

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, and 249

[Release No. 34-87005B; File No. S7-05-14]

RIN 3235-AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: On September 19, 2019, the Securities and Exchange Commission (the “Commission”) adopted recordkeeping, reporting, and notification requirements applicable to security-based swap dealers and major security-based swap participants, securities count requirements applicable to certain security-based swap dealers, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. Release 34-87005 (Sept. 19, 2019) was published in the *Federal Register* on Dec. 16, 2019 (84 FR 68550). This document corrects certain technical inaccuracies in that release.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Valentina Minak Deng, Special Counsel, at (202) 551-5778; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, D.C. 20549-7010.

SUPPLEMENTARY INFORMATION: We are making technical corrections to 17 CFR 240.17a-4 and 17 CFR 240.17a-12 under the Securities Exchange Act of 1934, and Parts II and IIC of Form X-17A-5 (referenced in 17 CFR 249.617). The release resulting in the technical inaccuracies was published in the *Federal Register* on December 16, 2019 [84 FR 68550], and

adopted by the Commission in Exchange Act Release No. 87005 on September 19, 2019.

List of Subjects in 17 CFR Part 240

Administrative practice and procedure, Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities, Swaps.

List of Subjects in 17 CFR Part 249

Brokers, Recordkeeping and reporting requirements, Securities.

Accordingly, 17 CFR parts 240 and 249 are corrected by making the following amendments:

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, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c-3, 78c-5, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78n-1, 78o, 78o-4, 78o-10, 78p, 78q, 78q-1, 78s, 78u-5, 78w, 78x, 78dd, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*, and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111-203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112-106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

Section 240.17a-14 is also issued under Public Law 111-203, sec. 913, 124 Stat. 1376 (2010).

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2. Amend § 240.17a-4 by revising paragraphs (a) and (l) to read as follows:

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

* * * * *

(a) Every member, broker or dealer subject to § 240.17a-3 must preserve for a period of not less than 6 years, the first two years in an easily accessible place, all records required to be made pursuant to § 240.17a-3(a)(1) through (3), (5), and (21) and (22), and analogous records created pursuant to § 240.17a-3(e).

* * * * *

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

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3. Amend § 240.17a-12 by revising paragraph (i)(2) to read as follows:

§ 240.17a-12 Reports to be made by certain OTC derivatives dealers.

* * * * *

(i) * * *

(2) If, during the course of the audit or interim work, the certified public accountant

determines that any material inadequacies exist in the accounting system, internal accounting controls, procedures for safeguarding securities, or as otherwise defined in paragraph (h)(2) of this section, then the certified public accountant shall call it to the attention of the chief financial officer of the OTC derivatives dealer, who shall inform the Commission by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a-11. The OTC derivatives dealer shall also furnish the certified public accountant with a copy of said notice to the Commission by telegram or facsimile within the same 24 hour period. If the certified public accountant fails to receive such notice from the OTC derivatives dealer within that 24 hour period, or if the certified public accountant disagrees with the statements contained in the notice of the OTC derivatives dealer, the certified public accountant shall inform the Commission by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a-11. Such report from the certified public accountant shall, if the OTC derivatives dealer failed to file a notice, describe any material inadequacies found to exist. If the OTC derivatives dealer filed a notice, the certified public accountant shall file a report detailing the aspects, if any, of the OTC derivatives dealer's notice with which the certified public accountant does not agree.

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PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

4. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111-203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112-106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112-106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.617 is also issued under Pub. L. 111-203, §939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78o-7 note).

* * * * *

5. Amend Part II of Form X-17A-5 (referenced in § 249.617 of this chapter) by:

a. Removing “10. Market risk exposure – for Basel 2.5 firms (sum of Lines 10E, 10H, 10I, 10J, 10K, 10L, 10N, and 10O)_____ [12776]” and adding in its place “10. Market risk exposure – for Basel 2.5 firms (sum of Lines 10E, 10H, 10I, 10J, 10K, 10L, 10M, 10N, and 10O)_____ [12776]”.

b. Removing “Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1760)” and adding in its place “Total aggregate indebtedness liabilities from Statement of Financial Condition (Item 1230)”.

c. Adding “For the period (MMDDYY) from _____ [3932] to _____ [3933]” and “Number of months included in this statement _____ [3931]” in the “Statement of Income (Loss) or Statement of Comprehensive Income, As Applicable” section in a new line immediately preceding the line reading “REVENUE”.

d. Removing “B. Additions (including non-conforming capital of \$ _____ [4263]) \$ _____ [4260]” and adding in its place “B. Additions (including non-conforming capital of \$ _____ [4262]) \$ _____ [4260]”.

e. Removing “(k)(1) - \$2,500 capital category as per Rule 15c3-3” and adding in its place “(k)(1) – Limited business (mutual funds and/or variable annuities only)” in the “Claiming an Exemption from Rule 15c3-3” section.

f. Removing “3. Other accrued withdrawals” and adding in its place “3. Other anticipated withdrawals” in the “Other Capital Withdrawals – Recap” section.

g. In the “Computation of CFTC Minimum Capital Requirements” section, removing

“v. Enter the sum of Lines A.ii and A.iv.....\$ 7455”

and adding in its place:

“v. Amount of uncleared swap margin.....\$ 7446

vi. If the FCM is also registered as a swap dealer,

enter 2% of Line A.v.....\$ 7447

vii. Enter the sum of Lines A.ii, A.iv, and A.vi.....\$ 7455”

6. Amend Part IIC of Form X-17A-5 (referenced in § 249.617 of this chapter) by:

a. Removing “2200b”, “6631b” and “6636b” in Lines 13.B., 13.B.1. and 13.B.2. of the Balance Sheet section and adding in its place “2200bb”, “6631bb” and “6636bb”, respectively.

b. Removing “7206b” and “7205b” in Lines 9 and 10 of Column B the Regulatory Capital section and adding in its place “7206bb” and “7205bb”, respectively.

Dated: May 27, 2021.

Vanessa A. Countryman,

Secretary.