

# **SECURITIES AND EXCHANGE COMMISSION**

## **17 CFR Part 240**

**Release Nos. 34-63949**

### **Technical Amendments to Rule 17a-8: Financial Recordkeeping and Reporting of Currency and Foreign Transactions**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Securities and Exchange Commission (“Commission”) is adopting technical amendments to Rule 17a-8 under the Securities and Exchange Act of 1934 (“Exchange Act”) to update a reference within the rule to the implementing regulations of the Currency and Foreign Transactions Reporting Act of 1970, as amended (commonly referred to as the Bank Secrecy Act or the “BSA”). The BSA’s implementing regulations are promulgated and administered by the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the Department of the Treasury. The reference to the BSA’s implementing regulations in Rule 17a-8 is being updated in response to FinCEN’s reorganization of those regulations into a new chapter of the Code of Federal Regulations (“CFR”).

**EFFECTIVE DATE:** March 1, 2011

**FOR FURTHER CONTACT INFORMATION:** Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission; (202) 551-5550; 100 F Street, NE, Washington, DC 20549.

## I. Supplementary Material

### A. Background

The BSA,<sup>1</sup> as implemented through regulations issued and administered by FinCEN, requires financial institutions, including broker-dealers registered with the Commission, to make, keep, retain and report certain records that are useful for the purposes of criminal, tax, or regulatory investigations or proceedings.<sup>2</sup> FinCEN administers the BSA and its implementing regulations, and the Commission has oversight authority for broker-dealers' compliance with the BSA's requirements.<sup>3</sup> Exchange Act Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements of the BSA's implementing regulations as found in part 103 of title 31 of the CFR.<sup>4</sup>

FinCEN recently reorganized the BSA's implementing regulations into a new chapter within title 31 of the CFR.<sup>5</sup> As part of this reorganization, FinCEN moved the regulations reflected in 31 CFR Part 103 into 31 CFR Chapter X. When Chapter X becomes effective on March 1, 2011, 31 CFR Part 103 will be deleted, thereby rendering the references to "part 103 of title 31" of the CFR in Exchange Act Rule 17a-8 incorrect.

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<sup>1</sup> 31 U.S.C. 5311 et seq.

<sup>2</sup> See Section 17 of the Exchange Act (15 U.S.C. 78q) and 31 CFR 103.12 (redesignated as 31 CFR 1010.301).

<sup>3</sup> See 31 CFR 103.56(a)(6) (redesignated as 31 CFR 1010.810(a)(6)).

<sup>4</sup> See Exchange Act Release No. 18321 (December 10, 1981); 46 FR 61454 (December 17, 1981) ("Rule 17a-8 Adopting Release").

<sup>5</sup> Transfer and Reorganization of Bank Secrecy Act Regulation; Proposed Rule, 73 FR 66414 (November 7, 2008); Transfer and Reorganization of Bank Secrecy Act Regulation; Final Rule, 75 FR 65806 (October 26, 2010).

B. Technical Amendments to Rule 17a-8

The Commission is amending Rule 17a-8 to conform the current CFR references to the BSA's implementing regulations to those that will apply as a result of FinCEN's reorganization of these regulations. Accordingly, the two references to "part 103 of title 31" in Exchange Act Rule 17a-8 will be replaced with references to "Chapter X of title 31."

**II. Certain Findings**

Under the Administrative Procedure Act ("APA"), notice of proposed rulemaking is not required when an agency, for good cause, finds "that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."<sup>6</sup> The Commission is making technical amendments to Rule 17a-8 to update the reference to the BSA implementing regulations. The Commission finds that because the amendment is technical in nature and is being made solely to reflect the changes in applicable references to the BSA's implementing regulations, publishing the amendment for comment is unnecessary.<sup>7</sup>

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.<sup>8</sup> Due to the need to coordinate the effectiveness of the amendment to Rule 17a-8 with the effective date of FinCEN's rule reorganization scheduled to take effect on March 1, 2011, and for the same reasons described

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<sup>6</sup> 5 U.S.C. 553(b).

<sup>7</sup> For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act ("RFA") or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of RFA analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>8</sup> See 5 U.S.C. 553(d)(3).

above with respect to notice and opportunity for comment, the Commission finds that there is good cause for these technical amendments to take effect on March 1, 2011.

### **III. Consideration of Competitive Effects of Amendment**

Section 3(f) of the Exchange Act,<sup>9</sup> provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.<sup>10</sup>

Because the amendments to Exchange Act Rule 17a-8 are technical in nature, and do not impose any additional requirements beyond those already required, we do not anticipate that the amendments would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

### **IV. Statutory Authority**

We are adopting this technical amendment to Rule 17a-8 under the authority set forth in the Exchange Act, in particular, Sections 3, 10, 15, 17 and 23 thereof.<sup>11</sup>

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<sup>9</sup> 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78w(a)(2).

<sup>11</sup> 15 U.S.C. 78c, 78j, 78o, 78q, and 78w.

**List of Subjects**

**17 CFR Part 240**

Broker-dealers, Reporting and recordkeeping requirements, Securities.

**TEXT OF AMENDMENTS**

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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

1. The authority 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, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a– 20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et seq., and 18 U.S.C. 1350, unless otherwise noted.

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2. Amend § 240.17a-8 by revising the phrase “part 103” in the two places it appears to read “Chapter X.”

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Elizabeth M. Murphy  
Secretary

Dated: February 23, 2011