fan duct cowl (the firewall) of the thrust reversers to determine the type of topcoat material installed, in accordance with Boeing Alert Service Bulletin 737–78A1056, dated August 11, 1994.

(1) If the existing topcoat has silica fibers in it, no further action is required by this AD.

(2) If the existing topcoat does not have silica fibers in it, prior to further flight, accomplish the application of the DC92–010 topcoat to the firewall of the thrust reversers in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and application shall be done in accordance with Boeing Alert Service Bulletin 737–78A1056, dated August 11, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 26, 1995.

Issued in Renton, Washington, on April 14, 1995.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–9771 Filed 4–25–95; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 404 and 405

RIN 1505–AA47

Amendments to Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is publishing, as a final rule, amendments to the recordkeeping rules in part 404 and the reporting rules in part 405 of the regulations issued under the Government Securities Act of 1986 (''GSA''). The recordkeeping amendment requires entities registered with the Securities and Exchange Commission (''SEC'') as specialized government securities brokers and dealers (''registered government securities brokers and dealers'') under section 15C(a)(2) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78o–5(a)(2)) to maintain and preserve records concerning the financial and securities activities of affiliates whose business activities are reasonably likely to have a material impact on the financial or operational condition of the registered government securities brokers and dealers. The reporting amendment requires registered government securities brokers and dealers to file with the SEC quarterly summary reports of the information required to be maintained and preserved by the recordkeeping amendment. The amendments (''risk assessment rules'') parallel the SEC's final temporary risk assessment rules applicable to brokers and dealers that conduct general or municipal securities businesses (''registered brokers and dealers''). The Department's risk assessment rules are being promulgated pursuant to the authority granted to the Department by the Market Reform Act of 1990 (the ''Reform Act'') and are intended to provide regulators with access to information concerning the financial risk posed to registered government securities brokers and dealers—and to the securities markets as a whole—as a result of certain financial and securities activities conducted by affiliates within holding company structures. The Department is adopting the amendments essentially unchanged from their proposed form.

DATES: The effective date is June 30, 1995. The rules are being implemented in accordance with a phase-in schedule. See Section III of this preamble for the entire schedule.

FOR FURTHER INFORMATION CONTACT: Kerry Lanham (Government Securities Specialist) or Lee Grandy (Government Securities Specialist) at 202–219–3632. (TDD for hearing impaired: 202–219–3988.)

SUPPLEMENTARY INFORMATION:

I. Background

In response to the stock market disruption of October 1987, the bankruptcy of Drexel Burnham Lambert Group, Inc. (''Drexel'') in February 1990, and other developments in the securities markets, Congress passed the Reform Act in September 1990.[1] Among other things, the Reform Act provided the SEC and Treasury separate but parallel authority to promulgate risk assessment rules for certain broker-dealer holding company structures. The Reform Act authorized Treasury to require registered government securities brokers and dealers to maintain and report information on the financial and securities activities of certain affiliates that had the potential to pose material amounts of risk to the brokers and dealers. The Reform Act did not authorize Treasury to require financial institutions that have filed notice (or are required to file notice) as government securities brokers and dealers to maintain and report risk assessment information, although registered government securities brokers and dealers that are subject to the rules must maintain records and submit reports pertaining to the financial and securities activities of certain affiliates that are financial institutions.

The Drexel failure demonstrated that financial difficulties or liquidity problems of parent companies or affiliates of brokers and dealers could have a material and adverse effect on brokers and dealers themselves; risk assessment authority was therefore intended to help regulators monitor such developments. The primary focus of the risk assessment authority was the financial health of large holding companies whose potential failures pose risks to their affiliated brokers and dealers, as well as to the securities markets and the financial system as a whole. The Department believes that these rules will enhance the safety of the government securities market and provide for more effective regulatory oversight.

The legislative history[2] of the Reform Act indicated that risk assessment rules would require information concerning several particular types of potentially risky financial and securities activities conducted by affiliates of brokers and dealers, including bridge loans, interest rate swaps, foreign currency transactions, other derivatives (e.g., forwards and futures), and real estate

[1] Pub. L. 101–432, 104 Stat. 963 (1990).

[2] H.R. Rep. No. 101–524 and 101–477, 101st Cong., 2nd Sess. (1990).

developments. Off-balance sheet derivatives such as interest rate swaps and foreign currency transactions were identified as particularly important categories for risk assessment rules given their high growth rates and the limited public information available regarding their magnitude and use.

Affiliates conducting these largely unregulated activities can attain a degree of leverage and assume credit risks that brokers and dealers, which are subject to the capital and customer protection rules of the Treasury and the SEC, cannot attain. The business activities of these affiliates could have significant and adverse effects on the financial health of brokers and dealers. For example, large losses at the parent company level might cause the credit rating of the parent to decline, which could cause liquidity problems at the broker or dealer. Thus, the Reform Act specifically provided the SEC with direct access to information concerning the business activities of brokers' and dealers' affiliates that are outside of SEC oversight.

In September 1991, the SEC published for comment proposed temporary Rules 17h–1T and 17h–2T, which together with proposed Form 17–H, would establish a risk assessment recordkeeping and reporting system for registered brokers and dealers.[3] After reviewing the 63 comment letters it received and making modifications, the SEC issued in July 1992 final temporary risk assessment rules.[4] Rule 17h–1T[5] is a recordkeeping rule identifying and describing the records that registered brokers and dealers are required to maintain and preserve. Rule 17h–2T[6] sets forth requirements for registered brokers and dealers to submit quarterly reports summarizing the information required to be maintained under Rule 17h–1T. The preamble of the SEC's final temporary rules stated that the SEC staff would issue for public comment a study evaluating the effectiveness of the SEC's risk assessment rules within 90 days after the rules have been fully operative for two years. At that time, the SEC will consider what, if any, modifications to its rules would be appropriate. Treasury will consult with the SEC regarding the study and assessment of its rules to determine whether any of the SEC's findings are germane to Treasury's risk assessment rules.

[3] Securities Exchange Act Release No. 34–29635 (August 30, 1991), 56 FR 44014 (September 6, 1991).

[4] Securities Exchange Act Release No. 34–30929 (July 16, 1992), 57FR 32159 (July 21, 1992).

[5] 17 CFR 240.17h–1T.

[6] 17 CFR 240.17h–2T.

The Commodity Futures Trading Commission (''CFTC'') was also authorized to promulgate risk assessment rules applicable to registered futures commission merchants (''FCMs'') pursuant to the Futures Trading Practices Act of 1992.[7] The CFTC published its proposed risk assessment rules in March 1994.[8] The CFTC extended its comment period twice before promulgating the first part of its final risk assessment rules in December 1994,[9] which require certain FCMs to maintain and file key information addressing the overall structure of holding companies involving the FCMs. The CFTC deferred action on other portions of its proposed rules pending further review and consultation with other regulators.

Treasury published its risk assessment amendments in proposed form on November 15, 1994,[10] and the comment period closed on January 17, 1995. The Department received no comments in response to the proposal.

II. Analysis

A. Reporting and Recordkeeping Requirements

The Department's risk assessment rules incorporate the SEC's final temporary risk assessment Rules 17h–1T and 17h–2T, with minor modifications that reflect both the specialized activities of registered government securities brokers and dealers and the Department's analysis of the SEC's interpretive letter to the Securities Industry Association (''SIA'') in September 1993.[11] Under the Department's rules, two general categories of records will be required: (1) Information concerning the holding company organization, risk management policies, and material legal proceedings; and (2) financial and securities information pertinent to assessing risk in the holding company system (e.g., consolidating and consolidated financial statements and positions in various financial instruments). The information required to be maintained and preserved pursuant to the recordkeeping rules will be subject to routine inspection by the SEC and the self-regulatory organizations. Under the reporting rules, registered government securities brokers and dealers will be required to file with the SEC quarterly summaries of the information that must be maintained under the recordkeeping rules. These quarterly summaries will be required to be filed on the SEC's Form 17–H. A more detailed discussion of the Department's specific risk assessment requirements is included in the preamble to the proposed rules.

The information required to be maintained and reported by the firms pertains only to the firms' ''Material Associated Persons'' (''MAPs''). The Reform Act did not define MAPs. However, the legislative history accompanying the statute specified a number of factors that should be considered when determining which affiliates (associated persons) might have a ''material'' impact on the financial or operational condition of brokers and dealers. These factors have been incorporated into paragraph 17h–1T(a)(2), thereby providing guidelines for determining which affiliates of the brokers and dealers are MAPs. The initial designation of MAPs will be made by the affected registered government securities brokers and dealers.

The term ''associated persons,'' as explained in the legislative history, is based on the definition at 3(a)(18) of the Exchange Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded for the purposes of the risk assessment rules (which automatically excludes natural persons from the definition of MAPs). Consistent with the SEC approach,[12] partnerships will not be treated as natural persons and, depending on the circumstances, may be deemed to be MAPs of the registered government securities broker or dealer. Subchapter S corporations may be treated as natural persons for purposes of the amendments if the Subchapter S corporation is owned by one natural person.

Note that, with respect to the Department's risk assessment rules, the definition of ''associated persons'' differs from the definition of that term as specified in § 400.3 of the GSA regulations. The term as used in § 400.3 specifically applies to certain natural persons who are associated with government securities brokers or dealers.

B. Exemptions and Special Provisions

The Department is incorporating, with modifications and supplements, the SEC's exemptive provisions (17 CFR 240.17h–1T(d) and 240.17h–2T(b)). The Department's provisions will exempt registered government securities brokers

[7] Pub. L. 102–546, 106 Stat. 3590 (1992).

[8] 59 FR 9689 (March 1, 1994).

[9] 59 FR 66674 (December 28, 1994).

[10] 59 FR 58792 (November 15, 1994).

[11] See letter from Michael Macchiaroli, Associate Director, Division of Market Regulation, Securities and Exchange Commission to Douglas G. Preston, Esq., Securities Industry Association (September 20, 1993). (1993 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 76,696.

[12] Id.

and dealers from all of Treasury's risk assessment rules if they: (1) Do not carry customer accounts and maintain capital (equity capital plus subordinated debt) of less than $20 million; (2) maintain capital of less than $250,000 (regardless of whether they carry customer accounts or not); or (3) have an affiliated registered broker or dealer,[13] provided that the registered broker or dealer is subject to, and in compliance with, the SEC's risk assessment rules, and provided that all of the MAPs of the registered government securities broker or dealer are also MAPs of the registered broker or dealer. A registered government securities broker or dealer that has no affiliates or holding company would not be subject to the Department's risk assessment rules. The Department's rules also allow affiliated registered government securities brokers and dealers to request in writing that the Department permit one of the firms—a ''Reporting Registered Government Securities Broker or Dealer''—to maintain and report risk assessment information on behalf of the other affiliated firms. The Department will promptly advise the SEC and the National Association of Securities Dealers of such a request and consult with them in order to provide for an efficient examination process.

The Department is also adopting the SEC's special provisions for affiliates that are already subject to supervision by certain U.S. or foreign financial regulatory authorities. (See paragraphs (b) and (c) of 17 CFR 240.17h–1T, and paragraphs (c) and (d) of 17 CFR 240.17h–2T, as modified by §§ 404.2(b) and 405.5, respectively). With respect to such affiliates, registered government securities brokers and dealers will be deemed in compliance with the financial and securities recordkeeping requirements of the rule by maintaining copies of reports that such affiliates already submit to certain domestic and foreign regulators. The registered government securities brokers and dealers will, however, remain responsible for maintaining organizational charts, risk management policies, and records of legal proceedings in which they are involved, and will have to submit such information on Form 17–H (Items 1–3 of Part I of the form).

The Department believes that these types of special provisions and exemptions will preclude duplicative and unnecessary recordkeeping and reporting for various registered government securities brokers and dealers without compromising regulators' need to capture information on the potentially risky activities of entire holding company systems.

C. Scope of Proposed Risk Assessment Rules

In proposing its risk assessment rules, the SEC noted that it believed the majority of registered brokers and dealers that conduct a business with the public do not pose the types of risks the Reform Act was designed to address.

Following this precept, the SEC exempted from its rules registered brokers and dealers whose activities are not likely to pose a material threat to the investing public or the marketplace (e.g., limited purpose mutual fund brokers), whose operations are relatively small (as measured by capital levels), or whose functions do not include carrying customer accounts (unless they are large firms).

The SEC also adopted special provisions for registered brokers and dealers that have certain regulated affiliates, such as banks, insurance companies, futures commission merchants, and foreign affiliates, recognizing the existence of certain regulatory reporting by these entities and eliminating the need to create a new set of records for such entities. In lieu of adhering to the bulk of the SEC's risk assessment rules, registered brokers and dealers are, in certain specified cases, able to maintain and submit copies of reports that these affiliates already routinely submit to U.S. and foreign regulators.

Of the approximately 5,600 registered brokers and dealers that conduct a public business, SEC staff informs us that roughly 250 firms are currently following the SEC's risk assessment rules. These are the largest firms and the ones that potentially pose the most risk to the markets. In contrast, of the 33 registered government securities firms in existence at the time of this writing, approximately 11 are potentially subject to the Department's risk assessment rules since we estimate that 22 of the 33 firms will qualify for at least one of the Treasury exemptions. It appears that five registered government securities brokers and dealers will qualify for an exemption because their capital levels are under $250,000. Fourteen firms will qualify for an exemption because they do not carry customer accounts and have capital of less than $20 million. Six firms will potentially qualify for an exemption because their affiliated registered brokers and dealers follow the SEC's risk assessment rules.[14]

Of the 11 firms potentially subject to the Department's rules, three are affiliated within the same holding company structure. Thus, any one of the firms will be able to request that the Department authorize it to be the Reporting Registered Government Securities Broker or Dealer on behalf of the other two firms. Of the remaining eight firms that are potentially subject to the Department's rules, three have foreign bank holding companies, which could ease their recordkeeping and reporting requirements considerably. These firms should be able to maintain and submit the same reports that their holding companies submit to foreign financial regulatory authorities, with a copy translated into English. The amount of information the remaining five firms will be required to maintain and report will be based on the number of MAPs designated and the types of activities the MAPs conduct. The Department believes this approach meets the objectives of the statute without imposing significant costs or burdens on market participants. In order to provide affected firms time to make personnel and systems adjustments required for compliance, the Department has adopted a multi-month phase-in period.[15] Refer to Section III below for the Department's implementation schedule.

In preparing the rules, the Department consulted with the staffs of the SEC and the bank regulatory agencies; they concur with the Department's approach.

The Department is also promulgating technical amendments to § 404.2 by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and by revising newly redesignated paragraph (c). The revisions to redesignated paragraph (c) will more accurately define the terms ''registered government securities broker or dealer'' and ''the Secretary of the Treasury'' as they are used to modify 17 CFR 240.17a–7.

III. Implementation Schedule

Most of the Department's implementation dates have been

[13] Similarly, the CFTC's final risk assessment rules permit FCMs that are, or that have affiliates that are, registered broker-dealers or registered government securities broker-dealers to file Form 17–H in partial compliance with the CFTC's rules. *See Supra* note 9.

[14] The total estimated number of firms qualifying for exemptions exceeds 22 because we anticipate that some firms will qualify for more than one exemption.

[15] Many of the commentators to the SEC's proposed risk assessment rules stated that they would be required to make personnel and systems adjustments to comply with the rules. To ease the burden associated with meeting the requirements of its rules, the SEC adopted a phased-in implementation schedule. The Department is adopting a similar phased-in approach to implementation.

modified from the dates in the proposed rules to provide affected firms with sufficient time to make the necessary preparations to comply with the rules. Effective June 30, 1995, affected firms will be required to maintain records of an organizational chart, written risk management procedures, and a description of material legal or arbitration proceedings; the entire recordkeeping provisions will apply as of September 30, 1995.

The Department's rules will require affected firms to file the organizational chart, the written risk management procedures, and the description of material legal or arbitration proceedings (Part I, Items 1–3 of Form 17–H) by July 31, 1995; the entire reporting provisions (i.e., the remaining portions of Form 17–H, including documents attached in accordance with the special provisions for entities subject to certain domestic and foreign regulators) will apply for the period ending September 30, 1995. The affected firms will have 60 calendar days after September 30, 1995, and after each subsequent fiscal quarter, to actually file the remaining portions of Form 17–H. The cumulative year-end financial statements required pursuant to § 404.2(b)(4) must be filed within 105 calendar days of the end of the fiscal year.

Note that following the first filing by July 31, 1995, of the organizational chart, the written risk management procedures, and the description of material legal or arbitration proceedings, this information need be included in quarterly filings only when a material change in the information has occurred. Additionally, the organizational chart is required in each year-end filing.

IV. Special Analysis

It has been determined that these amendments are not a ''significant regulatory action'' for the purposes of Executive Order 12866. Therefore, a Regulatory Assessment is not required.

In the preamble to the proposed rules, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Department certified that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. In reviewing the final rules being adopted herein and in light of the fact that no comments were received, the Department has concluded that there is no reason to alter the previous certification.

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1535–0089.

Estimated total annual reporting and recordkeeping burden: 264 hours

Estimated average annual burden per respondent and recordkeeper: 24 hours

Estimated number of respondents and recordkeepers: 11

Estimated annual frequency of response: Four

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Forms Management Branch, Bureau of the Public Debt, Department of the Treasury, Parkersburg, West Virginia 26106–1328; and to the Office of Management and Budget, Paperwork Reduction Project 1535–0089, Attention: Desk Officer for Department of the Treasury, Washington, DC 20503.

List of Subjects

17 CFR Part 404

Banks, Banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 17 CFR parts 404 and 405 are amended as follows:

PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS

1. The authority citation for part 404 is revised to read as follows:

Authority: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

2. Section 404.2 is amended by redesignating paragraphs (b) and (c) as paragraphs (c) and (d), respectively; by revising newly redesignated paragraph (c); and by adding new paragraph (b) to read as follows:

§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.

* * * * *

(b) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h–1T of this title (SEC Rule 17h–1T), with the following modifications:

(1) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered with the Commission pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§ 240.17h–1T and 240.17h–2T of this title mean those sections as modified by §§ 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, ''associated person'' has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraphs 240.17h–1T(a)(1)(iii) through (vi) of this title are modified to read as follows:

''(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the registered government securities broker or dealer that are required to be disclosed, under generally accepted accounting principles on a consolidated basis, by the highest level holding company that is a Material Associated Person.

''(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter-end for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

''(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the registered government securities broker or dealer and its highest level holding company that is a Material Associated Person;

''(vi) The amount as of quarter-end, and at month-end if greater than quarter-end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. Treasury securities, that exceeds the Materiality Threshold at any month-end;''

(5) Paragraphs 240.17h–1T(a)(3) and (a)(4) of this title are modified to read as follows:

''(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of § 404.3 of this title and shall be kept for a period of not less than three years in an easily accessible place.

''(4) For the purposes of this section and § 405.5 of this title, the term

''Materiality Threshold'' shall mean the greater of:

''(i) $100 million; or

''(ii) 10 percent of the registered government securities broker's or dealer's liquid capital based on the most recently filed Form G–405 (or, in the case of futures commission merchants and interdealer brokers subject to the capital rules in §§ 402.1(d) and 402.1(e), respectively, tentative net capital based on the most recently filed Form X–17A–5) or 10 percent of the Material Associated Person's tangible net worth, whichever is greater.''

(6) Paragraph 240.17h–1T(b) of this title is modified to read as follows:

''(b) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if:''

* * * * *

(7) Paragraph 240.17h–1T(c) of this title is modified to read as follows:

''(c) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a)(1)(iii) through (x) of this section with respect to a Material Associated Person if such registered government securities broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act.''

(8) Paragraph 240.17h–1T(d) of this title is modified to read as follows:

''(d) *Exemptions.* (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

''(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

''(ii) If the registered government securities broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

''(iii) In the case of paragraphs (d)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2.

''(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

''(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

''(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T and § 240.17h–2T of this title, and

''(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T and § 240.17h–2T of this title.

''(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall not be included in the capital computation.

''(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term ''Reporting Registered Government Securities Broker or Dealer'' shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers.''

(9) Paragraph 240.17h–1T(g) of this title is modified to read as follows:

''(g) *Implementation schedule.* Every registered government securities broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing June 30, 1995. Commencing September 30, 1995, the provisions of this section shall apply in their entirety.''

(c) (1) Every non-resident government securities broker or dealer registered or applying for registration pursuant to Section 15C of the Act shall comply with § 240.17a–7 of this title, provided that:

(i) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered or applying for registration pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers; and

(ii) For the purposes of this section, references to ''any rule or regulation of the Commission'' and ''any rule or regulation of the Securities and Exchange Commission'' mean any rule or regulation of the Secretary.

(2) For the purposes of this section, the term ''non-resident government securities broker or dealer'' means:

(i) In the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States;

(ii) In the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; and

(iii) In the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

* * * * *

PART 405—REPORTS AND AUDIT

3. The authority citation for part 405 is revised to read as follows:

Authority: 15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

4. Section 405.5 is added to read as follows:

§ 405.5 Risk assessment reporting requirements for registered government securities brokers and dealers.

(a) Every registered government securities broker or dealer shall comply with the requirements of § 240.17h–2T of this title (SEC Rule 17h–2T), with the following modifications:

(1) For the purposes of this section, references to ''broker or dealer'' and ''broker or dealer registered with the Commission pursuant to Section 15 of the Act'' mean registered government securities brokers or dealers.

(2) For the purposes of this section, references to §§ 240.17h–1T and 240.17h–2T of this title mean those sections as modified by §§ 404.2(b) and 405.5, respectively.

(3) For the purposes of this section, ''associated person'' has the meaning set out in Section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)), except that natural persons are excluded.

(4) Paragraph 240.17h–2T(b) of this title is modified to read as follows:

''(b) *Exemptions.* (1) The provisions of this section shall not apply to any registered government securities broker or dealer:

''(i) Which is exempt from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, pursuant to paragraph (k)(2) of § 240.15c3–3 of this title; or

''(ii) If the registered government securities broker or dealer does not qualify for exemption from the provisions of § 240.15c3–3 of this title, as made applicable by § 403.4, and such registered government securities broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of, or for, customers; unless

''(iii) In the case of paragraphs (b)(1)(i) or (ii) of this section, the registered government securities broker or dealer maintains capital of at least $20,000,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2.

''(2) The provisions of this section shall not apply to any registered government securities broker or dealer which maintains capital of less than $250,000, including debt subordinated in accordance with Appendix D of § 240.15c3–1 of this title, as modified by Appendix D of § 402.2, even if the registered government securities broker or dealer holds funds or securities for, or owes money or securities to, customers or carries the accounts of, or for, customers.

''(3) The provisions of this section shall not apply to any registered government securities broker or dealer which has an associated person that is a registered broker or dealer, provided that:

''(i) The registered broker or dealer is subject to, and in compliance with, the provisions of § 240.17h–1T and § 240.17h–2T of this title, and

''(ii) All of the Material Associated Persons of the registered government securities broker or dealer are Material Associated Persons of the registered broker or dealer subject to § 240.17h–1T and § 240.17h–2T of this title.

''(4) In calculating capital for the purposes of this paragraph, a registered government securities broker or dealer shall include with its equity capital and subordinated debt the equity capital and subordinated debt of any other registered government securities brokers or dealers or registered brokers or dealers that are associated persons of such registered government securities broker or dealer, except that the equity capital and subordinated debt of registered brokers and dealers that are exempt from the provisions of § 240.15c3–3 of this title, pursuant to paragraph (k)(1) of § 240.15c3–3, shall not be included in the capital computation.

''(5) The Secretary may, upon written application by a Reporting Registered Government Securities Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any registered government securities brokers or dealers that are associated persons of such Reporting Registered Government Securities Broker or Dealer. The term ''Reporting Registered Government Securities Broker or Dealer'' shall mean any registered government securities broker or dealer that submits such application to the Secretary on behalf of its associated registered government securities brokers or dealers.''

(5) Paragraph 240.17h–2T(c) of this title is modified to read as follows:

''(c) *Special provisions with respect to Material Associated Persons subject to the supervision of certain domestic regulators.* A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer files Items 1, 2, and 3 (in Part I) of Form 17–H in accordance with paragraph (a) of this section, provided that:

''(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the registered government securities broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or''

* * * * *

(6) Paragraph 240.17h–2T(d) of this title is modified to read as follows:

''(d) *Special provisions with respect to Material Associated Persons subject to the supervision of a foreign financial regulatory authority.* A registered government securities broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if such registered government securities broker or dealer furnishes, in accordance with the provisions of paragraph (a) of this section, Items 1, 2, and 3 (in Part I) of Form 17–H and copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The registered government securities broker or dealer shall file a copy of the original Foreign Financial Regulatory report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(52) of the Act.''

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

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

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

Dated: April 18, 1995.

Frank N. Newman,

Deputy Secretary.

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