

# **Exhibit 40**

## **Part 2 of 2**

statements shall be deemed confidential, except that they shall be available for official use by any official or employee of the United States or any State, by national securities exchanges and registered national securities associations of which the person filing such a report is a member, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest. Nothing contained in this paragraph (3) shall be deemed to be in derogation of the rules of any registered national securities association or national securities exchange which give to customers of a member broker or dealer the right, upon request to such member broker or dealer, to obtain information relative to its financial condition.

(4) The broker or dealer shall file with the report a supplemental report which shall be covered by an opinion of the independent public accountant on the status of the membership of the broker or dealer in the Securities Investor Protection Corporation ("SIPC") if, pursuant to paragraph (e)(1) of this section, a report of the broker or dealer is required to be covered by an opinion of a certified public accountant or a public accountant who is in fact independent. The supplemental report shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms not previously reported on under this paragraph (e)(4) which were required to be filed on or prior to the date of the report required by paragraph (d) of this section: *Provided*, That the broker or dealer need not file the supplemental report on the SIPC annual general assessment reconciliation or exclusion from membership form for any period during which the SIPC assessment is a minimum assessment as provided for in section 4(d)(1)(c) of the Securities Investor Protection Act of 1970, as amended. The supplemental report, an original of which shall be submitted to the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business, the Commission's principal office in Washington, the principal office of the designated examining authority for such broker or dealer and the office of SIPC,

shall be bound separately, be dated and be signed manually, and shall include the following:

(i) A schedule of assessment payments also showing any overpayments applied and overpayments carried forward including: payment dates, amounts, and name of SIPC collection agent to whom mailed, or

(ii) If exclusion from membership was claimed, a statement that the broker or dealer qualified for exclusion from membership under the Securities Investor Protection Act of 1970, and the date and name of the SIPC collection agent with whom a Certification of Exclusion from Membership (Form SIPC-3) was filed, and

(iii) An accountant's report which shall state that in the accountant's opinion either the assessments were determined fairly in accordance with applicable instructions and forms, or that a claim for exclusion from membership was consistent with income reported. If exceptions are noted, the accountant shall state any corrective action taken or proposed. The accountant's review on which his report is based shall include as a minimum the following procedures:

(A) Comparison of listed assessment payments with respective cash disbursements record entries;

(B) For all or any portion of a fiscal year ending in 1976 and each fiscal year thereafter, comparison of amounts reflected in the annual report as required by paragraph (d) of this section, with amounts reported in the Annual General Assessment Reconciliation (Form SIPC-7);

(C) Comparison of adjustments reported in Form SIPC-7 with supporting schedules and working papers supporting adjustments;

(D) Proof of arithmetical accuracy of the calculations reflected in Form SIPC-7 and in the schedules and working papers supporting adjustments; and

(E) Comparison of the amount of any overpayment applied with the Form SIPC-7 on which it was computed; or

(F) If exclusion from membership is claimed, the accountant shall review the annual report required by paragraph (d) of this section for all or any portion of a fiscal year ending in 1976

and each fiscal year thereafter to ascertain that the Certification of Exclusion from Membership (Form SIPC-7) was consistent with the income reported.

(5)(i) For purposes of this section, the term *Year 2000 Problem* shall include problems arising from:

(A) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(B) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(C) Computer software failing to detect that the Year 2000 is a leap year; or

(D) Any other computer software error that is directly or indirectly caused by the problems set forth in paragraph (e)(5)(i)(A), (B), or (C) of this section.

(ii) (A) No later than August 31, 1998, every broker or dealer required to maintain minimum net capital pursuant to § 240.15c3-1(a)(2) of \$5,000 or greater as of July 15, 1998, shall file Part I of Form BD-Y2K (§ 249.618 of this chapter) prepared as of July 15, 1998, and no later than April 30, 1999, every broker or dealer required to maintain minimum net capital pursuant to § 240.15c3-1(a)(2) of \$5,000 or greater as of March 15, 1999, shall file Part I of Form BD-Y2K prepared as of March 15, 1999.

(B) Every broker or dealer that registers pursuant to section 15 of the Act between July 16, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of \$5,000 or greater, shall file Part I of Form BD-Y2K (§ 249.18 of this chapter) no later than 30 days after its registration becomes effective. Part I of Form BD-Y2K shall be prepared as of the date its registration became effective.

(iii) (A) No later than August 31, 1998, every broker or dealer with a minimum net capital requirement pursuant to § 240.15c3-1(a)(2) of \$100,000 or greater as of July 15, 1998 shall file Part II of Form BD-Y2K (§ 249.618 of this chapter). Part II of Form BD-Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of July 15, 1998.

(B) No later than April 30, 1999, every broker or dealer with a minimum net capital requirement pursuant to § 240.15c3-1(a)(2) of \$100,000 or greater as of March 15, 1999 shall file Part II of Form BD-Y2K (§ 249.618 of this chapter). In addition, each broker or dealer subject to paragraph (e)(5)(iii)(A) of this section shall file Part II of Form BD-Y2K pursuant to this paragraph (e)(5)(iii)(B) regardless of its minimum net capital requirement. Part II of Form BD-Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of March 15, 1999.

(C) Every broker or dealer that registers pursuant to section 15 of the Act between July 15, 1998 and December 31, 1998 or between March 16, 1999 and October 1, 1999, and that is required to maintain net capital pursuant to § 240.15c3-1(a)(2) of \$100,000 or greater, shall file Part II of Form BD-Y2K (§ 249.18 of this chapter) no later than 30 days after registration becomes effective. Part II of Form BD-Y2K shall address each topic in paragraph (e)(5)(iv) of this section as of the effective date of its registration.

(iv) Part II of Form BD-Y2K (§ 249.618 of this chapter) prepared pursuant to paragraph (e)(5)(iii) of this section shall identify a specific person or persons that are available to discuss the contents of the report and shall include a discussion of the following:

(A) Whether the board of directors (or similar body) of the broker or dealer has approved and funded plans for preparing and testing its computer systems for Year 2000 Problems;

(B) Whether the plans of the broker or dealer exist in writing and address all mission critical computer systems of the broker or dealer wherever located throughout the world;

(C) Whether the broker or dealer has assigned existing employees, hired new employees, or engaged third parties to provide assistance in addressing Year 2000 Problems, and if so, a description of the work that these groups of individuals have performed as of the date of each report;

(D) The current progress of the broker or dealer on each stage of preparation for potential problems caused by Year 2000 Problems. These stages are:

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(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the broker or dealer must take to address Year 2000 Problems;

(3) Implementation of the steps needed to address Year 2000 Problems;

(4) Internal testing of software designed to address Year 2000 Problems, including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date;

(5) Point-to-point or industry-wide testing of software designed to address Year 2000 Problems (including testing with other brokers or dealers, other financial institutions, and customers), including the number and a description of the material exceptions resulting from such testing that are unresolved as of the reporting date; and

(6) Implementation of tested software that will address Year 2000 Problems;

(E) Whether the broker or dealer has written contingency plans in the event, that after December 31, 1999, it has problems caused by Year 2000 Problems;

(F) What levels of management of the broker or dealer are responsible for addressing potential problems caused by Year 2000 Problems, including a description of the responsibilities for each level of management regarding the Year 2000 Problems;

(G) Any additional material information concerning its management of Year 2000 Problems that will help the Commission and the designated examining authorities assess the readiness of the broker or dealer for the Year 2000.

(v) The broker or dealer shall file an original and two copies of Form BD-Y2K (§249.618 of this chapter) prepared pursuant to paragraph (e)(5) of this section with the Commission's principal office in Washington, D.C. and one copy of Form BD-Y2K with the designated examining authority of the broker or dealer. The reports required by paragraph (e)(5) of this section shall be public.

(vi) No later than April 30, 1999, every broker or dealer required to file Part II of Form BD-Y2K (§249.618 of this chapter) pursuant to paragraph (e)(5)(iii)(B) of this section and required to file au-

dated financial statements pursuant to paragraph (d) of this section shall file with its Form BD-Y2K an original and two copies of a report prepared by an independent public accountant regarding the broker's or dealer's process, as of March 15, 1999, for addressing Year 2000 Problems with the Commission's principal office in Washington, DC and one copy of the accountant's report with the designated examining authority of the broker or dealer. The independent public accountant's report shall be prepared in accordance with standards that have been reviewed by the Commission and that have been issued by a national organization that is responsible for promulgating authoritative accounting and auditing standards.

(f)(1) *Qualification of accountants.* The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of his place of residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of his place of residence or principal office.

(2) *Designation of accountant.* (i) Every broker or dealer which is required by paragraph (d) of this section to file an annual report of financial statements section shall file no later than December 10 of each year a statement with the Commission's principal office in Washington, DC, the regional or district office of the Commission for the region or district in which its principal place of business is located, and the principal office of the designated examining authority for such broker or dealer. Such statement shall indicate the existence of an agreement dated no later than December first, with an independent public accountant covering a contractual commitment to conduct the broker's or dealer's annual audit during the following calendar year.

(ii) The agreement may be of a continuing nature, providing for successive yearly audits, in which case no further filing is required. If the agreement is for a single audit, or if the continuing agreement previously filed has been terminated or amended, a new

statement must be filed by the required date.

(iii) The statement shall be headed "Notice pursuant to Rule 17a-5(f)(2)" and shall contain the following information:

(A) Name, address, telephone number and registration number of the broker or dealer;

(B) Name, address and telephone number of the accounting firm; and

(C) The audit date of the broker or dealer for the year covered by the agreement.

(iv) Any broker or dealer which is exempted from the requirement to file an annual audited report of financial statements shall nevertheless file the notice specified herein indicating the date as of which the unaudited report will be prepared.

(v) Notwithstanding the date of filing specified in paragraph (f)(2)(i) of this section, every broker or dealer shall file the notice provided for in paragraph (f)(2) of this section within 30 days following the effective date of registration as a broker or dealer.

(3) *Independence of accountant.* An accountant shall be independent in accordance with the provisions of § 210.2-01 (b) and (c) of this chapter.

(4) *Replacement of accountant.* A broker or dealer shall file a notice which must be received by the Commission's principal office in Washington, DC, the regional or district office of the Commission for the region or district in which its principal place of business is located, and the principal office of the designated examining authority for such broker or dealer, not more than 15 business days after:

(i) The broker or dealer has notified the accountant whose opinion covered the most recent financial statements filed under paragraph (d) of this section that his services will not be utilized in future engagements; or

(ii) The broker or dealer has notified an accountant who was engaged to give an opinion covering the financial statements to be filed under paragraph (d) of this section that the engagement has been terminated; or

(iii) An accountant has notified the broker or dealer that he would not continue under an engagement to give an opinion covering the financial state-

ments to be filed under paragraph (d) of this section; or

(iv) A new accountant has been engaged to give an opinion covering the financial statements to be filed under paragraph (d) of this section without any notice of termination having been given to or by the previously engaged accountant.

Such notice shall state (A) the date of notification of the termination of the engagement or engagement of the new accountant as applicable and (B) the details of any problems existing during the 24 months (or the period of the engagement, if less) preceding such termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which problems, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to them in connection with his report on the subject matter of the problems. The problems required to be reported in response to the preceding sentence include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Problems contemplated by this section are those which occur at the decision-making level—i.e., between principal financial officers of the broker-dealer and personnel of the accounting firm responsible for rendering its report. The notice shall also state whether the accountant's report on the financial statements for any of the past two years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The broker or dealer shall also request the former accountant to furnish the broker or dealer with a letter addressed to the Commission stating whether he agrees with the statements contained in the notice of the broker or dealer and, if not, stating the respects in which he does not agree. The broker or dealer shall file three copies of the notice and the accountant's letter, one copy of which shall be manually signed by the sole proprietor, or a general

partner or a duly authorized corporate officer, as appropriate, and by the accountant, respectively.

(g) *Audit objectives.* (1) The audit shall be made in accordance with generally accepted auditing standards and shall include a review of the accounting system, the internal accounting control and procedures for safeguarding securities including appropriate tests thereof for the period since the prior examination date. The audit shall include all procedures necessary under the circumstances to enable the independent public accountant to express an opinion on the statement of financial condition, results of operations, cash flow, and the Computation of Net Capital under § 240.15c3-1, the Computation for Determination of reserve Requirements for Brokers or Dealers under Exhibit A of § 240.15c3-3, and Information Relating to the Possession or Control Requirements under § 240.15c3-3. The scope of the audit and review of the accounting system, the internal control and procedures for safeguarding securities shall be sufficient to provide reasonable assurance that any material inadequacies existing at the date of the examination in (a) the accounting system; (b) the internal accounting controls; (c) procedures for safeguarding securities; and (d) the practices and procedures whose review is specified in (i), (ii), (iii) and (iv) of this paragraph would be disclosed. Additionally, as specific objectives, the audit shall include reviews of the practices and procedures followed by the client:

(i) In making the periodic computations of aggregate indebtedness and net capital under § 240.17a-3(a)(11) and the reserve required by § 240.15c3-3(e);

(ii) In making the quarterly securities examinations, counts, verifications and comparisons and the recordation of differences required by § 240.17a-13;

(iii) In complying with the requirement for prompt payment for securities of section 4(c) of Regulation T (§ 220.4(c) of chapter II of title 12) of the Board of Governors of the Federal Reserve System; and

(iv) In obtaining and maintaining physical possession or control of all fully paid and excess margin securities of customers as required by § 240.15c3-3.

Such review shall include a determination as to the adequacy of the procedures described in the records required to be maintained pursuant to § 240.15c3-3(d)(4).

(2) If the broker or dealer is exempt from § 240.15c3-3, the independent public accountant shall ascertain that the conditions of the exemption were being complied with as of the examination date and that no facts came to his attention to indicate that the exemption had not been complied with during the period since his last examination.

(3) A material inadequacy in the accounting system, internal accounting controls, procedures for safeguarding securities, and practices and procedures referred to in paragraph (g)(1) of this section which is expected to be reported under these audit objectives includes any condition which has contributed substantially to or, if appropriate corrective action is not taken, could reasonably be expected to (i) inhibit a broker or dealer from promptly completing securities transactions or promptly discharging his responsibilities to customers, other broker-dealers or creditors; (ii) result in material financial loss; (iii) result in material misstatements of the broker's or dealer's financial statements; or (iv) result in violations of the Commission's recordkeeping or financial responsibility rules to an extent that could reasonably be expected to result in the conditions described in paragraphs (g)(3) (i), (ii), or (iii) of this section.

(h) *Extent and timing of audit procedures.* (1) The extent and timing of audit procedures are matters for the independent public accountant to determine on the basis of his review and evaluation of existing internal controls and other audit procedures performed in accordance with generally accepted auditing standards and the audit objectives set forth in paragraph (g) of this section. In determining the extent of testing, consideration shall be given to the materiality of an area and the possible effect on the financial statements and schedules of a material misstatement in a related account. The performance of auditing procedures involves the proper synchronization of

their application and thus comprehends the need to consider simultaneous performance of procedures in certain areas such as, for example, securities counts, transfer verification and customer and broker confirmation in connection with verification of securities positions.

(2) If, during the course of the audit or interim work, the independent public accountant determines that any material inadequacies exist in the accounting system, internal accounting control, procedures for safeguarding securities, or as otherwise defined in paragraph (g)(3) of this section, then the independent public accountant shall call it to the attention of the chief financial officer of the broker or dealer, who shall have a responsibility to inform the Commission and the designated examining authority by telegraphic or facsimile notice within 24 hours thereafter as set forth in § 240.17a-11 (e) and (g). The broker or dealer shall also furnish the accountant with a copy of said notice to the Commission by telegram or facsimile within said 24 hour period. If the accountant fails to receive such notice from the broker or dealer within said 24 hour period, or if the accountant disagrees with the statements contained in the notice of the broker or dealer, the accountant shall have a responsibility to inform the Commission and the designated examining authority by report of material inadequacy within 24 hours thereafter as set forth in § 240.17a-11(g). Such report from the accountant shall, if the broker or dealer failed to file a notice, describe any material inadequacies found to exist. If the broker or dealer filed a notice, the accountant shall file a report detailing the aspects, if any, of the broker's or dealer's notice with which the accountant does not agree.

(i) *Accountant's reports, general provisions—1) Technical requirements.* The accountant's report shall:

- (i) Be dated;
- (ii) Be signed manually;
- (iii) Indicate the city and state where issued; and
- (iv) Identify without detailed enumeration the financial statements and schedules covered by the report.

(2) *Representations as to the audit.* The accountant's report shall:

- (i) State whether the audit was made in accordance with generally accepted auditing standards;
- (ii) State whether the accountant reviewed the procedures followed for safeguarding securities; and
- (iii) Designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reason for their omission.

Nothing in this section shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required under this section.

(3) *Opinion to be expressed.* The accountant's report shall state clearly the opinion of the accountant: (i) In respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and (ii) as to the consistency of the application of the accounting principles, or as to any changes in such principles which have a material effect on the financial statements.

(4) *Exceptions.* Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

(5) *Definitions.* For the purpose of this section, the terms *audit* (or *examination*), *accountant's report*, and *certified* shall have the meanings given in § 210.1-02 of this chapter.

(j) *Accountant's report on material inadequacies.* The broker or dealer shall file concurrently with the annual audit report a supplemental report by the accountant describing any material inadequacies found to exist or found to have existed since the date of the previous audit. The supplemental report shall indicate any corrective action taken or proposed by the broker or dealer in regard thereto. If the audit did not disclose any material inadequacies, the supplemental report shall so state.

(k) *Supplemental reports.* Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3-1e shall file concurrently with the annual audit report a supplemental report on management controls, which shall be prepared by a registered public accounting firm (as that term is defined in section 2(a)(12) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7201 *et seq.*)). The supplemental report shall indicate the results of the accountant's review of the internal risk management control system established and documented by the broker or dealer in accordance with § 240.15c3-4. This review shall be conducted in accordance with procedures agreed upon by the broker or dealer and the registered public accounting firm conducting the review. The agreed upon procedures are to be performed and the report is to be prepared in accordance with the rules promulgated by the Public Company Accounting Oversight Board. The purpose of the review is to confirm that the broker or dealer has established, documented, and is in compliance with the internal risk management controls established in accordance with § 240.15c3-4. Before commencement of the review and no later than December 10 of each year, the broker or dealer shall file a statement with the Division of Market Regulation, Office of Financial Responsibility, at the Commission's principal office in Washington, DC that includes:

(1) A description of the agreed-upon procedures agreed to by the broker or dealer and the registered public accounting firm; and

(2) A notice describing changes in those agreed-upon procedures, if any. If there are no changes, the broker or dealer should so indicate.

(l) *Use of certain statements filed with the Securities and Exchange Commission.* At the request of any broker or dealer who is (1) an investment company registered under the Investment Company Act of 1940, or (2) a sponsor or depositor of such a registered investment company who effects transactions in securities only with, or on behalf of, such registered investment company, the Commission will accept the financial statements filed pursuant to section 13 or 15(d) of the Securities Exchange Act

of 1934 or section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder as a filing pursuant to paragraph (d) of this section. Such a filing shall be deemed to satisfy the requirements of this section for any calendar year in which such financial statements are filed, provided that the statements so filed meet the requirements of the other rules under which they are filed with respect to time of filing and content.

(m) *Extensions and exemptions.* (1) A broker's or dealer's designated examining authority may extend the period under paragraph (d) of this section for filing annual audit reports. The designated examining authority for the broker or dealer shall maintain, in the manner prescribed in § 240.17a-1, a record of each extension granted.

(2) Any "bank" as defined in section 3(a)(6) of the Act (48 Stat. 882; 15 U.S.C. 78c) and any "insurance company" as defined in section 3(a)(19) of the Act (78 Stat. 565; 15 U.S.C. 78c) registered as a broker or dealer to sell variable contracts but exempt from § 240.15c3-1 shall be exempt from the provisions of this section.

(3) On written request of any national securities exchange, registered national securities association, broker or dealer, or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(4) The provisions of § 240.17a-5 shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o-3(a)).

(n) *Notification of change of fiscal year.* (1) In the event any broker or dealer finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC, the regional or district office of the Commission for the region or district in which the broker or dealer has its principal place of business and the



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principal office of the designated examining authority for such broker or dealer, a notice of such change.

(2) Such notice shall contain a detailed explanation of the reasons for the change. Any change in the filing period for the audit report must be approved by the designated examining authority pursuant to paragraph (d)(1)(i) of this section.

(c) *Filing requirements.* For purposes of filing requirements as described in § 240.17a-5, such filing shall be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of § 240.17a-5 which is applicable.

(p) *Compliance with § 240.17a-12.* An OTC derivatives dealer may comply with § 240.17a-5 by complying with the provisions of § 240.17a-12.

CROSS REFERENCE: For interpretative release applicable to § 240.17a-5, see No. 51 in tabulation, part 211 of this chapter.

[40 FR 59713, Dec. 30, 1975, as amended at 41 FR 5275, Feb. 5, 1976; 41 FR 12638, Mar. 26, 1976; 42 FR 23787, May 10, 1977; 44 FR 1975, Jan. 9, 1979; 45 FR 39842, June 12, 1980; 46 FR 13206, Feb. 20, 1981; 46 FR 35635, July 10, 1981; 57 FR 45294, Oct. 1, 1992; 58 FR 37657, July 13, 1993; 58 FR 45839, 45840, Aug. 31, 1993; 59 FR 5945, Feb. 9, 1994; 63 FR 37673, July 13, 1998; 63 FR 59213, 59401, Nov. 3, 1998; 67 FR 58300, Sept. 13, 2002; 68 FR 46453, Aug. 6, 2003; 69 FR 34471, June 21, 2004]

### **§ 240.17a-6 Right of national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board to destroy or dispose of documents.**

(a) Any document kept by or on file with a national securities exchange, national securities association, registered clearing agency or the Municipal Securities Rulemaking Board pursuant to the Act or any rule or regulation thereunder may be destroyed or otherwise disposed of by such exchange, association, clearing agency or the Municipal Securities Rulemaking Board at the end of five years or at such earlier date as is specified in a plan for the destruction or disposition of any such documents if such plan has been filed with the Commission by such

exchange, association, clearing agency or the Municipal Securities Rulemaking Board and has been declared effective by the Commission.

(b) Such plan may provide that any such document may be transferred to microfilm or other recording medium after such time as specified in the plan and thereafter be maintained and preserved in that form. If a national securities exchange, association, clearing agency or the Municipal Securities Rulemaking Board uses microfilm or other recording medium it shall:

(1) Be ready at all times to provide, and immediately provide, easily readable projection of the microfilm or other recording medium and easily readable hard copy thereof;

(2) Provide indexes permitting the immediate location of any such document on the microfilm or other recording medium; and

(3) In the case of microfilm, store a duplicate copy of the microfilm separately from the original microfilm for the time required.

(c) For the purposes of this rule a plan filed with the Commission by a national securities exchange, association, clearing agency or the Municipal Securities Rulemaking Board shall not become effective unless the Commission, having due regard for the public interest and for the protection of investors, declares the plan to be effective. The Commission in its declaration may limit the applications, reports, and documents as to which it shall apply, and may impose any other terms and conditions to the plan and to the period of its effectiveness which it deems necessary or appropriate in the public interest or for the protection of investors.

[45 FR 79426, Dec. 1, 1980]

### **§ 240.17a-7 Records of non-resident brokers and dealers.**

(a)(1) Except as provided in paragraphs (b) and (c) of this section, each non-resident broker or dealer registered or applying for registration pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall keep, maintain, and preserve, at a