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17 CFR Ch. II (4-1-03 Edition)

of any executor, administrator, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary, appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such registered broker or dealer; *Provided*, That such fiduciary files with the Commission, within 30 days after entering upon the performance of his duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.

(Secs. 15, 17, 48 Stat. 895, as amended, 897 as amended; 15 U.S.C. 78o, 78q)

[19 FR 1041, Feb. 24, 1954. Redesignated at 30 FR 11851, Sept. 16, 1965]

§ 240.15b1-5 Consent to service of process to be furnished by nonresident brokers or dealers and by nonresident general partners or managing agents of brokers or dealers.

(a) Each nonresident broker or dealer registered or applying for registration pursuant to section 15(b) of the Securities Exchange Act of 1934, each nonresident general partner of a broker or dealer partnership which is registered or applying for registration, and each nonresident managing agent of any other unincorporated broker or dealer which is registered or applying for registration, shall furnish to the Commission, in a form prescribed by or acceptable to it, a written irrevocable consent and power of attorney which (1) designates the Securities and Exchange Commission as an agent upon whom may be served any process, pleadings, or other papers in any civil suit or action brought in any appropriate court in any place subject to the jurisdiction of the United States, with respect to any cause of action (i) which accrues during the period beginning when such broker or dealer becomes registered pursuant to section 15 of the Securities Exchange Act of 1934 and the rules and regulations thereunder and ending either when such registration is cancelled or revoked, or when the Commission receives from such broker or dealer a notice to withdraw from such registration, whichever is earlier, (ii) which arises out of any activity, in any place subject to the jurisdiction of the

United States, occurring in connection with the conduct of business of a broker or dealer, and (iii) which is founded directly or indirectly, upon the provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any rule or regulation under any of said Acts; and (2) stipulates and agrees that any such civil suit or action may be commenced by the service of process upon the Commission and the forwarding of a copy thereof as provided in paragraph (c) of this section, and that the service as aforesaid of any such process, pleadings, or other papers upon the Commission shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

(b) The required consent and power of attorney shall be furnished to the Commission within the following period of time:

(1) Each nonresident broker or dealer registered at the time this section becomes effective, and each nonresident general partner or managing agent of an unincorporated broker or dealer registered at the time this section becomes effective, shall furnish such consent and power of attorney within 60 days after such date;

(2) Each broker or dealer applying for registration after the effective date of this section shall furnish, at the time of filing such application, all the consents and powers of attorney required to be furnished by such broker or dealer and by each general partner or managing agent thereof; *Provided, however*, That where an application for registration of a broker or dealer is pending at the time this section becomes effective such consents and powers of attorney shall be furnished within 30 days after this section becomes effective.

(3) Each broker or dealer registered or applying for registration who or which becomes a nonresident broker or dealer after the effective date of this section, and each general partner or managing agent, of an unincorporated broker or dealer registered or applying for registration, who becomes a nonresident after the effective date of this section, shall furnish such consent and

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power of attorney within 30 days thereafter.

(c) Service of any process, pleadings or other papers on the Commission under this part shall be made by delivering the requisite number of copies thereof to the Secretary of the Commission or to such other person as the Commission may authorize to act in its behalf. Whenever any process, pleadings or other papers as aforesaid are served upon the Commission, it shall promptly forward a copy thereof by registered or certified mail to the appropriate defendants at their last address of record filed with the Commission. The Commission shall be furnished a sufficient number of copies for such purpose, and one copy for its file.

(d) For purposes of this section the following definitions shall apply:

(1) The term *broker* shall have the meaning set out in section 3(a)(4) of the Securities Exchange Act of 1934.

(2) The term *dealer* shall have the meaning set out in section 3(a)(5) of the Securities Exchange Act of 1934.

(3) The term *managing agent* shall mean any person, including a trustee, who directs or manages or who participated in the directing or managing of the affairs of any unincorporated organization or association which is not a partnership.

(4) The term *nonresident broker or dealer* shall mean (i) in the case of an individual, one who resides in or has his principal place of business in any place not subject to the jurisdiction of the United States; (ii) in the case of a corporation, one incorporated in or having its principal place of business in any place not subject to the jurisdiction of the United States; (iii) in the case of a partnership or other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

(5) A general partner or managing agent of a broker or dealer shall be deemed to be a nonresident if he resides in any place not subject to the jurisdiction of the United States.

(Sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 641, 855; 15 U.S.C. 77sss, 80a-37, 80b-11)

[18 FR 2578, May 2, 1953, as amended at 23 FR 9691, Dec. 16, 1958; 29 FR 16982, Dec. 11, 1964. Redesignated at 30 FR 11851, Sept. 16, 1965]

§ 240.15b2-2 Inspection of newly registered brokers and dealers.

(a) *Definition.* For the purpose of this section the term *applicable financial responsibility rules* shall include:

(1) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a), or 17(e)(1)(A) of the Act;

(2) Any rule adopted by the Commission relating to hypothecation or lending of customer securities;

(3) Any other rule adopted by the Commission relating to the protection of funds or securities; and

(4) Any rule adopted by the Secretary of the Treasury pursuant to section 15C(b)(1) of the Act.

(b) Each self-regulatory organization that has responsibility for examining a broker or dealer member (including members that are government securities brokers or government securities dealers registered pursuant to section 15C(a)(1)(A) of the Act) for compliance with applicable financial responsibility rules is authorized and directed to conduct an inspection of the member, within six months of the member's registration with the Commission, to determine whether the member is operating in conformity with applicable financial responsibility rules.

(c) The examining self-regulatory organization is further authorized and directed to conduct an inspection of the member no later than twelve months from the member's registration with the Commission, to determine whether the member is operating in conformity with all other applicable provisions of the Act and rules thereunder.

(d) In each case where the examining self-regulatory organization determines that a broker or dealer member has not commenced actual operations within six months of the member's registration with the Commission, it shall delay the inspection pursuant to this section until the second six month period from the member's registration with the Commission.

(e) No inspection need be conducted as provided for in paragraphs (b) and (c) of this section if:

(1) The member was registered with the Commission prior to April 26, 1982;

(2) an inspection of the member has already been conducted by another