

## Securities and Exchange Commission

## § 240.15c3-3

securities exchanges, or of a custodian bank in accordance with a system for the central handling of securities complying with the provisions of §§ 240.8c-1(g) and 240.15c2-1(g) the delivery of which certificates to the broker or dealer does not require the payment of money or value, and if the books or records of the broker or dealer identify the security-based swap customers entitled to receive specified quantities or units of the securities so held for such security-based swap customers collectively;

(B) Are the subject of bona fide items of transfer; provided that securities and money market instruments shall be deemed not to be the subject of bona fide items of transfer if, within 40 calendar days after they have been transmitted for transfer by the broker or dealer to the issuer or its transfer agent, new certificates conforming to the instructions of the broker or dealer have not been received by the broker or dealer, the broker or dealer has not received a written statement by the issuer or its transfer agent acknowledging the transfer instructions and the possession of the securities or money market instruments, or the broker or dealer has not obtained a revalidation of a window ticket from a transfer agent with respect to the certificate delivered for transfer;

(C) Are in the custody or control of a bank as defined in section 3(a)(6) of the Act, the delivery of which securities or money market instruments to the broker or dealer does not require the payment of money or value and the bank having acknowledged in writing that the securities and money market instruments in its custody or control are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank;

(D)(I) Are held in or are in transit between offices of the broker or dealer; or

(2) Are held by a corporate subsidiary if the broker or dealer owns and exercises a majority of the voting rights of all of the voting securities of such subsidiary, assumes or guarantees all of the subsidiary's obligations and liabilities, operates the subsidiary as a branch office of the broker or dealer, and assumes full responsibility for

compliance by the subsidiary and all of its associated persons with the provisions of the Federal securities laws as well as for all of the other acts of the subsidiary and such associated persons; or

(E) Are held in such other locations as the Commission shall upon application from a broker or dealer find and designate to be adequate for the protection of security-based swap customer securities.

(iii) Each business day the broker or dealer must determine from its books and records the quantity of excess securities collateral in its possession or control as of the close of the previous business day and the quantity of excess securities collateral not in its possession or control as of the previous business day. If the broker or dealer did not obtain possession or control of all excess securities collateral on the previous business day as required by this section and there are securities or money market instruments of the same issue and class in any of the following non-control locations:

(A) Securities or money market instruments subject to a lien securing an obligation of the broker or dealer, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments from the lien and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(B) Securities or money market instruments held in a qualified clearing agency account, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments by the clearing agency and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(C) Securities or money market instruments held in a qualified registered security-based swap dealer account maintained by another security-based

swap dealer or in a third-party custodial account, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the release of the securities or money market instruments by the security-based swap dealer or the third-party custodian and must obtain physical possession or control of the securities or money market instruments within two business days following the date of the instructions;

(D) Securities or money market instruments loaned by the broker or dealer, then the broker or dealer, not later than the next business day on which the determination is made, must issue instructions for the return of the loaned securities or money market instruments and must obtain physical possession or control of the securities or money market instruments within five business days following the date of the instructions;

(E) Securities or money market instruments failed to receive more than 30 calendar days, then the broker or dealer, not later than the next business day on which the determination is made, must take prompt steps to obtain physical possession or control of the securities or money market instruments through a buy-in procedure or otherwise;

(F) Securities or money market instruments receivable by the broker or dealer as a security dividend, stock split or similar distribution for more than 45 calendar days, then the broker or dealer, not later than the next business day on which the determination is made, must take prompt steps to obtain physical possession or control of the securities or money market instruments through a buy-in procedure or otherwise; or

(G) Securities or money market instruments included on the broker's or dealer's books or records that allocate to a short position of the broker or dealer or a short position for another person, for more than 30 calendar days, then the broker or dealer must, not later than the business day following the day on which the determination is made, take prompt steps to obtain physical possession or control of such securities or money market instruments.

(3) *Deposit requirement for special reserve account for the exclusive benefit of security-based swap customers.* (1) A broker or dealer must maintain a special reserve account for the exclusive benefit of security-based swap customers that is separate from any other bank account of the broker or dealer. The broker or dealer must at all times maintain in the special reserve account for the exclusive benefit of security-based swap customers, through deposits into the account, cash and/or qualified securities in amounts computed in accordance with the formula set forth in § 240.15c3-3b. In determining the amount maintained in a special reserve account for the exclusive benefit of security-based swap customers, the broker or dealer must deduct:

(A) The percentage of the value of a general obligation of a State or a political subdivision of a State specified in § 240.15c3-1(c)(2)(vi);

(B) The aggregate value of general obligations of a State or a political subdivision of a State to the extent the amount of the obligations of a single issuer (after applying the deduction in paragraph (p)(3)(i)(A) of this section) exceeds two percent of the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers;

(C) The aggregate value of all general obligations of States or political subdivisions of States to the extent the amount of the obligations (after applying the deduction in paragraph (p)(3)(i)(A) of this section) exceeds 10 percent of the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers;

(D) The amount of cash deposited with a single non-affiliated bank to the extent the amount exceeds 15 percent of the equity capital of the bank as reported by the bank in its most recent Call Report or any successor form the bank is required to file by its appropriate federal banking agency (as defined by section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)); and

(E) The total amount of cash deposited with an affiliated bank.

(ii) A broker or dealer must not accept or use credits identified in the

items of the formula set forth in § 240.15c3-3b except for the specified purposes indicated under items comprising Total Debits under the formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof must be maintained in the Special Reserve Account pursuant to paragraph (p)(3)(i) of this section.

(iii)(A) The computations necessary to determine the amount required to be maintained in the special reserve account for the exclusive benefit of security-based swap customers must be made weekly as of the close of the last business day of the week and any deposit required to be made into the account must be made no later than one hour after the opening of banking business on the second following business day. The broker or dealer may make a withdrawal from the special reserve account for the exclusive benefit of security-based swap customers only if the amount remaining in the account after the withdrawal is equal to or exceeds the amount required to be maintained in the account pursuant to paragraph (p)(3) of this section.

(ii) (B) Computations in addition to the computations required pursuant to paragraph (p)(3)(iii)(A) of this section may be made as of the close of any business day, and deposits so computed must be made no later than one hour after the open of banking business on the second following business day.

(iv) A broker or dealer must promptly deposit into a special reserve account for the exclusive benefit of security-based swap customers cash and/or qualified securities of the broker or dealer if the amount of cash and/or qualified securities in one or more special reserve accounts for the exclusive benefit of security-based swap customers falls below the amount required to be maintained pursuant to this section.

(4) *Requirements for non-cleared security-based swaps*—(i) *Notice*. A broker or dealer registered under section 15F(b) of the Act (15 U.S.C. 78o-10(b)) as a security-based swap dealer or major security-based swap participant must provide the notice required pursuant to section 3E(f)(1)(A) of the Act (15 U.S.C. 78c-5(f)) in writing to a duly authorized

individual prior to the execution of the first non-cleared security-based swap transaction with the counterparty occurring after the compliance date of this section.

(ii) *Subordination*—(A) *Counterparty that elects to have individual segregation at an independent third-party custodian*. A broker or dealer must obtain an agreement from a counterparty whose funds or other property to meet a margin requirement of the broker or dealer are held at a third-party custodian in which the counterparty agrees to subordinate its claims against the broker or dealer for the funds or other property held at the third-party custodian to the claims of customers (including PAB customers) and security-based swap customers of the broker or dealer but only to the extent that funds or other property provided by the counterparty to the independent third-party custodian are not treated as *customer property* as that term is defined in 11 U.S.C. 741 or *customer property* as defined in 15 U.S.C. 78ll(4) in a liquidation of the broker or dealer.

(B) *Counterparty that elects to have no segregation*. A broker or dealer registered under section 15F(b) of the Act as a security-based swap dealer must obtain an agreement from a counterparty that is an affiliate of the broker or dealer that affirmatively chooses not to require segregation of funds or other property pursuant to section 3E(f) of the Act (15 U.S.C. 78c-5(f)) in which the counterparty agrees to subordinate all of its claims against the broker or dealer to the claims of customers (including PAB customers) and security-based swap customers of the broker or dealer.

[37 FR 25226, Nov. 29, 1972; 38 FR 6277, Mar. 8, 1973, as amended at 42 FR 23790, May 10, 1977; 44 FR 1975, Jan. 9, 1979; 45 FR 37688, June 4, 1980; 47 FR 21775, May 20, 1982; 47 FR 23920, June 2, 1982; 50 FR 41340, Oct. 10, 1985; 52 FR 30333, Aug. 14, 1987; 63 FR 59400, Nov. 3, 1998; 67 FR 58299, Sept. 13, 2002; 68 FR 12783, Mar. 17, 2003; 78 FR 51902, Aug. 21, 2013; 84 FR 44047, Aug. 22, 2019]

**§ 240.15c3-3a Exhibit A—Formula for determination of customer and PAB account reserve requirements of brokers and dealers under § 240.15c3-3.**

	Credits	Debits
1. Free credit balances and other credit balances in customers' security accounts. (See Note A) .....	XXX	
2. Monies borrowed collateralized by securities carried for the accounts of customers (See Note B) .....	XXX	
3. Monies payable against customers' securities loaned (See Note C) .....	XXX	
4. Customers' securities failed to receive (See Note D) .....	XXX	
5. Credit balances in firm accounts which are attributable to principal sales to customers. ....	XXX	
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days .....	XXX	
7. Market value of short security count differences over 30 calendar days old .....	XXX	
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days .....	XXX	
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days .....	XXX	
10. Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E) .....		XXX
11. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver .....		XXX
12. Failed to deliver of customers' securities not older than 30 calendar days .....		XXX
13. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts. (See Note F) .....		XXX
14. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (See Note G) .....		XXX
Total credits .....		
Total debits .....		
15. Excess of total credits (sum of items 1-9) over total debits (sum of items 10-14) required to be on deposit in the "Reserve Bank Account" (§ 240.15c3-3(e)). If the computation is made monthly as permitted by this section, the deposit must be not less than 105% of the excess of total credits over total debits. ....		XXX

NOTES REGARDING THE CUSTOMER RESERVE BANK ACCOUNT COMPUTATION

NOTE A. Item 1 must include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and must also include checks drawn in excess of bank balances per the records of the broker or dealer.

NOTE B. Item 2 must include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by customers' securities, to the extent of the member's margin requirement at the registered clearing agency or derivatives clearing organization. Item 2 must also include the amount of Letters of Credit which are collateralized by customers' securities and related to other futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule.

NOTE C. Item 3 must include in addition to monies payable against cus-

tomers' securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

NOTE D. Item 4 must include in addition to customers' securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

NOTE E. (1) Debit balances in margin accounts must be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of the aggregate value of all securities which collateralize all margin accounts receivable; provided, however, the required reduction must not be in excess of the amounts of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin

account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of Section 7(f) of Regulation T (12 CFR 220.7(f)) or similar accounts carried on behalf of another broker or dealer, must be reduced by any deficits in such accounts (or if a credit, such credit must be increased) less any calls for margin, mark to the market, or other required deposits which are outstanding 5 business days or less.

(3) Debit balances in customers' cash and margin accounts included in the formula under Item 10 must be reduced by an amount equal to 1 percent of their aggregate value.

(4) Debit balances in cash and margin accounts of household members and other persons related to principals of a broker or dealer and debit balances in cash and margin accounts of affiliated persons of a broker or dealer must be excluded from the Reserve Formula, unless the broker or dealer can demonstrate that such debit balances are directly related to credit items in the formula.

(5) Debit balances in margin accounts (other than omnibus accounts) must be reduced by the amount by which any single customer's debit balance exceeds 25% (to the extent such amount is greater than \$50,000) of the broker-dealer's tentative net capital (*i.e.*, net capital prior to securities haircuts) unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (*e.g.*, the separate accounts of an individual, accounts under common control or subject to cross guarantees) will be deemed to be a single customer's accounts for purposes of this provision.

If the registered national securities exchange or the registered national securities association having responsibility for examining the broker or dealer ("designated examining authority") is satisfied, after taking into account the circumstances of the concentrated account including the quality, diversity, and marketability of the collateral securing the debit balances or

margin accounts subject to this provision, that the concentration of debit balances is appropriate, then such designated examining authority may grant a partial or plenary exception from this provision. The debit balance may be included in the reserve formula computation for five business days from the day the request is made.

(6) Debit balances in joint accounts, custodian accounts, participation in hedge funds or limited partnerships or similar type accounts or arrangements that include both assets of a person or persons who would be excluded from the definition of customer ("noncustomer") and assets of a person or persons who would be included in the definition of customer must be included in the Reserve Formula in the following manner: If the percentage ownership of the non-customer is less than 5 percent then the entire debit balance shall be included in the formula; if such percentage ownership is between 5 percent and 50 percent then the portion of the debit balance attributable to the non-customer must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula; or if such percentage ownership is greater than 50 percent, then the entire debit balance must be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula.

NOTE F. Item 13 must include the amount of margin required and on deposit with the Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities and letters of credit collateralized by customers' securities.

NOTE G. (a) Item 14 must include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) for customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

(b) Item 14 will apply only if the broker or dealer has the margin related to security futures products, or futures (and options thereon) carried in a securities account pursuant to an approved SRO portfolio margining program on deposit with:

(1) A registered clearing agency or derivatives clearing organization that:

(i) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least \$2 billion, at least \$500 million of which must be in the form of security deposits. For the purposes of this Note G, the term “security deposits” refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization; or

(ii) Maintains at least \$3 billion in margin deposits; or

(iii) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and

(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products or futures in a portfolio margin account in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification will state that all funds and/or securities deposited with the bank as margin (including customer security futures products and futures in a portfolio

margin account), or held by the bank and pledged to such registered clearing agency or derivatives clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also will provide that such funds and/or securities will at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and will be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. This provision, however, will not prohibit a registered clearing agency or derivatives clearing organization from pledging customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and

(3) A registered clearing agency or derivatives clearing organization establishes, documents, and maintains:

(i) Safeguards in the handling, transfer, and delivery of cash and securities;

(ii) Fidelity bond coverage for its employees and agents who handle customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and

(iii) Provisions for periodic examination by independent public accountants; and

(iv) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and