

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104881]

Amended and Restated Order Under Section 17(h)(4) of the Securities Exchange Act of 1934 Granting Exemption from Rule 17h-1T and Rule 17h-2T for Certain Broker-Dealers Maintaining Capital of Less than \$100 Million and Total Assets of Less than \$1 Billion

February 24, 2026.

I. Introduction

Section 17(h) was added to the Securities Exchange Act of 1934 (“Exchange Act”) to address the concern that financial problems of a broker-dealer’s affiliate could cause the broker-dealer to fail or experience significant financial difficulties.¹ The Securities and Exchange Commission (“Commission”) adopted Rules 17h-1T and 17h-2T under Section 17(h) of the Exchange Act.² As discussed below, these rules contain provisions that exempt certain broker-dealers from the requirements of the rules. This amended and restated order (“this Order”) exempts from the requirements of those rules additional broker-dealers that maintain total assets of less than \$1 billion and capital of less than \$100 million.³

Rule 17h-1T requires a broker-dealer to maintain and preserve certain records, including: (1) an organizational chart that includes the broker-dealer and its affiliates; (2) policies, procedures, or systems concerning methods for monitoring and controlling financial and operational risks to the broker-dealer resulting from the activities of its affiliates; (3) a description of material pending legal and arbitration proceedings involving the broker-dealer or

¹ See *Final Temporary Risk Assessment Rules*, Exchange Act Release No. 30929 (July 16, 1992), 57 FR 32159 (July 21, 1992) (“17h Adopting Release”).

² See 15 U.S.C. 78q(h) (“Section 17h of the Exchange Act”); 17 CFR 240.17h-1T (“Rule 17h-1T”); 17 CFR 240.17h-2T (“Rule 17h-2T”).

³ For the purposes of the exemption in this Order, total assets is reported as line item 940 on Form X-17A-5 (the “FOCUS Report”) and capital is reported as line item 3530 on the FOCUS Report.

its affiliates; (4) consolidating and consolidated financial statements; and (5) the broker-dealer's securities and commodities position records. Rule 17h-2T requires a broker-dealer to file Form 17-H with the Commission on a quarterly basis. The form elicits information concerning certain of the broker-dealer's affiliates.⁴

Paragraph (d) of Rule 17h-1T and paragraph (b) of Rule 17h-2T exempt certain broker-dealers from the applicability of Rules 17h-1T and 17h-2T. Broker-dealers that are exempt from Rule 15c3-3 pursuant to paragraph (k)(2) of that rule and broker-dealers that do not hold funds or securities for customers, owe money or securities to customers, or carry the accounts of customers (collectively "non-carrying broker-dealer") are exempt from Rules 17h-1T and 17h-2T, as long as such broker-dealers maintain capital of less than \$20 million (the "\$20 million capital threshold").⁵ In 2020, the Commission issued an exemptive order (the "2020 Order") that effectively raised the \$20 million capital threshold. Under the 2020 Order, the Commission exempted a non-carrying broker-dealer that maintains total assets of less than \$1 billion (the "\$1 billion total asset threshold") and capital of greater than \$20 million but less than \$50 million (the "\$50 million capital threshold").⁶

The Commission is issuing this Order to raise the \$50 million capital threshold to \$100 million. This Order does not alter the \$1 billion total asset threshold. This Order supersedes and replaces the 2020 Order.

⁴ See Form 17-H, available at <https://www.sec.gov/about/forms/form17-h.pdf>.

⁵ 17 CFR 240.17h-1T(d)(1); 17 CFR 240.17h-2T(b)(1).

⁶ See Order Under Section 17(h)(4) of the Securities Exchange Act of 1934 Granting Exemption from Rule 17h-1T and Rule 17h-2T for Certain Broker-Dealers Maintaining Capital, Including Subordinated Debt of Greater than \$20 Million But Less than \$50 Million, Exchange Act Release No. 89184 (June 29, 2020), 85 FR 40356 (July 6, 2020).

II. Discussion

Section 17(h)(4) of the Exchange Act provides that the Commission by rule or order may exempt any person or class of persons, under such terms and conditions and for such periods as the Commission shall provide in such rule or order, from the provisions of Section 17(h) of the Exchange Act, and the rules thereunder. The statute further provides that, in granting such exemptions, the Commission shall consider, among other factors:

- Whether information of the type required under section 17(h) of the Exchange Act is available from a supervisory agency (as defined in section 3401(6) of title 12), a State insurance commission or similar State agency, the Commodity Futures Trading Commission or a similar foreign regulator;
- The primary business of any associated person;
- The nature and extent of domestic or foreign regulation of the associated person's activities;
- The nature and extent of the registered person's securities activities; and
- With respect to the registered person and its associated persons, on a consolidated basis, the amount and proportion of assets devoted to, and revenues derived from, activities in the United States securities markets.

The Commission has administered the risk assessment program under Section 17(h) of the Exchange Act since 1992. Based on this experience, it is appropriate to raise the \$50 million capital threshold to \$100 million. This Order does not alter the \$1 billion total asset threshold.

From the outset, the Commission's risk assessment program under Section 17(h) of the Exchange Act sought to be risk-based and to focus on larger broker-dealers. For example, although the Commission originally proposed a capital threshold of \$5 million when it proposed rules under Section 17(h), it ultimately adopted a \$20 million capital threshold,⁷ because the

⁷ See *Proposed Temporary Risk Assessment Rules*, Exchange Act Release No. 29635 (Aug. 30, 1991), 56 FR 44016 (Sept. 6, 1991).

number of broker-dealers subject to Rules 17h-1T and 17h-2T would be reduced without a corresponding trade-off in risk.⁸ Information filed by broker-dealers on the FOCUS Report as of September 30, 2025 indicates that broker-dealers above the \$100 million capital threshold and \$1 billion asset threshold, coupled with broker-dealers already supervised by the Commission pursuant to Rule 15c3-1e,⁹ represent approximately 97% of total capital of all broker-dealers. Thus, increasing the capital threshold while maintaining the \$1 billion assets threshold would continue to ensure supervision of approximately 97% of broker-dealer capital while providing relief to approximately 35 broker-dealers or approximately 14% of the approximately 244 broker-dealers currently subject to Rules 17h-1T and 17h-2T.

Exempting certain firms that maintain capital of less than \$100 million from Rules 17h-1T and 17h-2T is intended to reduce the number of broker-dealers subject to the rules without materially increasing risk. The Commission's risk assessment program will continue to focus on those broker-dealers and affiliates that are in a position to potentially pose significant risk to customers and to the orderly, fair, and efficient functioning of the securities markets. Increasing the exemption capital threshold to \$100 million will reduce the regulatory burden for a cohort of smaller broker-dealers that pose less risk to customers and to the orderly, fair, and efficient functioning of the securities markets relative to broker-dealers that will continue to be subject to the rules.

⁸ See *17h Adopting Release* at 32164-65.

⁹ Many of the largest broker-dealers, which use alternative methods of computing their net capital under Appendix E of Rule 15c3-1, are exempt from Rules 17h-1T and 17h-2T but are subject to heightened monitoring as part of the Commission's Risk Supervised Broker-Dealer Program. See 17 CFR 17h-1T(d)(4) and 17 CFR 17h-2T(b)(4). See also 17 CFR 240.15c3-1e.

In considering this Order, the Commission focused on the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.*, the nature and extent of the person’s securities activities).¹⁰ Although the other four factors included in Section 17(h)(4) of the Exchange Act were considered, the Commission determined they did not inform the exemption as the exemption does not alter the type of information required to be reported or preserved, does not vary in applicability based upon the business activities of or the extent of regulatory oversight over a broker-dealer’s affiliate, and applies regardless of the extent of a broker-dealer and its affiliate conducting business in the United States.¹¹ The firms that will be able to rely on this exemption are relatively small in size, as measured by the amount of total assets and by the amount of capital that they maintain. These exempted firms—because of their relatively small size and the fact that they are non-carrying broker-dealers—present less risk to their customers and to the financial markets. Consequently, the objectives of this exemption align most closely with the fourth factor in Section 17(h)(4) of the Exchange Act (*i.e.*, the nature and extent of the registered person’s securities activities). This Order strikes an appropriate balance in terms of relieving certain smaller broker-dealers from the requirements of Rules 17h-1T and 17h-2T while continuing to subject to the rules those broker-dealers that pose greater risk to the financial markets, investors, and other market participants.

III. Conclusion

IT IS HEREBY ORDERED pursuant to Section 17(h)(4) of the Exchange Act that any broker-dealer that does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers, or that is exempt from Rule 15c3-3 pursuant

¹⁰ 15 U.S.C. 78q(h)(4).

¹¹ 15 U.S.C. 78q(h)(4)(A)-(C) & (E).

to paragraph (k)(2) of that rule, is hereby exempt from Rule 17h-1T and Rule 17h-2T, if it maintains total assets of less than \$1 billion (as reported as line item 940 on the FOCUS Report) and capital of at least \$20 million but less than \$100 million (as reported as line item 3530 on the FOCUS Report).¹²

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

¹² See *supra* note 3.