement pursuant to which he was fined \$15,000. Without admitting or denying the allegations, Keady consented to the described sanction and to the entry of

findings that he participated in outside business activities and failed to provide notice to his member firm of such activities. Keady also failed to respond timely to NASD requests for information.

**Richard Stephen Lombardi (Registered Representative, Barrington, Illinois)** submitted a Letter of Acceptance, Waiver and Consent pursuant to which he was fined \$25,000 and required to pay \$33,944 in restitution to a member firm. Without admitting or denying the allegations, Lombardi consented to the described sanctions and to the entry of findings that he submitted to his member firm two applications for the purchase of securities on behalf of a public customer without the customer's knowledge or consent. The findings also stated that Lombardi signed the customer's name to applications and to other documents relating to the applications without the customer's knowledge or consent.

**Robert Nelson Rankin (Registered Representative, Seattle, Washington)** submitted an Offer of Settlement pursuant to which he was fined \$29,200. Without admitting or denying the allegations, Rankin consented to the described sanction and to the entry of findings that he exercised discretion granted pursuant to oral authority and executed transactions in the account of a public customer without obtaining prior written discretionary authorization and without written acceptance of such account by his member firm. The findings also stated that Rankin recommended purchase and sales transactions without having reasonable grounds for believing that such recommendations were suitable for the customer in view of the frequency of the transactions, the customer's financial situation, circumstances, objectives, and needs.

**Firms Expelled For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**  
**Athena Capital Corporation,**  
Dallas, Texas

**Vision Investment Group, Inc.,**  
Williamsville, New York

**Firms Suspended**

The following firms were suspended from membership in the NASD for failure to comply with formal written requests to submit financial information to the NASD. The actions were based on the provisions of NASD Rule 8210 (formerly Article IV, Section 5 of the NASD Rules of Fair Practice) and Article VII, Section 2 of the NASD By-Laws. The date the suspension commenced is listed after each entry. If the firm has complied with the requests for information, the listing also includes the date the suspension concluded.

**M.C. Financial Corporation,**  
La Jolla, California (October 4, 1996)

**United Daniels Capital,** Queen  
Village, New York (October 4, 1996)

**Individuals Whose Registrations Were Revoked For Failure To Pay Fines, Costs, And/Or Provide Proof Of Restitution In Connection With Violations**  
**Roland Acevedo,** New York,  
New York

**Kenneth E. Baum,** San Juan  
Capistrano, California

**Eric J. Brunelli,** Los Angeles,  
California

**Jesse M. Chase, Jr.,** Jackson,  
Mississippi

**Keith L. DaSanto,** New York,  
New York

**Robert M. Dickerson,** San  
Francisco, California

**Donnie M. Frith,** Champaign,  
Illinois

**Michael P. Galterio,** Wantagh,  
New York

**William F. Giles,** Omaha, Nebraska

**Michael L. Grayson,** Thousand  
Oaks, California

**Kraig P. Hanadel,** Beverly Hills,  
California

**Diana Marinello-Park,** Los  
Angeles, California

**Owen C. Massey,** Nashville,  
Tennessee

**Frank W. Teresi, Jr.,** Buffalo,  
New York

**Robert D. White,** Excelsior,  
Minnesota

**Julia Woodward,** Dallas, Texas

**Individuals Whose Registrations Were Canceled/Suspended Pursuant To NASD Rule 9622 (Formerly Article VI, Section 2 Of The NASD Code Of Procedures) For Failure To Pay Arbitration Awards**

**Philip Eitman,** New York, New  
York

**Gregory Knafelc,** Greenbay,  
Wisconsin



# SPECIAL NASD NOTICE TO MEMBERS 96-80

## SEC Requests Comments On Proposed Amendments To SEC Rules 17a-3 And 17a-4

### Suggested Routing

- Senior Management
- Advertising
- Corporate Finance
- Government Securities
- Institutional
- Internal Audit
- Legal & Compliance
- Municipal
- Mutual Fund
- Operations
- Options
- Registration
- Research
- Syndicate
- Systems
- Trading
- Training

### Executive Summary

The Securities and Exchange Commission (SEC) is requesting comments on proposed amendments to the broker/dealer books and records rules. The proposed amendments clarify, modify, and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specify certain types of books and records that broker/dealers must make available in their local offices.

The SEC is proposing these amendments in response to concerns raised by members of the North American Securities Administrators Association (NASAA). The proposed amendments are intended to obligate broker/dealers to make and retain additional records that would be valuable to state regulators during examination and enforcement proceedings.

Comments regarding this Notice should be submitted by December 27, 1996, in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Stop 6-9, Washington, DC 20549. Comments may also be submitted electronically to the following e-mail address: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). All comment letters should refer to File No. S7-27-96.

Questions regarding this Notice may be directed to Samuel Luque, Jr., Compliance Department, NASD Regulation, Inc., at (202) 728-8472, or Susan DeMando, NASD Regulation, Inc., Compliance Department, at (202) 728-8411.

### Explanation Of Changes

Following is an explanation of the proposed books and records rule amendments. A more detailed dis-

cussion of these changes can be found in the October 28, 1996, *Federal Register* which follows this Notice.

The proposed amendments to Rule 17a-3 will require broker/dealers to generate local office blotters, to record supplemental information on brokerage order memoranda, to create customer account forms, and to maintain additional records concerning associated persons, customer complaints, and exceptional numerical occurrences.

The proposed amendments to Rule 17a-4 will require broker/dealers to preserve additional types of records, including advertising and marketing materials, registrations and licenses, audit and examination reports, records concerning recommended securities, and manuals relating to compliance, supervision, and procedures.

In addition, Rule 17a-4 will be amended to clarify and modify the SEC's existing requirements concerning preservation of certain correspondence and contracts. Finally, the proposed amendments to Rule 17a-4 will supplement the existing standards concerning the organization of books and records, will require broker/dealers to designate a principal to be responsible for books and records compliance, and will require broker/dealers to make certain records available in each of their local offices.

### Blotters And Memoranda

Rule 17a-3(a)(1) presently specifies the SEC's requirements concerning records of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. The proposed amendment to Rule 17a-3(a)(1) will add a requirement that records of purchases and sales of securities for customer

accounts be accessible with respect to the activities of each local office.

Existing requirements of Rule 17a-3(a)(6) specify that brokerage memoranda include information concerning the terms and conditions of the order, the account for which the order is entered, the times of entry and execution, and the execution price. The proposed amendment to Rule 17a-3(a)(6) adds a requirement that each memorandum indicate which associated person entered the order and also indicate whether the order was solicited or unsolicited.

### **Additional Records Concerning Associated Persons**

Rule 17a-3(a)(12) currently specifies the types of records that a broker/dealer must maintain with respect to each of its associated persons. In addition to basic background information, the existing rule requires a broker/dealer to maintain records of each associated person's employment and disciplinary history.

The proposed amendments will add new Rule 17a-3(a)(20) which designates several supplementary types of associated person records that a broker/dealer must maintain. These new records include registration and licensing materials, contracts or agreements between associated persons and the broker/dealer, compensation arrangements, customer complaint information, and client trading records for each associated person.

In addition, proposed Rule 17a-3(a)(21) will add a requirement that broker/dealers maintain a list identifying each of their associated persons and designating the local office where each associated person conducts the greatest portion of his or her business. Proposed Rule 17a-3(a)(21), in conjunction with proposed Rule 17a-4(l)(1), will require all records concerning each associat-

ed person to be stored where such associated person conducts most of his or her business.

### **Account Forms**

Proposed Rule 17a-3(a)(16) creates a new requirement that broker/dealers maintain an account form for each customer account. The required account form will include basic identification and background information about a customer, as well as a designation of the customer's investment objective(s) from a list of defined objectives and a specification of the approximate percentage of investment capital that the customer would like to allocate to speculative investments. (As the proposed amendments do not include a definition of the term *speculation*, the SEC is expressly requesting comments concerning whether a definition should be provided, and suggestions on possible definitions.) In addition, the associated person responsible for each account and a principal of the broker/dealer must sign or initial each account form to indicate approval of the contents.

Proposed Rule 17a-3(a)(16) will apply to both new and existing customer accounts. The SEC recognizes that it will be difficult for broker/dealers to prepare the required account forms for existing customers immediately upon adoption of the new Rule. Accordingly, the SEC initially proposes a one-year period from the date of adoption of the proposed Rule as an appropriate time frame for broker/dealers to comply with respect to existing customer accounts. The SEC is expressly soliciting comments concerning the feasibility of this phase-in period.

Proposed Rule 17a-3(a)(16) also will require that the material contents of a new or changed customer account form be sent to the customer for confirmation. To minimize burdens and

allow maximum flexibility for broker/dealers who send communications to their customers from a central location, the proposed Rule will permit a broker/dealer to send a customer an alternate document which contains the material contents of the account form, rather than a copy of the account form itself. The signatures or initials of the associated person and principal of the broker/dealer do not have to be included on any alternate document sent to a customer for confirmation.

As a customer's financial situation and investment preferences will vary over time, proposed Rule 17a-3(a)(16) includes a one-year updating requirement with respect to the investment objectives designated on each customer's account form. The SEC is aware of the potential burdens presented by the annual updating requirement. Accordingly, the SEC is expressly soliciting suggestions of less burdensome alternatives that would nevertheless provide broker/dealers and regulators with a reasonably current indication of each customer's investment objectives.

Finally, the SEC recognizes that the nature of the businesses of certain types of broker/dealers may render unnecessary the account form requirements of proposed Rule 17a-3(a)(16). Therefore, the SEC is expressly soliciting suggested standards for the exemption of categories of broker/dealers from the proposed account form requirements.

### **Complaints**

Rules 17a-3 and 17a-4 do not currently contain any express requirements concerning oral or written customer complaints that are delivered to a broker/dealer. The proposed amendments add a new Rule 17a-3(a)(17), which will require broker/dealers to maintain files of written materials relating to customer

complaints. Note that this is already required by NASD Rule 3110 (formerly Article III, Section 21 of the NASD Rules of Fair Practice). In addition, proposed Rule 17a-3(a)(17) will require broker/dealers to make and keep written memoranda of oral customer complaints alleging certain types of fraud and theft.<sup>1</sup>

In addition, proposed Rule 17a-3(a)(17) requires broker/dealers to provide routine notification in account statements that customers should set their complaints in writing in order to establish an independent record of the complaint.

Proposed Rule 17a-3(a)(18) would require records of all commissions, overrides, and other compensation (including any bonus) identified by each transaction. Information includes the person or persons receiving the compensation, the customer account number, the date the transaction occurred, the amount of compensation, and the name of the security involved. To the extent that compensation is based on factors other than remuneration per trade, such as a total production system or bonus system, the member must be able to demonstrate and to document, upon request, the method by which the compensation paid was earned.

Proposed Rule 17a-3(a)(19) would require activity reports to identify exceptional numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or canceled transactions, for management's attention and information. The systems and criteria used to generate such activity reports shall be determined by each member, broker or dealer, as long as the system and its parameters are reasonably designed to monitor levels of activity in accounts that may warrant further review and analysis by management.<sup>2</sup>

The proposed amendments will also add several new items to the record-preservation requirements of Rule 17a-4. The new types of records include copies of advertisements and marketing materials, information relating to underwritten or recommended securities, registrations and licenses, audit and examination reports, and manuals relating to compliance, supervision, and procedures.

Rules 17a-4(a) and 17a-4(b) currently require broker/dealers to preserve specified types of records for six and three years, respectively. Records pertaining to proposed Rules 17a-3(a)(17), (19), and (21) would be retained for six years pursuant to 17a-4(a) and records pertaining to proposed Rule 17a-3(a)(18) would be retained for three years pursuant to Rule 17a-4(b). Changes to 17a-4 would require retention of records under (1) proposed Rule 17a-3(a)(16) for not less than six years after the close of a customer's account, while clarifying language regarding information relating to a recommendation of a security by a member, and (2) proposed Rules 17a-3(a)(12) and (a)(20) for at least three years after the "associated person" has terminated his employment and any other connection with the member. Finally, a revision to Rule 17a-4 would require preservation by the member of all Forms BD, BDW, amendments to these forms, licenses and other documentation showing registrations, and organizational documents for the life of the enterprise.

Amendments to Rule 17a-4(j) will require that requested records must be produced immediately when the records are located in the office where the request is made and within three business days if the requested records are located offsite.

Proposed Rule 17a-4(k) will require each broker/dealer to designate a principal for purposes of the books

and records rules. The designated principal's responsibilities include indicating approval of records such as outgoing correspondence and marketing materials.

Proposed Rule 17a-4(l) will adopt a new requirement that broker/dealers make available certain records in each of their local offices. Required records include certain blotters of the local office's activities, memoranda of brokerage orders, complaint and correspondence files, associated person records, and customer account forms.

In order to accommodate centralized electronic record storage systems used by some broker/dealers and to minimize the overall burden of the local office requirements, proposed Rule 17a-4(l) specifies that the ability to display the necessary records electronically in a local office and immediately produce printed copies will satisfy the Rule. The Rule also limits the local office record availability period to three years, and single-agent offices may comply if the required local office records are made available in certain other offices of the broker/dealer.

The last section of the *Federal Register*, included with this Notice, contains an Exhibit A, Model State Regulation Governing Access To Records Required To Be Kept By Broker/Dealers. This model was prepared by NASAA.

<sup>1</sup> Proposed Rule 17a-3(a)(17) expressly specifies that the requirement to prepare a written memorandum concerning certain oral complaints does not convert the complaint into a reportable event for purposes of Form U-4 or other reporting requirements.

<sup>2</sup> Actual copies of activity reports need not be retained by a member if the member electronically stores the data necessary to promptly create or recreate the required activity reports upon request by representatives of a securities regulatory authority.

**SECURITIES AND EXCHANGE  
COMMISSION****17 CFR Part 240**

[Release No. 34-37850; File No. S7-27-96]

RIN 3235-AH04

**Books and Records Requirements for  
Brokers and Dealers Under the  
Securities Exchange Act of 1934****AGENCY:** Securities and Exchange  
Commission.**ACTION:** Proposed rule.

**SUMMARY:** The Commission is proposing for comment amendments to the broker-dealer books and records rules. The proposed amendments clarify, modify, and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. In addition, the proposed amendments specify certain types of books and records that broker-dealers must make available in their local offices. The Commission is proposing amendments to the books and records rules in response to certain concerns raised by members of the North American Securities Administrators Association ("NASAA"). The proposed amendments are intended to obligate broker-dealers to make and retain certain additional records that would be valuable to state regulators during examination and enforcement proceedings.

**DATES:** Comments must be received on or before December 27, 1996.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6-9, Washington, DC 20549. Comments may also be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-27-96. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:** Michael A. Macchiaroli, (202) 942-0131; Peter R. Geraghty, (202) 942-0177; or Matthew G. McGuire, (202) 942-7103; Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION****I. Introduction**

Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act.<sup>1</sup> Rules 17a-3 and 17a-4 under the Exchange Act specify minimum requirements with respect to the records that must be made by broker-dealers as well as the periods during which such records and other documents relating to the broker-dealer's business must be preserved.<sup>2</sup>

In 1993, a NASAA Committee ("NASAA Committee") commenced work on a model state regulation to supplement the books and records requirements set forth in Rules 17a-3 and 17a-4. The NASAA Committee observed that the existing Commission books and records requirements do not obligate broker-dealers to make and retain certain types of records that would be valuable to state regulators during examination and enforcement proceedings. In addition, the NASAA Committee noted that several states had commenced independent efforts to develop supplemental books and records requirements and expressed concern about the potential difficulties that would result if inconsistent books and records requirements emerged from these independent efforts.

The NASAA Committee determined that supplementary rules should be required with respect to purchase and sale documentation, registered representatives, customer investment objectives, customer complaints, exceptional or unusual numerical occurrences, background information on underwritten or recommended securities, communications, contracts and agreements, marketing materials, and licenses. In addition, the NASAA Committee determined that supplemental requirements should specify the types of records that broker-dealers must make available in each of their local offices and should contain requirements obligating broker-dealers to cooperate with inspections and investigations by state regulators. The NASAA Committee released a final draft of its model regulation ("NASAA Model") in August 1995, which it presented for membership approval at NASAA's October 1995 meeting.

At the October meeting, the Commission Chairman stated that supplemental state books and records requirements would impose a substantial burden on broker-dealers because of the likelihood that each state's requirements would not be consistent with those adopted by other states. The Chairman further noted that modification of the Commission's books and records rules would be a considerably less burdensome means of accomplishing the NASAA members' objectives than would be the development of supplemental state requirements. The NASAA membership thereafter voted to defer taking further action with respect to the NASAA Model in order to give the Commission an opportunity to develop appropriate amendments to its books and records rules.<sup>3</sup>

**II. Proposed Amendments and Discussion**

In preparing the proposed amendments to Rules 17a-3 and 17a-4, Commission staff members met with the NASAA Committee on several occasions to discuss the specific concerns of state securities regulators. The NASAA Committee advised that state examinations of broker-dealers are frequently hindered by the absence of relevant records in local offices, by long delays in producing required records from a central location, and by poorly organized records. In addition, the NASAA Committee reported that certain provisions of the Commission's current books and records rules have been interpreted differently by broker-dealers, regulators, hearing officers, and courts, and that clarification of the requirements of such provisions would assist regulatory enforcement initiatives. Finally, the NASAA Committee indicated that requiring broker-dealers to maintain certain additional types of books and records would facilitate state regulators' efforts to monitor and control the broker-dealer industry and would increase levels of customer protection.

In general, the proposed amendments to Rule 17a-3 will require broker-dealers to generate local office blotters, to record supplemental information on brokerage order memoranda, to create customer account forms, and to maintain additional records concerning associated persons, customer complaints, and exceptional numerical occurrences. The proposed amendments

to Rule 17a-4 will require broker-dealers to preserve certain additional types of records, including advertising and marketing materials, registrations and licenses, audit and examination reports, records concerning recommended securities, and manuals relating to compliance, supervision, and procedures. In addition, the proposed amendments to Rule 17a-4 will clarify and modify the Commission's existing requirements concerning preservation of certain correspondence and contracts. Finally, the proposed amendments to Rule 17a-4 will supplement the existing standards concerning the organization of books and records, will require broker-dealers to designate a principal to be responsible for books and records compliance, and will require broker-dealers to make certain records available in each of their local offices. A discussion of the proposed amendments follows.

**A. Blotters and Memoranda**

Rule 17a-3(a)(1) specifies the Commission's current requirements concerning records of purchases and sales of securities, receipts and deliveries of securities, and receipts and disbursements of cash. The proposed amendments will add a requirement that records of purchases and sales of securities for customer accounts be accessible with respect to the activities of each local office.

The proposed amendments also specify certain additional information that broker-dealers will be required to include in the memoranda of brokerage orders currently required by Rule 17a-3(a)(6). Existing requirements specify that brokerage memoranda include information concerning the terms and conditions of the order, the account for which the order is entered, the times of entry and execution, and the execution price. The proposed amendments add requirements that each memorandum indicate which associated person entered the order and also indicate whether the order was solicited or unsolicited.

**B. Additional Records Concerning Associated Persons**

Rule 17a-3(a)(12) currently specifies the types of records that a broker-dealer must maintain with respect to each of its associated persons. In addition to basic background information, the existing rule requires a broker-dealer to maintain records of each associated person's employment and disciplinary history. The proposed amendments will add a new Rule 17a-3(a)(20), which designates several supplementary types of associated person records that a

<sup>1</sup> 15 U.S.C. 78q(a)(1).

<sup>2</sup> 17 CFR 240.17a-3 and 240.17a-4.

<sup>3</sup> The Commission notes that the National Securities Markets Improvement Act of 1996, signed by the President on October 11, 1996, contains a provision that prohibits states from adopting supplement books and records requirements.



broker-dealer must maintain. These new records include registration and licensing materials, agreements between associated persons and the broker-dealer, customer complaint information, and client trading records for each associated person. It is the view of the Commission that many of these supplemental records consist of documents that broker-dealers would routinely keep in the course of operating their businesses. However, the NASAA Committee has indicated that a statutory specification of the precise records that broker-dealers must maintain with respect to associated persons will facilitate inspection and enforcement actions by regulatory authorities.

In addition, proposed Rule 17a-3(a)(21) will add a requirement that broker-dealers maintain a list identifying each of their associated persons and designating the local office where each associated person conducts the greatest portion of his or her business. The NASAA Committee has indicated that state investigations are sometimes delayed because broker-dealers store associated person records in several offices. Proposed Rule 17a-3(a)(21), in conjunction with proposed Rule 17a-4(l)(1), is intended to address this issue. In combination, these rules will require all records concerning each associated person to be stored where such associated person conducts most of his or her business.

#### C. Account Forms

Proposed Rule 17a-3(a)(16) creates a new Commission requirement that broker-dealers maintain an account form for each customer account. The required account form will include basic identification and background information about a customer, as well as a designation of the customer's investment objective(s) and a specification of the approximate percentage of investment capital that the customer would like to allocate to speculative investments. The associated person responsible for each account and a principal of the broker-dealer must sign or initial each account form to indicate approval of the contents. It is the understanding of the Commission that most broker-dealers currently collect and maintain records of most of the information that they will be required to include on the proposed account forms.

Proposed Rule 17a-3(a)(16) will apply with respect to both new and existing customer accounts. The Commission recognizes that it will be difficult as a practical matter for broker-dealers to prepare the required account forms for existing customers immediately upon

adoption of the new rule. Accordingly, the Commission initially proposes a one-year period from the date of adoption of the proposed rule as an appropriate time frame for broker-dealers to comply with respect to existing customer accounts. The Commission is expressly soliciting comments concerning the feasibility of this phase-in period.

Proposed Rule 17a-3(a)(16) also will require that the material contents of a new or changed customer account form be sent to the customer for confirmation. In order to minimize burdens and allow maximum flexibility for broker-dealers who send communications to their customers from a central location, the proposed rule will permit a broker-dealer to send a customer an alternate document containing a copy of the material contents of the account form rather than a copy of the account form itself. In addition, the proposed rule will not require that the signatures or initials of the associated person and principal of the broker-dealer be included on any alternate document sent to a customer for confirmation.

Proposed Rule 17a-3(a)(16) will require a designation on account forms of each customer's investment objective(s) from a list of defined objectives. In instances where a customer designates multiple objectives, one of which includes speculation, the proposed rule will require a specification of the approximate percentage or range of percentages of investment capital to be dedicated to speculation. The proposed amendments do not include a definition of the term "speculation." Accordingly, the Commission is expressly requesting comments concerning whether such a definition should be provided and suggesting possible definitions.

The Commission recognizes that the percentage of speculative investments in a customer's portfolio could change as a result of numerous factors outside of a broker-dealer's control, including changes in the relative market prices of securities, changes in the characterizations of specific securities (e.g., non-speculative to speculative), or changes in a portfolio resulting from customer actions such as adding to or withdrawing funds from the account. Accordingly, broker-dealers might interpret the proposed rule as implying an obligation to monitor all customer accounts for adherence to the designated speculative percentage or might be concerned that the designated speculative percentage provided on the customer account form will serve as dispositive evidence of a broker-dealer's failure to fulfill its suitability

obligations if at any time a customer's speculative holdings exceed such percentage.

In response, the Commission notes that the requirements to designate a speculative percentage are not intended to create any monitoring obligation. In addition, while the designated percentage will be useful in assessing the suitability of recommendations made by a broker-dealer, it is only a factor to be considered in determining whether a broker-dealer has fulfilled its suitability obligations to a particular customer.

The Commission recognizes that a customer's financial situation and investment preferences will vary over time. In order to ensure that the required account forms have enduring value as an indicator of customer choices, proposed Rule 17a-3(a)(16) includes a one-year updating requirement with respect to the investment objectives designated on each customer's account form. The Commission is aware of the potential burdens presented by the annual updating requirement. Accordingly, the Commission is expressly soliciting suggestions of less burdensome alternatives that would nevertheless provide broker-dealers and regulators with a reasonably current indication of each customer's investment objectives.

The Commission also recognizes that the nature of the businesses of certain types of broker-dealers may render unnecessary the account form requirements of proposed Rule 17a-3(a)(16). Therefore, the Commission is expressly soliciting suggested standards for the exemption of categories of broker-dealers from the proposed account form requirements.

#### D. Complaints

Rules 17a-3 and 17a-4 do not currently contain any express requirements concerning oral or written customer complaints that are delivered to a broker-dealer. The proposed amendments add a new Rule 17a-3(a)(17), which will require broker-dealers to maintain files of written materials relating to customer complaints. In addition, proposed Rule 17a-3(a)(17) will require broker-dealers to make and keep written memoranda of oral customer complaints alleging certain types of fraud and theft.

In drafting the Rule 17a-3(a)(17) memoranda requirement, the Commission attempted to respond to the NASAA Committee's view that such memoranda would be of considerable value to state regulators in their efforts to identify particularly problematic registered representatives and broker-

dealer offices. However, in order to avoid unnecessary burdens, the rule does not require a written memorandum where an oral customer complaint is the result of customer misunderstanding or misinterpretation and the complaint is quickly and completely explained or resolved to the customer's satisfaction. This exception to the written memorandum requirement specifies that a customer who makes such an oral complaint must be advised to send a written complaint if the customer remains unsatisfied with the broker-dealer's explanation or has further concerns regarding the matter.

Proposed Rule 17a-3(a)(17) expressly specifies that the requirement to prepare a written memorandum concerning certain oral complaints does not convert the complaint into a reportable event for purposes of Form U-4 or other reporting requirements. In addition, proposed Rule 17a-3(a)(17) requires broker-dealers to provide routine notification in account statements that customers should set their complaints in writing in order to establish an independent record of the complaint. This final requirement is intended to address the NASAA Committee's concern that some broker-dealers have adopted a practice of discouraging their customers from delivering written complaints.

#### *E. Other Required Records*

In addition to the records described in the preceding paragraphs, the proposed amendments to Rule 17a-3 will require broker-dealers to create commission and compensation records and activity reports of unusual numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions. The proposed amendments will also modify the definition of "associated person" in Rule 17a-3(a)(12)(ii) to codify an existing interpretation of such term.

The proposed amendments will add several new items to the record-preservation requirements of Rule 17a-4.<sup>4</sup> The new types of records include copies of advertisements and marketing materials, information relating to underwritten or recommended securities, registrations and licenses, audit and examination reports, and manuals relating to compliance, supervision, and procedures. Furthermore, the proposed amendments will augment and clarify the existing record maintenance standards set forth

in Rule 17a-4(b)(4) with respect to communications and in Rule 17a-4(b)(7) with respect to written agreements.

#### *F. Record Retention Periods*

Rules 17a-4(a) and 17a-4(b) currently require broker-dealers to preserve specified types of records for six and three years, respectively. In addition, Rule 17a-4(a) records must be maintained for the first two years in an "easily accessible place," while Rule 17a-4(b) records must be maintained for the first two years in an "accessible place."

The NASAA Committee has indicated that the designated record retention periods in Rules 17a-4(a) and 17a-4(b) do not provide clear standards to state regulators concerning record accessibility requirements. In addition, the Commission believes that advances in record-storage technologies and decreased reliance on paper records by broker-dealers have minimized the relevance of the provisions in such rules that vary the accessibility requirements during the designated record retention periods. Accordingly, the proposed amendments modify Rules 17a-4(a) and 17a-4(b) to require broker-dealers to maintain the specified records in an "easily accessible place" for the entire retention period. The Commission expressly requests comments concerning any burdens that might be imposed on broker-dealers by this proposed modification.

#### *G. Record Form and Access*

The NASAA Committee has advised the Commission that some inspections and investigations of broker-dealers are hindered by delays in producing records or by poorly maintained records. While the Commission is sensitive to the importance of this issue, the Commission and members of the NASAA Committee share the view that obligations to cooperate with inspections and investigations by state securities authorities should be addressed primarily through state regulations rather than through the Commission's books and records rules. Accordingly, the NASAA Committee has prepared a model production and access rule attached as Exhibit A to this document. The model production and access rule sets cooperation standards for broker-dealers and references Rules 17a-3 and 17a-4 with respect to substantive record-keeping requirements. It is our understanding that the NASAA Committee intends to submit this model production and access rule to the NASAA membership for adoption.

The proposed amendments will modify and augment the Commission's current record production and organization requirements set forth in Rule 17a-4(j) in order to make these requirements consistent with correlating provisions in NASAA's proposed model production and access rule. Similarly, the proposed amendments establish a definition for the term "promptly" in Rule 17a-4(j) that is consistent with the document production obligations in NASAA's proposed model production and access rule. The definition specifies that requested records must be produced immediately when the records are located in the office where the request is made and within three business days if the requested records are not located in such office.

#### *H. Local Office Access; Designation of Principal*

Proposed Rule 17a-4(l) will adopt a new requirement that broker-dealers make available certain records in each of their local offices. This proposed requirement was developed to address the NASAA Committee's concern that storage of records in distant locations can be an impediment to some inspections and investigations. The records that must be available in local offices consist of items that the NASAA Committee believes are essential to conducting effective inspections. Required records include certain blotters of the local office's activities, memoranda of brokerage orders, complaint and correspondence files, associated person records, and customer account forms. In order to accommodate centralized electronic record storage systems used by some broker-dealers and to minimize the overall burden of the local office requirements, proposed Rule 17a-4(l) specifies that the ability to display the necessary records electronically in a local office and immediately produce printed copies will satisfy the rule. The Commission also attempted to minimize the burden of this proposed rule by limiting the local office record availability period to three years. In addition, broker-dealers can comply with the proposed rule's requirements with respect to single-agent offices if the required local office records are made available in certain other offices of the broker-dealer.

Finally, proposed Rule 17a-4(k) will require each broker-dealer to designate a principal for purposes of the books and records rules. The designated principal's responsibilities include indicating approval of records such as outgoing correspondence and marketing materials.

<sup>4</sup> In addition, the proposed amendments include a modification of Rule 17a-4(b)(8) that corrects a typographical error.

### III. Request for Comments

The Commission invites interested persons to submit written comments on the proposed amendments. As noted above, the Commission specifically requests comments from broker-dealers on the feasibility of the proposed one-year phase-in period with respect to the account form requirement for existing customers, on possible definitions for the term "speculation," on possible alternatives to the annual account form investment objective updating requirement, on the desirability of exempting certain categories of broker-dealers from the proposed account form requirement, and on the desirability of modifying the record accessibility requirements of Rules 17a-4(a) and 17a-4(b).

### IV. Costs and Benefits of the Proposed Amendments and Their Effects on Competition

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed amendments to Rules 17a-3 and 17a-4, commenters are requested to provide analyses and data relating to costs and benefits associated with any of the proposals herein. The Commission preliminarily believes that compliance burdens presented by the proposed amendments will not be substantial and that the proposed amendments will significantly increase levels of customer protection.

In addition, section 23(a) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against regulatory benefits gained in terms of furthering the purposes of the Exchange Act.<sup>5</sup> The Commission preliminarily has considered the proposed amendments to Rules 17a-3 and 17a-4 in light of the standards cited in section 23(a)(2) and believes preliminarily that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act, in that any burden imposed would be less than that imposed by individual, and possibly divergent, state regulations. The Commission solicits commenters' views regarding the effects of the proposed rules on competition.

### V. Summary of Initial Regulatory Flexibility Analysis

In accordance with 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis

("IRFA") concerning the proposed amendments. The IRFA notes that the purpose of the proposed amendments is to facilitate the efforts of federal and state agencies in protecting investors and indicates that the Commission believes that the proposed amendments are necessary to ensure that registered broker-dealers keep books and records that are sufficient to permit state and federal regulators to undertake complete operational examinations. The IRFA further indicates that the proposed amendments would affect all broker-dealers, including the approximately 5,250 small broker-dealers, but notes that the requirements of the proposed amendments were designed to minimize additional burdens. The IRFA indicates that the proposed amendments would require broker-dealers to adjust their recordkeeping and reporting practices, to update certain customer information records on an annual basis, and to modify their record storage systems. The IRFA adds that no federal securities laws duplicate, overlap, or conflict with the proposed amendments and states that the Commission does not believe that any less burdensome alternatives are available to accomplish the objectives of the proposed amendments.

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Written comments will be considered in preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted. Such comments will be placed in the same public file as that designated for the proposed amendments themselves. A copy of the IRFA may be obtained by contacting Matthew G. McGuire, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 942-7103.

### VI. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,<sup>6</sup> and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: "Proposed Books and Records Amendments."

#### A. Collection of Information Under Proposed Books and Records Amendments

The Proposed Books and Records Amendments would require registered

broker-dealers to maintain information with respect to purchase and sale documents, customer information, associated person information, customer complaints, and certain other matters.

#### B. Proposed Use of Information

The information collected pursuant to the Proposed Books and Records Amendments would be used by the Commission, self-regulatory organizations, and representatives of state securities regulatory authorities. No governmental agency or third party would regularly receive any of the information described above. The Commission, self-regulatory organizations, and state securities regulatory authorities would use the records required by the Proposed Books and Records Amendments in examinations and investigations of broker-dealers.

#### C. Respondents

The Proposed Books and Records Amendments would apply with respect to all of the approximately 8,500 broker-dealers that are currently registered with the Commission. However, most of the provisions of the Proposed Books and Records Amendments would apply only with respect to the approximately 5,300 broker-dealers who do business with the general public.

#### D. Total Annual Reporting and Recordkeeping Burden

The hour burden of the Proposed Books and Records Amendments would vary widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. Most of the requirements of the Proposed Books and Records Amendments involve collections of information that typical broker-dealers already maintain as customary and usual business practices or in compliance with existing regulations. Accordingly, the additional annual burden created by most of the new requirements of the Proposed Books and Records Amendments will not be substantial.

The Commission believes that the only provision of the Proposed Books and Records Amendments that will present a significant new burden to broker-dealers is the annual account form updating requirement of proposed Rule 17a-3(a)(16). Broker-dealers currently maintain approximately 46,000,000 customer accounts. The Commission estimates that approximately 10% of the customer accounts of a typical broker-dealer will require updating each year and that it

<sup>5</sup> See 15 U.S.C. 78w(a)(2).

<sup>6</sup> 44 U.S.C. 3501 *et seq.*

will require approximately five minutes for a typical broker-dealer to update each such customer account. Thus, the Commission estimates that approximately 383,333 hours (five minutes times 4,600,000 updated customer accounts) would be required by the account form updating requirement of proposed Rule 17a-3(a)(16) in each year.

Other than the account form updating requirement, the provisions of the Proposed Books and Records Amendments should create only minimal annual compliance burdens. Variables relating to the recordkeeping practices and levels of customer business of broker-dealers make it difficult to estimate the precise burden of the Proposed Books and Records Amendments. However, based on conversations with members of the securities industry and based on the Commission's experience in this area, the Commission estimates that, in addition to the requirement of updating account forms pursuant to the provisions of proposed Rule 17a-3(a)(16), the Proposed Books and Records Amendments should result in an increase of approximately 2% of the time that a typical broker-dealer spends making records required by Rule 17a-3 and an increase of approximately 2% of the time that a typical broker-dealer spends making records required by Rule 17a-4.

The current estimate of the time required to comply with the existing provisions of Rule 17a-3 is one hour per broker per working day. Thus, the Commission estimates that complying with the proposed amendments to Rule 17a-3 (other than updating account forms pursuant to proposed Rule 17a-3(a)(16)) should require an additional 42,330 hours per year (1.2 minutes per working day times 249 working days times 8,500 broker-dealers). The current estimate of the time required to comply with the existing provisions of Rule 17a-4 is also one hour per broker per working day. Thus, the Commission also estimates that complying with the proposed amendments to Rule 17a-4 should require an additional 42,330 hours per year (1.2 minutes per working day times 249 working days times 8,500 broker-dealers).

In addition to the time necessary to make the required records, the Proposed Books and Records Amendments would also impose burdens on respondents in connection with storing the new types of records and in connection with complying with new record access requirements. Variations in the current record storage systems of respondents make it difficult for the Commission to

provide any meaningful estimate of the costs of these burdens to a typical respondent. To the extent that the additional records required by the Proposed Books and Records Amendments can be stored and produced for inspection by electronic means, the additional costs should not be substantial.

Finally, the Proposed Books and Records Amendments will impose burdens on respondents in connection with necessary modifications to their record storage systems. Variations in the current record storage systems of respondents make it difficult for the Commission to provide any meaningful estimate of the costs of these burdens to a typical respondent. However, the Commission notes that such burdens would be one-time expenses rather than recurring costs.

#### *E. General Information about the Collection of Information*

The collection of information under the Proposed Books and Records Amendments would be mandatory. The information collected pursuant to Rules 17a-3(a) (17), (19), and (21) would be retained for six years. The information collected pursuant to Rules 17a-3(a)(18), 17a-4(b)(4), (7), (10), and (11), and 17a-4(e)(5) would be retained for three years. The information collected pursuant to Rule 17a-4(a)(16) would be retained for six years following the closing of the related customer's account. The information collected pursuant to Rule 17a-4(d) would be retained for the life of the enterprise or any successor enterprise. The information collected pursuant to Rule 17a-3(a)(20) would be retained for three years following the termination of employment or other connection with the broker-dealer of the related associated person. The information collected pursuant to Rule 17a-4(e)(6) would be retained for three years after the date of the termination of use of such information. In general, the information collected pursuant to the Proposed Books and Records Amendments would be held by the respondent. The Commission, self-regulatory organizations, and state securities regulatory authorities would only gain possession of the information upon request. Any information received by the Commission pursuant to the Proposed Books and Records Amendments would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

#### *F. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and refer to File No. S7-27-96. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release in the Federal Register, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

#### VII. Statutory Analysis

The amendments are proposed pursuant to the authority conferred on the Commission by section 17(a)(1) of the Exchange Act.

#### List of Subjects in 17 CFR Part 240

Brokers; Reporting and recordkeeping requirements; Securities.

For the reasons set forth in the preamble, Title 17 Chapter II of the Code of Federal Regulation is proposed to be amended as follows:

#### **PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934**

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

\* \* \* \* \*

2. Section 240.17a-3 is amended by adding a sentence at the end of paragraph (a)(1), revising paragraph

(a)(6), adding paragraphs (a)(16), (a)(17), (a)(18), (a)(19), (a)(20), and (a)(21), and (f) to read as follows, and removing and reserving paragraph (a)(12)(ii):

**§ 240.17a-3 Records to be made by certain exchange members, brokers and dealers.**

(a) \* \* \*

(1) \* \* \* The blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities for accounts of customers of such member, broker or dealer shall be maintained so that such records are accessible with respect to the activities of each local office of such member, broker or dealer.

\* \* \* \* \*

(6) 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 memorandum shall 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, if any; information identifying the associated person who entered the order on behalf of the customer; information identifying whether the transaction was solicited or unsolicited; and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary authority by such member, broker or dealer, or any associated person thereof, shall be so designated. The term *instruction* shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term *time of entry* shall be deemed to mean the time when such member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

\* \* \* \* \*

(12) \* \* \*

(ii) [Reserved]

\* \* \* \* \*

(16) An "account form" for every customer account:

(i) Each account form shall be approved by the associated person responsible for such account (who, in the case of a new account, shall be the associated person who opened such account) and a principal of the member, broker or dealer. Approval by the associated person and principal shall be indicated by signature or individual initials and date of signature or initialing on each account form. A member, broker or dealer shall send to each customer, no later than 30 calendar days after the date of the first

transaction execution for the account of such customer, a copy of such customer's account form or an alternate document containing all required information set forth on such account form. The account form or alternate document shall include or be accompanied by a prominent statement advising the customer that, if any information on the account form or alternate document is incorrect, the customer should mark any corrections and return the account form or alternate document to the member, broker or dealer. Within 30 days of receipt from a customer of any corrections or changes to the contents of an account form or alternate document, a member, broker or dealer shall send a copy of the revised account form or alternate document to such customer and to the associated person who is responsible for such customer's account.

(ii) Each account form shall contain the following information:

(A) For natural persons, the customer's name, Social Security number (or other identifying tax number), address and telephone number, age, marital status and number of dependents, educational level, employment status including occupation and employer's name, annual income, and net worth (excluding value of primary residence). In the case of a joint account, such information shall be included for each individual on the joint account.

(B) For customers other than natural persons, the name of the entity, its address, telephone number, Internal Revenue Service employer identification number, and the name and telephone number of the individual or individuals at that entity authorized to effect securities transactions in that account.

(C) A designation of the customer's investment objective(s), from a list of objectives that shall include a definition of each category of objective in simple language. If speculation or a similar high-risk objective is among the alternatives presented, such objective must be presented as an independent category on the list of objectives and may not be presented on the list in combination with any other category of objective. Any definition of speculation or a similar high-risk objective shall state that such investments involve a high risk of loss that may exceed the losses in general market averages on any specific day or over a longer period of time. Where a customer designates multiple investment objectives, and one of the objectives is speculation or similar high-risk objective, the approximate percentage or range of

percentages of investment capital dedicated to speculation or such similar high-risk objective shall be specified. No investment objective shall be marked or otherwise indicated on an account form unless specified or expressly authorized by the customer. The investment objectives on customer account forms shall be designated upon opening a new account and updated, if required, on an annual basis thereafter.

(iii) The neglect, refusal, or inability of a customer to provide the required information for such customer's account form shall excuse a member, broker or dealer from obtaining such required information, provided that the member, broker or dealer maintains a written memorandum of such customer's neglect, refusal, or inability to provide the required information.

(17)(i) Customer complaint files containing all correspondence, memoranda, and other documents received or generated in connection with any complaint by or on behalf of a customer. Customer complaint files shall also include a record showing what action, if any, has been taken by the member, broker or dealer in response to each complaint. Customer complaint files must be accessible by associated person name and local office location. Each local office shall maintain a customer complaint file that can be sorted by associated person name for all complaints involving that office. Local office customer complaint files shall include, at a minimum, the complaint and the response or resolution, if any.

(ii) Any oral complaint from a customer received by an employee of a member, broker or dealer alleging facts that, if true, would constitute theft, conversion of funds or securities, unauthorized trading, churning, misrepresentation or lack of material disclosure, lack of suitability, or falsification of records, must be noted in a memorandum containing the name and address of the complainant, the customer account number, and the date of the complaint. The memorandum shall be prepared by a branch manager, principal, or compliance department employee of the member, broker or dealer. For purposes of Form U-4 and other reporting requirements, the preparation of such a memorandum shall not convert an oral complaint into a reportable event. It shall not be necessary to prepare a memorandum of an oral complaint in instances where:

(A) The oral complaint is clearly the result of a misunderstanding or misinterpretation by the customer;

(B) The nature of the misunderstanding or misinterpretation

is fully explained to the customer by an employee of the member, broker or dealer; and

(C) The employee who explains the misunderstanding or misinterpretation also advises the customer that, if the customer is not satisfied with the explanation or has further concerns regarding the matter, the customer should send a written complaint to the broker-dealer, and provides the customer with the appropriate address to send such written complaint.

(iii) Every member, broker or dealer shall routinely notify its customers in a prominent notice on its customer account statements that customers should put their complaints in writing in order to establish an independent record of the complaint. Such notice shall also advise customers of the address and telephone number of the office or department of the member, broker or dealer where complaints should be directed.

(iv) Customer complaint files need not include copies of litigation and arbitration documents if these documents are referenced in the customer complaint files and such documents are readily available to representatives of a securities regulatory authority.

(18) Records of all commissions, overrides, and other compensation (including any bonus) identified by each transaction to the extent earned or accrued specifically for that transaction, the person or persons receiving the compensation, the customer account number, the date the transaction occurred, the amount of compensation, and the name of the security involved. To the extent that compensation is based on factors other than remuneration per trade, such as a total production system or bonus system, the member, broker or dealer must be able to demonstrate and to document, upon request, the method by which the compensation paid was earned.

(19) Activity reports to identify exceptional numerical occurrences, such as frequent trading in customer accounts, unusually high commissions, or an unusually high number of trade corrections or cancelled transactions, for management's attention and information. For the purpose of this paragraph (a)(19), the systems and criteria used to generate such activity reports shall be determined by each member, broker or dealer, as long as the system and its parameters are reasonably designed to monitor levels of activity in accounts that may warrant further review and analysis by management. Actual copies of activity reports need not be retained by a

member, broker or dealer if the member, broker or dealer maintains through electronic storage the data necessary to create or recreate promptly the required activity reports upon request by representatives of a securities regulatory authority.

(20) The following records with respect to each associated person of such member, broker or dealer:

(i) All registration application forms (Form U-4), termination forms (Form U-5), and amendments, which forms and amendments shall be manually executed, including complete documentation as to any "yes" answer pertaining to disciplinary history on Form U-4 (including items reported on a Disclosure Reporting Page).

(ii) All licenses or other documentation showing registration with state securities jurisdictions or self-regulatory organizations.

(iii) All contracts and other records pertaining to the relationship between each associated person and the member, broker or dealer.

(iv) A summary of each associated person's compensation agreement with the member, broker or dealer, including commission schedules and details of any commission overrides.

(v) Copies of all written inquiries and customer complaints concerning each associated person (for purposes of this paragraph (a)(20)(v), a member, broker or dealer shall not be required to include copies of litigation and arbitration documents among the required records so long as such documents are referenced in the records and are readily available for inspection by representatives of a securities regulatory authority).

(vi) Records showing that upon every change in licensing affecting an associated person, such associated person has been notified of such change, including any restrictions or other provisions affecting the associated person's license.

(vii) A client trading record listing all trades in chronological order for all customers of each associated person, including the items specified in paragraph (a)(1) of this section and the total dollar amount of remuneration per trade (if applicable) to the associated person (if remuneration is on other than a per-trade basis, such as on a total production system or a bonus system for each office, the records required by paragraph (a)(18) of this section shall apply in lieu of the requirement to maintain remuneration records on a per trade basis).

(21) A current list identifying any internally assigned number for each associated person and a designation of

the local office of the member, broker or dealer where each associated person conducts the greatest percentage of such associated person's business for such member, broker or dealer.

\* \* \* \* \*

(f) When used in this section:

(1) The term *associated person* shall mean a partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or otherwise soliciting transactions or accounts for such member, broker or dealer.

(2) The term *local office* means any location where an associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or otherwise soliciting transactions or accounts for a member, broker or dealer.

(3) The term *principal* shall mean an individual registered with the National Association of Securities Dealers, Inc. as a principal or branch manager of a member, broker or dealer.

(4) The term *securities regulatory authority* shall mean the Commission, a state securities regulatory agency, or a self-regulatory organization.

3. Section 240.17a-4 is amended by revising paragraphs (a), (b)(1), (b)(4), (b)(7), (c), (d), (e)(1), (j), and the introductory text to paragraph (b)(8), and adding paragraphs (b)(10), (b)(11), (e)(5), (e)(6), (k), (l), and (m) and to read as follows:

**§ 240.17a-4 Records to be preserved by certain exchange members, brokers and dealers.**

(a) Every member, broker and dealer subject to § 240.17a-3 shall preserve for a period of not less than six years in an easily accessible place all records required to be made pursuant to § 240.17a-3(a)(1), (2), (3), (5), (17), (19) and (21).

(b) Every such member, broker and dealer shall preserve for a period of not less than three years in an easily accessible place:

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

\* \* \* \* \*

(4) Originals of all communications received and copies of all communications sent by such member, broker or dealer (including inter-office memoranda and communications) relating to its business, and a record that all outgoing communications have been approved by a principal of the member,



broker or dealer. Communications files shall be maintained in each local office with respect to communications sent from or received by that office, but communications sent from or received at a central location of a member, broker or dealer may be maintained at such central location. Records of principal approval of the outgoing communications of a member, broker or dealer may be kept at a central record storage location rather than at each local office. Correspondence sent with identical text, including any handwritten notes, to two or more customers may be recorded by one copy and a list of recipients. All communications pertaining to a specific customer account that are sent from or received at any local office of a member, broker or dealer shall be preserved with all other communications pertaining to that customer account that have been sent from or received at the same local office.

\* \* \* \*

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to his business as such, including agreements with respect to any account. Written agreements for purposes of this paragraph (b)(7) shall include all written contracts, options agreements, margin agreements, and discretionary trading agreements between the customer and the member, broker or dealer. The customer shall receive a copy of every written contract or agreement between the customer and the member, broker or dealer.

(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 and in annual audited financial statements required by § 240.17a-5(d).

\* \* \* \*

(10) All advertisements, marketing materials, sales scripts, and other paper or electronic records, including audio and video tapes, used by the member, broker or dealer or any associated person to offer or sell any security. This provision includes documents and other records that are intended exclusively for internal use. All documents and other records used by the member, broker or dealer or any associated person to offer or sell any security shall be approved by a principal, a record of whose approval must be maintained.

(11) Any information relating to the basis for any recommendation of a security by the member, broker or dealer with respect to each security that is

underwritten by the member, broker or dealer and each security that the member, broker or dealer trades as principal and recommends to its customers. The requirement of this paragraph (b)(11) shall not be deemed to supersede the requirements of § 240.15c2-11 with respect to any securities for which a member, broker or dealer publishes quotations or submits such quotations for publication.

(c) Every such member, broker and dealer shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records that relate to the terms and conditions with respect to the opening and maintenance of such account and any account forms required by § 240.17a-3(a)(16).

(d) Every such member, broker and dealer shall preserve during the life of the enterprise and of any successor enterprise all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), and amendments to such Forms, which Forms and amendments shall be manually executed, all licenses or other documentation showing registration with state securities jurisdictions and self-regulatory organizations, and all organizational documents of the member, broker or dealer.

(e) \* \* \*

(1) All records required under paragraphs (a)(12) and (a)(20) of § 240.17a-3 until at least three years after the "associated person" has terminated his employment and any other connection with the member, broker or dealer.

\* \* \* \*

(5) All audit or examination reports that are required by law or that are completed by a party other than the member, broker or dealer for at least three years after the date of each such audit or examination report.

(6) Compliance, supervisory, and procedures manuals describing the policies and practices of the member, broker or dealer with respect to operations, compliance with all applicable securities laws and regulations, and supervision of the activities of each natural person associated with the member, broker or dealer until at least three years after the termination of use of each such manual. Such manuals that pertain to the operation of a local office shall be kept at that office.

\* \* \* \*

(j)(1) Every member, broker or dealer subject to this section shall furnish promptly to representatives of a securities regulatory authority such

authentic, accurate, legible, complete, and current (where a record requires updating) copies of those records of the member, broker or dealer that are required to be preserved under this section, as are requested by such representative of a securities regulatory authority. Records shall be organized in a systematic and easily recognizable order, such as chronologically or alphabetically. Each member, broker or dealer shall without delay make available to representatives of a securities regulatory authority an individual who is familiar with the records (or type of records) and qualified to explain them.

(2) For purposes of this section, the term *promptly* shall mean immediately when the requested records are located in the office of the member, broker or dealer where the request for such records is made. In the case of requested records that are not located in the office of the member, broker or dealer where the request for such records is made, the term *promptly* shall mean within three business days.

(k) Every member, broker or dealer shall designate a principal to ensure compliance with the provisions of this section and § 240.17a-3 that require approval of a record by a principal. Copies of documents provided to customers pursuant to the requirements of this section and § 240.17a-3 need not show the approval of a principal.

(l)(1) Records required to be preserved by the provisions of this section must be maintained at the headquarters office of a member, broker or dealer. The following records must be maintained for a period of at least three years also at each local office of a member, broker or dealer for such local office's activity: the blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities for any accounts of customers required by § 240.17a-3(a)(1); the memoranda required by § 240.17a-3(a)(6); with respect to each associated person who conducts the greatest percentage of such associated person's business for such member, broker or dealer at such local office, all of the records required by §§ 240.17a-3(a)(12) and 240.17a-3(a)(20) (except that records reflecting the amount of remuneration per trade required by § 240.17a-3(a)(20)(vii) may be kept at a central location with the other records of the member, broker or dealer instead of at each local office); a copy of the list required by § 240.17a-3(a)(21); all account forms, including any updated versions, required by § 240.17a-3(a)(16); all local office customer complaint files required by § 240.17a-3(a)(17) and all

local office communications required by paragraph (b)(4) of this section; and all local office compliance, supervisory, and procedures manuals required by paragraph (e)(6) of this section.

(2) The capability of electronically displaying and immediately producing printed copies of the local office records described herein in a local office will be deemed to comply with the local office record maintenance requirements of this section. This capability shall not be deemed to supersede paragraph (f) of this section.

(3) With respect to a single-agent office of a member, broker or dealer, local office records may be aggregated with the records of one or more other such offices in a regional record depository if the following requirements are met:

(i) The regional record depository, which may be another office of the member, broker or dealer, is located within the same state as the single-agent office.

(ii) The records stored in the regional record depository can be easily disaggregated and accessed for the single-agent office to the same extent as if the single-agent office kept separate records in compliance with the local office record-keeping requirements of this section.

(m) When used in this section:

(1) The term *associated person* shall have the meaning set forth in § 240.17a-3(f)(1).

(2) The term *local office* shall have the meaning set forth in § 240.17a-3(f)(2).

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

(4) The term *securities regulatory authority* shall have the meaning set forth in § 240.17a-3(f)(4).

Dated: October 22, 1996.

By the Commission.

Margaret H. McFarland,  
*Deputy Secretary.*

Exhibit A

(Note: This Exhibit will not appear in the Code of Federal Regulations)

*Model State Regulation Governing Access to Records Required To Be Kept By Broker-Dealers (Prepared by NASAA)*

#### I. Required Books and Records.

Every broker-dealer registered in this State shall comply with the record-keeping requirements of 17 CFR 240.17a-3 (hereinafter "Rule 17a-3") and 17 CFR 240.17a-4 (hereinafter "Rule 17a-4"), promulgated under the Securities Exchange Act of 1934.

#### II. Access to Records.

##### (a) Duty to produce.

All records required to be maintained shall be kept within the possession and control of the broker-dealer, except as permitted in section (e) below with respect to a broker-

dealer that has ceased transacting business in securities or that has terminated its registration. All records within the possession or control of a broker-dealer shall be produced to [the Administrator] or [the Administrator's] designee upon request. Every broker-dealer shall ensure that each office makes available to [the Administrator] or [the Administrator's] designee all local office records required by Rules 17a-3 and 17a-4.

##### (b) Time in which to produce.

It is the responsibility of each broker-dealer to make all required records quickly and easily accessible. Whenever records are required to be produced by this rule, the time limits set forth in this subparagraph shall control. When requested records are present on the premises of a broker-dealer, including paper records in a local office and electronic records retrievable over a computer terminal, they shall be produced immediately. When requested records are not present on the premises, such as microfilm in a central storage location outside this State, they shall be produced no later than the third business day after the date of the request. For good cause shown in writing, such as the unusually large scope of a request requiring production of a large volume of records, [the Administrator] may extend the time period for production.

##### (c) Forms of record retention; duty to organize.

Every broker-dealer shall ensure that all records required to be maintained shall be organized and made available for examination in one of the forms specified in Rules 17a-3 and 17a-4. Such records shall be authentic, accurate, legible, complete, and current (where a record requires updating). They shall be organized in a systematic and easily recognized order, such as chronologically or alphabetically, and they shall be easily accessible and readily explained. Each broker-dealer shall without delay make available to [the Administrator] or [the Administrator's] designee an individual who is familiar with the records (or type of records) and qualified to explain them. In the case of any records that require equipment to allow review or copying, the broker-dealer shall immediately make available such equipment in working order to the office that has responsibility to maintain the records.

##### (d) Duty to cooperate.

Every broker-dealer and broker-dealer employee shall cooperate with efforts by the [the Administrator] or [the Administrator's] designee to review for compliance with this regulation. [The Administrator] or [the Administrator's] designee may conduct announced or unannounced examinations at any office within or outside this State to review the business activities of the broker-dealer. Every broker-dealer shall furnish access to all areas of its securities operations conducted on or off the premises and otherwise facilitate the examination. [The Administrator] or [the Administrator's] designee may further require that any records subject to examination by submitted [the Administrator's] agency to determine compliance with applicable laws and regulations.

##### (e) Miscellaneous records.

Every broker-dealer shall make available for examination all records in its possession or control that are in any way related to its business or that may lead to evidence pertaining to its business regardless of whether or not routine maintenance of such records is required by this regulation or Rules 17a-3 and 17a-4. Such records which are not in the immediate possession of the broker-dealer but which the broker-dealer has the ability to obtain must be obtained and produced [the Administrator] or [the Administrator's] designee upon request, unless such records are equally available to [the Administrator].

##### (f) Privileged records.

If, in response to a request for records by [the Administrator] or [the Administrator's] designee during an examination or investigation, a broker-dealer refuses to produce any record on a claim of privilege, each such document must be identified in detail and the specific privilege identified as to each item. An assertion of privilege does not excuse a broker-dealer from maintaining records.

##### (g) Records retention time periods; control by other parties.

All records required by this rule shall be maintained for the time periods specified in the applicable provisions of Rules 17a-3 and 17a-4. Should a broker-dealer cease transacting business in securities to terminate its registration, the broker-dealer shall continue to maintain the records for the time period specified in Rules 17a-3 and 17a-4. Should a terminated broker-dealer have another party maintain control of the broker-dealer's records, notice shall include the reason for the arrangement and the name, address, and telephone number of the other party.

##### (h) Waiver of requirements.

[The Administrator] may, for good cause as determined in [the Administrator] discretion, waive any requirements in this regulation with respect to any requirements in this regulation with respect any broker-dealer or class of broker-dealers.

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