

DEBEVOISE & PLIMPTON LLP

Draft Regulations Regarding Private Placement Brokers

**Prepared for the American Bar Association
Task Force on Private Placement Broker-Dealers**

**Respectfully submitted,
Linda Lerner, Esq.
Jonathan Morrill, Esq.
Geoffrey Chepiga, Law Clerk**

Reg. §240.3b-1 to 3b-19 No change

Reg. §240.3b-20 Definition of private placement brokers

Private placement brokers are a special class of brokers who are registered with the Commission pursuant to Rule 15b under the Act and act in accordance with Rule 15a-12 under the Act.

Reg. §240.15a-1 to 15a-11 No change

Reg. §240.15a-12 Registration of private placement brokers

Preliminary Note: Private placement brokers are a special class of brokers that receive compensation for introducing buyers and sellers of securities but are exempt from certain requirements applicable to brokers, including application of the Securities Investor Protection Act of 1970 (§240.36a1-3) and the net capital requirements for brokers or dealers (§240.15c3-1). Private placement brokers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-12) and record keeping obligations (§240.17a-3(g)). For the purposes of this section 15, the term “broker” includes private placement broker.

- (a) The securities activities of a private placement broker shall
 - (1) be limited to:
 - (i) Introducing buyers and sellers in connection with sales of businesses effected as sales of securities and, in connection therewith, participating in structuring transactions and/or negotiations between the buyers and sellers;
 - (ii) Introducing buyers and sellers in securities placements that are exempt from the registration requirements of the Act but only if the buyers are “accredited investors” as defined in Regulation D promulgated under the Act, or qualified institutional buyers as defined in section 2(a)(51) of the Investment Company Act of 1940, as amended;
 - (iii) Providing advice on the use of and introduction to registered broker-dealers to effect public and private placements of securities, including arranging meetings between clients and broker-dealers and providing client information to such registered broker-dealers;
 - (iv) Effecting private placements in securitized mortgages or other receivables but only if the buyers are “accredited investors” as defined in Regulation D promulgated under the Act, or qualified institutional buyers as defined in section 2(a)(51) of the Investment Company Act of 1940, as amended;
 - (v) Participating in networking, kiosk, or similar arrangements with banks, savings banks or associations, credit unions, insurance companies, or insurance agencies, provided that the private placement broker complies with subparagraphs (i) through (iv) of this section.

(2) Consist solely of the activities described in paragraphs (a)(1)(i) through (a)(1)(v) of this section; and

(3) Not consist of any other securities activities, including, but not limited to:

(i) Handling or taking possession of funds or securities;

(ii) Effecting transactions in a class of publicly traded securities;

(iii) Effecting transactions in securities of mutual funds or in variable or equity indexed annuities;

(iv) Issuing research reports, as defined in 17 C.F.R. §230.138(d), regarding any securities;

(v) Participating in public offerings registered or required to be registered pursuant to the Act: *Provided, however,* That this subsection shall not be construed to limit the ability of private placement brokers to receive referral fees for introducing such offerings to broker-dealers registered under section 15 of the Act;

(vi) Effecting transactions in options or derivatives except in connection with the sale of all or a substantial portion of a business; and

(vii) Buying, selling or maintaining securities for the account of the private placement broker other than securities received as compensation for effecting transactions in such securities.

(4) A private placement broker in the course of its business must not:

(i) Fail to disclose, before effecting a transaction, clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her activities that the person is acting as a private placement broker, any payment for services as a private placement broker, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the private placement broker or a member of the immediate family of an associated person of the private placement broker in the issue of the securities that are the subject of services provided by the private placement broker;

(ii) Locate, introduce, or refer persons that the private placement broker knows, or after a reasonable inquiry should know, are

not suitable investors by reason of their financial condition, age, experience, or need to diversify investments; or

(iii) Employ a device, scheme, or artifice to defraud a client or prospective client, or engage in an act, practice, or course of business that operates or could operate as a fraud or deceit upon a client or prospective client.

(b) The Commission, by order, entered upon its own initiative or after considering an application for exemptive relief, may clarify or expand the scope of permissible securities activities of a private placement broker. Such orders may identify other permissible securities activities.

(c) The commission of any act by an individual private placement broker or an associated person of a private placement broker that would constitute grounds for censure, placing of limitations on the activities, functions or operations of, suspend or revoke the registration of that individual private placement broker or associated person.

(d) Any communication or contact by the private placement broker with any person or firm concerning a securities transaction (other than clerical and ministerial activities conducted by an associated person of the private placement broker) shall be conducted by registered persons.

(e) Every private placement broker shall maintain a blanket fidelity bond, in a form substantially similar to the standard form of Brokers Blanket Bond promulgated by the Surety Association of America, in such minimum amount as the self-regulatory organization of which the private placement broker is a member shall establish from time to time, covering officers and employees, which provides against loss and has agreements covering at least fidelity.

(f) For purposes of this section 15a-12, the term *registered person* means a natural person who is associated with a registered private placement broker and is registered or approved under the rules of a self-regulatory organization of which such private placement broker is a member, including, but not limited to, the completion of examinations appropriate to the scope of activities of the private placement broker.

(g) For purposes of this section, the term *effect* means participating in any way, directly or indirectly, including, without limitation, inducing or attempting to induce a purchase or sale, in a securities transaction as an agent for one or more of the parties thereto and receiving transaction based compensation therefor.

Reg. §240.15b to Reg. §240.15c2 No change

Reg. §240.15c3-1 Net capital requirements for brokers or dealers.

(a) Every broker or dealer, other than a private placement broker, shall at all times have and maintain net capital no less than the greater of the highest minimum requirement applicable to its ratio requirement under paragraph (a)(1) of this section, or to any of its activities under paragraph (a)(2) of this section. In lieu of applying paragraphs (a)(1) and (a)(2) of this section, an OTC derivatives dealer shall maintain net capital pursuant to paragraph (a)(5) of this section. Each broker or dealer, other than a private placement broker, also shall comply with the supplemental requirements of paragraphs (a)(4) and (a)(9) of this section, to the extent either paragraph is applicable to its activities. In addition, a broker or dealer, other than a private placement broker, shall maintain net capital of not less than its own net capital requirement plus the sum of each broker's or dealer's subsidiary or affiliate minimum net capital requirements, which is consolidated pursuant to Appendix C, §240.15c3-1c.

(a)(1) to (e) No change.

Reg. §240.15c3-1a to Reg. §240.15g No change

Reg. §240.17a-1 to a-2 No change

Reg. §240.17a-3 Records to Be Made by Certain Exchange Members, Brokers and Dealers

(a) Every member of a national exchange who transacts a business directly with others than members of a national securities exchange, and every broker or dealer who transacts a business in securities through the medium of any such member, and every broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, other than a private placement broker, shall make and keep current the following books and records related to its business:

(a)(1)-(11) No change

(a)(12)(i) A questionnaire or application for employment executed by each “associated person” (as defined in §17a-3(h)(4)) of the member, broker or dealer which questionnaire or application shall be approved in writing by an authorized representative of the member, broker or dealer and shall contain at least the following information with respect to the associated person:

(A) The associated person’s name, address, social security number, and the starting date of the associated person’s employment or other association with the member, broker or dealer;

(B) The associated person’s date of birth;

(C) A complete, consecutive statement of all the associated person’s business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker (including a private placement broker) or dealer with which the associated person was associated in any capacity when such action

was taken, to the extent the associated person has knowledge thereof;

(F) A record of any permanent or temporary injunction entered against the associated person or any member, broker (including a private placement broker) or dealer with which the associated person was associated in any capacity at the time such injunction was entered, to the extent such person has knowledge thereof;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, (including a private placement broker), investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or ~~[omission]~~ omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or that the associated person has used;

Provided, however, That if such associated person has been registered as a registered representative of such member, broker or dealer with, or the associated person's employment has been approved by the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., National Stock Exchange, the New York Stock Exchange, Inc., ~~[the Pacific Exchange, Inc.]~~ NYSE ARCA, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc. [, ~~the Cincinnati Stock Exchange, Inc.]~~ or the International Stock Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this subparagraph.

(ii) No change

(a)(13)-(22) No change

(b)-(f) No change

(g) Every private placement broker registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall make and keep current the following books and records relating to its business:

(1) A record itemizing each transaction effected by the private placement broker. Such record shall indicate the number of securities sold, the aggregate purchase price therefor, the date such transaction was effected, the name of the purchaser, the name of the seller and the associated person responsible for the transaction.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense of the private placement broker.

(3) A copy of the stock purchase agreement, subscription agreement or other similar agreement entered into between the buyer and seller with respect to each transaction identified in subparagraph (g)(1) above.

(4) A copy of each written agreement entered into by the private placement broker providing for the payment of transaction based compensation to the private placement broker.

(5) (i) A questionnaire or application for employment executed by each "associated person" (as defined in §17a-3(h)(4)) of the private placement broker, which questionnaire or application shall be approved in writing by an authorized representative of the private placement broker and shall contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the private placement broker;

(B) The associated person's date of birth;

(C) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities

association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any member, broker, private placement broker or dealer with which the associated person was associated in any capacity when such action was taken, to the extent the associated person has knowledge thereof;

(F) A record of any permanent or temporary injunction entered against the associated person or any member, broker, private placement broker or dealer with which the associated person was associated in any capacity at the time such injunction was entered, to the extent such person has knowledge thereof;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, private placement broker, investment company, investment adviser, futures sponsor, bank or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or that the associated person has used;

Provided, however, That if such associated person has been registered as a registered representative of such member, broker, private placement broker or dealer with, or the associated person's employment has been approved by the National Association of Securities Dealers, Inc., the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., National Stock Exchange, the New York Stock Exchange, Inc., NYSE ARCA, Inc., the Philadelphia Stock Exchange, Inc., the Chicago Board Options Exchange, Inc. or the International Stock Exchange, then retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this subparagraph.

(ii) A record listing every associated person of the private placement broker that shows, for each associated person, every office of the private placement broker where the associated person regularly conducts the business of inducing or attempting to induce the purchase or

sale of any security for the private placement broker, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the private placement broker.

(6) Records required to be maintained pursuant to Rule 17f-2, paragraph (d).

(7) Records required to be maintained pursuant to Rule 17f-2, paragraph (e).

(8) A record:

(i) As to each associated person of each written customer complaint received by the private placement broker concerning that associated person. The record shall include the complainant's name and address; the date the complaint was received; the name of any other associated person identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a private placement broker may maintain a copy of each original complaint in a separate file by the associated person named in the complaint along with a record of the disposition of the complaint.

(ii) Indicating that each customer of the private placement broker has been provided with a notice containing the address and telephone number of the department of the private placement broker to which any complaints regarding the private placement broker or any of its associated person may be directed.

(9) A record:

(i) As to each associated person, listing each purchase and sale of a security attributable, for compensation purposes, to that associated person. The record shall include the amount of compensation if monetary and a description of the compensation, if non-monetary. In lieu of making this record, a private placement broker may elect to produce the required information promptly upon request of a representative of a securities regulatory authority.

(ii) Of all agreements pertaining to the relationship between each associated person and the private placement broker, including a summary of each associated person's compensation arrangement or plan with the private placement broker, including commission and concession schedules and, to the extent that compensation is based on factors other

than remuneration per transaction, the method by which the compensation is determined.

(10) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that the private placement broker has complied with, or adopted policies and procedures reasonably designed to establish compliance with, applicable federal requirements and rules of a self-regulatory organization of which the private placement broker is a member that require that advertisements, sales literature, or any other communications with the public by a private placement broker or its associated persons be approved by a principal.

(11) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the firm maintains at that office and the information contained in those records.

(12) A record listing each principal of a private placement broker responsible for establishing policies and procedures that are reasonably designed to ensure compliance with any applicable federal requirements or rules of a self-regulatory organization of which the private placement broker is a member that require acceptance or approval of a record by a principal.

(g)(h) Every member, broker or dealer, other than a private placement broker, shall make and keep current, as to each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section. A private placement broker shall make and keep current, as to each office, the books and records described in paragraphs (g)(1), (g)(3), (g)(5), (g)(7)(i), (g)(8), (g)(9), (g)(10), and (g)(11) of this section.

(h)(i) When used in this section:

(1)-(4) No change

(5) The term private placement brokers means a special class of brokers who are registered with the Commission pursuant to Rule 15b under the Act and act in accordance with Rule 15a-12 under the Act.

(6) The term effect means participating in any way, directly or indirectly, including, without limitation, inducing or attempting to induce a purchase or sale, in a securities transaction as an agent for one or more of the parties thereto and receiving transaction based compensation therefor.

Reg. §240.17a-4. Records to Be Preserved by Certain Exchange members, Brokers and Dealers

(a) Every member, broker and dealer subject to §240.17a-3, other than a private placement broker, shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs §240.17a-3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to paragraph §240.171-3(f). A private placement broker shall preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs (g)(1), (g)(2), (g)(10), and (g)(11).

(b) Every member, broker and dealer subject to §240.17a-3, other than a private placement broker, shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1)-(12) No change

(c) Every private placement broker shall preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to §240.17a-3(g)(3), (g)(4), (g)(8), (g)(9), and (g)(10).

(2) All check books, bank statements, cancelled checks and cash reconciliations.

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such member, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the private placement broker (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the private placement broker is a member.

(5) All written agreements (or copies thereof) entered into by such private placement broker relating to its business as such.

~~(e)~~(d) Every member, broker, private placement broker and dealer subject to §240.17a-3 shall preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

~~(d)~~(e) Every member, broker, private placement broker and dealer subject to §240.17a-3 shall preserve during the life of the enterprise and of any successor enterprise

all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§249.501a of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the member, broker, private placement broker or dealer with any securities regulatory authority.

~~(e)~~(f) No change

(g) Every private placement broker subject to §240.17a-3 shall maintain and preserve in an easily accessible place:

(1) All records required under paragraph (g)(5) of §240.17a-3 until at least three years after the associated person's termination of employment and any other connection with the private placement broker has terminated;

(2) All records required under paragraph (g)(6) of §240.17a-3 until at least three years after the termination of employment or association of those persons required by §240.17f-2 to be fingerprinted;

(3) All records required pursuant to paragraph (g)(7) of §240.17a-3 for the life of the enterprise;

(4) Each report which a securities regulatory authority has requested or required the private placement broker to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report; and

(5) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the private placement broker with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the private placement broker until three years after the termination of the use of the manual.

~~(f)~~(h) The records required to be maintained and preserved pursuant to §240.17a-3 and §240.17a-4 may be immediately produced or reproduced on "micrographic media" (as defined in this section) or by means of "electronic storage media" (as defined in this section) that meet the conditions set forth in this section and be maintained and preserved for the required time in that form.

(1) For purposes of this section (h):

(i) No change

(ii) No change

(iii) The term broker shall include private placement brokers.

(2) If electronic storage media is used by a member, broker, or dealer, it shall comply with the following requirements:

(i) The member, broker, or dealer must notify its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) prior to employing electronic storage media. If employing any electronic storage media other than optical disk technology (including CD-ROM), the member, broker, or dealer must notify its designated examining authority at least 90 days prior to employing such storage media. In either case, the member, broker, or dealer must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph ~~(f)(h)~~(2).

(ii) The electronic storage media must:

(A)-(C) No change

(D) have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph ~~(f)(h)~~ as required by the Commission or the self-regulatory organization of which the member, broker, or dealer is a member.

(3) No change

~~(g)~~(i) No change

~~(h)~~(j) No change

~~(i)~~(k) No change

~~(j)~~(l) No change

~~(k)~~(m) No change

~~(l)~~(n) Records for the most recent two year period required to be made pursuant to §240.17a-3~~(g)~~(i) and paragraphs (b)(4) and ~~(e)~~(f)(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.

~~(m)~~(o) No change

Reg. §240.17a-5. Reports to Be Made by Certain Brokers and Dealers

(a) Filing of Monthly and Quarterly Reports

(1) This paragraph (a) shall apply to every broker or dealer registered pursuant to section 15 of the Act.

(2) (i) No change

(ii) No change

(iii) Every broker or dealer who does not clear transactions nor carry customer accounts, other than a private placement broker, shall file Part IIA of Form X-17A-5 (§249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than the end of the calendar quarter.

(iv) No change

(3)-(6) No change

(b) Report filed upon termination of membership interest

(1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such broker or dealer shall, within two business days after such event, file with the Commission Part II or Part IIA of Form X-17A-5 (§249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(2)(ii) and (iii) of this section as of the date of such event. The report shall be filed at the Commission's principal office in Washington, D.C. and with 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: *Provided, however,* That such report need not be made or filed in the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirements: *Provided, further,* That the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

(2)-(6) No change

(c) No change

(d) Annual Filing of Audited Financial Statements

(1) No change

(2) The annual audited report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the totals reported on the Statement of Financial Condition contained in Form X-17a-5 (§249.617 of this chapter)), Part II or Part IIA, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors: *Provided, however, That private placement brokers shall not be required to file a Statement of Financial Condition or a Statement of Changes in Liabilities Subordinated to Claims of General Creditors.* Such statements shall be in a format and on a basis which is consistent with such statements as contained in Form X-17A-5 (§249.617 of this chapter) Part II or Part IIA. If the Statement of Financial Condition filed in accordance with instructions to Form X-15A-5, Part II or Part IIA, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the Part II or Part IIA Statement of Financial Condition as filed by the broker or dealer should be included in the notes to the consolidated statement of financial condition reported on by the independent public accountant.

(3) Supporting schedules shall include, from Part II or Part IIA of Form X-17A-5, a Computation of Net Capital under Rule 15c3-1, a Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession or Control Requirements Under Rule 15c3-3, and shall be filed with said report: *Provided, however, That private placement brokers shall not be required to file such supporting schedules.*

(4) A reconciliation, including appropriate explanations, of the Computation of Net Capital under Rule 15c3-1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3-3 in

the audit report with the broker's or dealer's corresponding unaudited most recent Part Ii or Part IIA filing shall be filed with said report when material differences exist. If no material differences exist, a statement so indicating shall be filed. Private placement brokers shall not be required to file such reconciliations or statements.

(5)-(6) No change

(e) Nature and form of reports. The financial statements filed pursuant to paragraph (d) of this rule shall be prepared and filed in accordance with the following requirements:

(1) (i) An audit shall be conducted by a public accountant who shall be in fact independent as defined in paragraph (f)(3) herein and he shall give an opinion covering the statements filed pursuant to paragraph (d): *Provided, however,* That the financial statements filed pursuant to paragraph (d) of this section need not be audited if, since the date of the previous financial statements or report filed pursuant to ~~§240.15b1-2 of this section:~~

(A) the securities business of such broker or dealer has been limited to acting as broker (agent) for an issuer in soliciting subscriptions for securities of such issuer, said broker has promptly transmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and said broker has not otherwise held funds or securities from or owed money or securities to customers; ~~[or]~~

(B) its securities business has been limited to buying and selling evidences of indebtedness secured by mortgage, deed or trust, or other lien upon real estate or leasehold interests, and said broker or dealer has not carried any margin account, credit balance, or security for any securities customer; or

(C) the broker is a private placement broker,

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

(ii) No change

(2)-(5) No change

(f)-(o) No change

Reg. §240.17a-7 to 17a-9 No change

Reg. §240.17a-10 Report on Income and Expenses

(a) (1) Every broker or dealer exempted from the filing requirements of paragraph (a) of §240.171-5, other than a private placement broker, shall, not later than 17 business days after the close of each calendar year (commencing with calendar year 1977), file the Facing Page, a Statement of Income (Loss) and balance sheet from Part IIA of Form X-17A-5 (§249.617 of this chapter) and Schedules I and II of Form X-17A-5 (§249.617 of this chapter) for such calendar year.

(2) No change

(b)-(d) No change

Reg. §240.17a-11 to 17a-12 No change

Reg. §240-17a-13. Quarterly Security Counts to Be Made by Certain Exchange Members, Brokers and Dealers

(a) This rule shall apply to every member of a national securities exchange who transacts a business in securities directly with or for others than members of a national securities exchange, every broker or dealer (other than a member who transacts a business in securities through the medium of any member of a national securities exchange, and every broker or dealer registered pursuant to section 15 of the Act; except that a broker or dealer ~~meeting that is a private placement broker or that meets~~ all of the following conditions shall be exempt from the provisions of this rule:

(1)-(3) No change

(b)-(e) No change

Reg. §240.17a-19 to 17a-22 No change

Reg. §240.17a-25 Electronic Submission of Securities Transaction Information by Exchange Members, Brokers, and Dealers

(a) Every member, broker, or dealer subject to §240.17a-3, other than a private placement broker, shall, upon request, electronically submit to the Commission the securities transaction information as required in the section:

(1)-(2) No change

(b)-(d) No change

Reg. §240.17d No change

Reg. §240.17f-1 No change

Reg. §240.17f-2 Fingerprinting of Securities Industry Personnel

(a) Exemptions from the fingerprinting requirement. Except as otherwise provided in Paragraph (a)(1) or (a)(2) of this section, every member of a national securities exchange, broker, private placement broker, dealer, registered transfer agent and registered clearing agency shall require that each of its partners, directors, officers and employees be fingerprinted and shall submit, or cause to be submitted, the fingerprints of such persons to the Attorney General of the United States or its designee for identification and appropriate processing.

(1)-(2) No change

(b)-(e) No change

Reg. §240.17h - i No change