

IX. Statutory Authority

The amendments are proposed pursuant to the authority conferred on the Securities and Exchange Commission by the Exchange Act (15 U.S.C. 78a, *et seq.*) (particularly sections 17, 23, and 24(b) thereof (15 U.S.C. 78q, 78w, and 78x(b))).

List of Subjects in 17 CFR Part 240

Brokers, OTC derivatives dealers, Reporting and recordkeeping requirements, Securities, Supervised investment bank holding companies.

Text of Proposed Rules and Rule Amendments

In accordance with the foregoing, the Securities and Exchange Commission hereby proposes to amend Title 17 Chapter II of the Code of Federal Regulations as follows:

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

3. 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, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

4. Section 240.17a-12, paragraph (l) is revised to read as follows:

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

(l) *Accountant's report on management controls.* (1) The OTC derivatives dealer shall file concurrently with the annual audit report a supplemental report by the certified public accountant indicating the results of the certified public accountant's review of the OTC derivatives dealer's internal risk management control system with respect to the requirements of § 240.15c3-4. This review shall be conducted in accordance with procedures agreed to by the OTC derivatives dealer and the certified public accountant conducting the review. The purpose of the review is to confirm that the OTC derivatives dealer has established, documented, and maintained an internal risk management control system in accordance with § 240.15c3-4, and is in compliance with that internal risk management control system.

(2) The agreed-upon procedures are to be performed, and the report is to be prepared, in accordance with U.S.

Generally Accepted Attestation Standards.

(3) Prior to the commencement of the review, every OTC derivatives dealer shall file the procedures to be performed pursuant to paragraph (l)(1) of this section with the Commission's principal office in Washington, DC. Prior to the commencement of any subsequent review, every OTC derivatives dealer shall file with the Commission's principal office in Washington, DC a notice of changes in the agreed-upon procedures. If there are no changes, the OTC derivatives dealer should indicate in the notice that no changes have been made to those procedures.

* * * * *

5. Section 240.17h-1T is amended by:
a. Redesignating paragraph (d)(5) as paragraph (d)(6); and
b. Adding new paragraph (d)(5).
The addition reads as follows:

§ 240.17h-1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

* * * * *

(d) * * *
(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i-1(a).

* * * * *

6. Section 240.17h-2T is amended by:
a. Redesignating paragraph (b)(5) as paragraph (b)(6); and
b. Adding new paragraph (b)(5).
The addition reads as follows:

§ 240.17h-2T Risk assessment reporting requirements for brokers and dealers.

* * * * *

(b) * * *
(5) The provisions of this section shall not apply to a broker or dealer affiliated with a supervised investment bank holding company, as defined in § 240.17i-1(a).

* * * * *

7. Sections 240.17i-1 through 240.17i-8 are added to read as follows:

Supervised Investment Bank Holding Company Rules

§ 240.17i-1. Definitions.

(a) For purposes of §§ 240.17i-1 through 240.17i-8, the terms *investment bank holding company*, *supervised investment bank holding company*, *affiliate*, *bank*, *bank holding company*, *company*, *control*, *savings association*, *insured bank*, *foreign bank*, *person associated with an investment bank holding company* and *associated person of an investment bank holding company* shall be defined as set forth in section 17(i)(5) of the Act.

(b) For purposes of §§ 240.17i-2 through 240.17i-8, the term *affiliate group* shall include the supervised investment bank holding company and every affiliate of the supervised investment bank holding company.

(c) For purposes of §§ 240.17i-1 through 240.17i-8, the term *material affiliate* shall mean any member of the affiliate group that is material to the supervised investment bank holding company.

§ 240.17i-2. Notice of intention to be supervised by the Commission as a supervised investment bank holding company.

(a) An investment bank holding company that owns or controls a broker or dealer may file with the Commission a written notice of intention to become supervised by the Commission pursuant to section 17(i) of the Act (15 U.S.C. 78q(i)), provided that the investment bank holding company is not:

(1) An affiliate of an insured bank (other than an institution described in paragraph (D), (F), or (G) of section 2(c)(2), or held under section 4(f), of the Bank Holding Company Act of 1956) (12 U.S.C. 1841(c)(2)(D), (F), or (G) and 12 U.S.C. 1843(f)) or a savings association;

(2) A foreign bank, foreign company, or company that is described in section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)); or

(3) A foreign bank that controls, directly or indirectly, a corporation chartered under section 25A of the Federal Reserve Act (12 U.S.C. 611).

(b) To become supervised as a supervised investment bank holding company an investment bank holding company shall file a notice of intention that includes the following:

(1) A request to become supervised as a supervised investment bank holding company;

(2) A statement certifying that the investment bank holding company is not an entity described in section 17(i)(1)(A)(i)–(iii) of the Act (15 U.S.C. 78q(i)(1)(A)(i)–(iii));

(3) Documentation demonstrating that the investment bank holding company owns or controls a broker or dealer that maintains a substantial presence in the securities business as evidenced either by its holding \$100 million or more in tentative net capital as calculated pursuant to § 240.15c3-1 or by any other information and documentation as the Commission determines is appropriate; and

(4) Supplemental documents including:

(i) A narrative describing the business and organization of the investment bank holding company;