Part III - Administrative, Procedural and Miscellaneous

Section 408 — Individual Retirement Accounts

Alternative Method for Carrying Broker-Dealers to Comply with Certain Nonbank Trustee Rules

Notice 2026-32

I. PURPOSE

This notice provides that, pursuant to § 1.408-2(e)(6)(ii) of the Income Tax Regulations, a broker-dealer that carries customer accounts and receives or holds funds or securities for those customers (a carrying broker-dealer) may, in lieu of demonstrating satisfaction of the adequacy of net worth requirement for nonbank trustees under § 1.408-2(e)(5)(ii), demonstrate satisfaction of Rule 15c3-1 (SEC Net Capital Rule) and Rule 15c3-3 (SEC Customer Protection Rule) (together, SEC Net Capital and Customer Protection Rules) of the Securities Exchange Act of 1934, as amended (Exchange Act).[1] This notice also describes procedures regarding demonstration by a carrying broker-dealer of satisfaction of the SEC Net Capital and Customer Protection Rules and requests public comments on related topics.[2]

II. BACKGROUND

A. Background on IRS Nonbank Trustee Rules

Section 408(a) of the Internal Revenue Code provides that an individual retirement account (IRA) is a trust created or organized in the United States for the

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[1] Pub. L. 73-291, 48 Stat. 881.

[2] The guidance in this notice does not apply to a broker-dealer that operates pursuant to an exemption report under SEC Rule 17a-5(d) (17 CFR § 240.17a-5).

exclusive benefit of an individual or the individual's beneficiaries, but only if the written governing instrument creating the trust meets certain requirements. One such requirement, under section 408(a)(2), is that the trustee of an IRA must be a bank (as defined in section 408(n)) or "such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section."[3] In order for an entity that is not a bank to qualify as an IRA trustee (i.e., a nonbank trustee), § 1.408-2(e) imposes several requirements, including fiduciary conduct requirements.[4]

Section 1.408-2(e)(2) requires that an applicant for nonbank trustee status demonstrate its ability to act within the accepted rules of fiduciary conduct by including in its demonstration certain elements of proof. Under § 1.408-2(e)(2)(iv), one of these required elements of proof is to assure compliance with the fiduciary conduct provisions set out in § 1.408-2(e)(5). Under § 1.408-2(e)(5), the applicant must demonstrate that, under applicable regulatory requirements, corporate or other governing instruments, or its established operating procedures, it satisfies certain rules of fiduciary conduct, including the adequacy of net worth requirement under § 1.408-2(e)(5)(ii).[5] To comply with this requirement, a nonbank trustee's net worth generally must exceed the greater of (i) a specified dollar amount or (ii) a percentage of the value of all assets held in fiduciary accounts. However, that percentage test is modified under § 1.408-

[3] Nonbank trustees can be approved by the IRS to hold certain other types of fiduciary accounts, such as certain custodial accounts, Trump accounts, and health savings accounts. *See* section 3.07 of Rev. Proc. 2026-4, 2026-1 IRB 160 (updated annually).

[4] The nonbank trustee rules also apply with respect to IRAs that are custodial accounts. *See* section 408(h) and § 1.408-2(d).

[5] Under § 1.408-2(e)(5)(viii)(F), the term "net worth" is defined as "the amount of the applicant's assets less the amount of its liabilities, as determined in accordance with generally accepted accounting principles."

2(e)(5)(ii)(D) in the case of a nonbank trustee that is a member of the Securities Investor Protection Corporation (SIPC). A key objective of this adequacy of net worth requirement is to ensure that nonbank trustees maintain a level of solvency commensurate with their financial and fiduciary responsibilities.[6]

Section 1.408-2(e) provides flexibility for the Internal Revenue Service (IRS) to apply the nonbank trustee requirements under certain circumstances involving overlapping regulatory requirements. Specifically, § 1.408-2(e)(6)(ii) provides that "[e]vidence that an applicant is subject to Federal or State regulation with respect to one or more relevant factors shall be given weight in proportion to the extent that such regulatory standards are consonant with the requirements of section [408]"[7] and such evidence may be submitted "in addition to, or in lieu of," the specific proofs required by § 1.408-2(e).

B. Background on Exchange Act Rules 15c3-1 and 15c3-3[8]

Carrying broker-dealers are subject to prescriptive regulation by the Securities and Exchange Commission (SEC), including rules that aim to ensure carrying broker-dealers maintain a level of solvency commensurate with their financial responsibilities. The SEC Customer Protection Rule, as codified by the SEC in 17 CFR 240.15c3-3, is designed to give specific protection to customer funds and securities (for example, IRA assets), in effect forbidding carrying broker-dealers from using customer assets to

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[6] *See* T.D. 8635, 60 Fed. Reg. 65547, 65548 (Dec. 20, 1995).

[7] The final regulation points to section 401 (i.e., rules for qualification of employer-sponsored retirement plans); however, the reference is an artifact of the regulation's original publication as part of the regulations under section 401 and, thus, should be read as referring to section 408, which contains the IRA requirements.

[8] Personnel from the Department of the Treasury (Treasury Department) and the IRS consulted with SEC staff in developing the description of the SEC Net Capital and Customer Protection Rules discussed in this section, and that description was reviewed by SEC staff.

finance any part of their business unrelated to servicing securities customers. To meet this objective, the SEC Customer Protection Rule requires a carrying broker-dealer to take two primary steps to safeguard customer assets, which are designed to protect customers by segregating their securities and cash from the carrying broker-dealer's proprietary business activities.

The first step to safeguard customer assets under the SEC Customer Protection Rule requires carrying broker-dealers to maintain physical possession or control over customers' fully paid and excess margin securities.[9] The second step requires that a carrying broker-dealer maintain a reserve of cash or qualified securities in an account at a third-party bank that is at least equal in value to the net cash owed to customers, including cash obtained from the use of customer securities, determined by a computation of the broker-dealer's customer credit items (for example, cash in customer securities accounts and cash obtained through the use of customer margin securities) subtracted by the broker-dealer's customer debit items (for example, margin loans). If credit items exceed debit items, the net amount must be on deposit in the customer reserve bank account in the form of cash and/or qualified securities. Subject to certain exceptions, the SEC Customer Protection Rule requires a carrying broker-dealer to make this calculation of the required deposit amount on a weekly basis.

The SEC Customer Protection Rule operates in tandem with the SEC Net Capital Rule, as codified in 17 CFR 240.15c3-1. The SEC Net Capital Rule is designed to

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[9] "Control" means the carrying broker-dealer holds these securities in one of several locations specified in SEC Exchange Act Rule 15c3-3 and free of liens or any other interest that could be exercised by a third-party to secure an obligation of the carrying broker-dealer. *See* 17 CFR 240.15c3-3(c). Permissible locations include a clearing corporation and a "bank," as defined in section 3(a)(6) of the Exchange Act. A carrying broker-dealer does not treat customer securities as its own assets. Rather, the carrying broker-dealer holds them in a custodial capacity, and the possession and control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

prevent a broker-dealer's insolvency by preventing excessive credit or market risk positions. Among other requirements, a broker-dealer must maintain a minimum level of net capital under the rules of 17 CFR 240.15c3-1 at all times, and not be “insolvent” as defined in that rule.[10] The SEC has explained that “[t]he objective of Rule 15c3-1 is to require a broker-dealer to maintain sufficient liquid assets to meet all liabilities, including obligations to customers, counterparties, and other creditors and to have adequate additional resources to wind-down its business in an orderly manner without the need for a formal proceeding if the firm fails financially.”[11]

Pursuant to the Securities Investor Protection Act of 1970 (SIPA),[12] carrying broker-dealers are required to be members of SIPC, which generally protects each customer of a failed SIPC-member broker-dealer up to $500,000, including up to $250,000 for cash claims. The SEC Customer Protection Rule supports SIPA’s customer-protection objective by requiring carrying broker-dealers to segregate customers’ securities and cash from the broker-dealer’s proprietary business activities. Through this requirement, the SEC Customer Protection Rule is designed to ensure that, if the carrying broker-dealer fails financially, the customer securities and cash should be readily available to be returned to customers, which facilitates an orderly self-liquidation. However, if the failed carrying broker-dealer is liquidated under SIPA, the customer securities and cash should be isolated and readily identifiable as “customer

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[10] For this purpose, “net capital” is defined in SEC Exchange Act Rule 15c3-1(c)(2) as “the net worth of a broker or dealer, adjusted by” deductions for certain illiquid assets along with certain percentages from its proprietary securities or commodities inventory (for example, a 100% haircut for “non-marketable” securities and a 20% haircut for commodities), and additions back of certain liabilities to arrive at net capital. One such “add-back” adjustment is for “liabilities of the broker or dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement.”
[11] *See* 84 FR 43872, 43879 (Aug. 22, 2019).
[12] Pub. L. 91-598, 84 Stat. 1636, codified at 15 U.S.C. § 78aaa et seq.

property” and, consequently, available to be distributed to customers ahead of other creditors.[13] In addition, the Financial Industry Regulatory Authority (FINRA), acting as the designated examining authority for carrying broker-dealers, examines carrying broker-dealers’ compliance with the SEC’s financial responsibility rules, including the SEC Net Capital and Customer Protection Rules.

III. GUIDANCE

Stakeholders have asked the Department of the Treasury (Treasury Department) and the IRS whether, for purposes of compliance with the nonbank trustee fiduciary conduct requirements under § 1.408-2(e)(5), the regulatory standards imposed on carrying broker-dealers by the SEC Net Capital and Customer Protection Rules are consonant with the adequacy of net worth requirement under § 1.408-2(e)(5)(ii), so that, under § 1.408-2(e)(6)(ii), evidence of satisfaction of the SEC Net Capital and Customer Protection Rules by a carrying broker-dealer could be submitted to the IRS in lieu of evidence of satisfaction of the adequacy of net worth requirement.

A. Carrying Broker-Dealers May Demonstrate Satisfaction of the SEC Net Capital and Customer Protection Rules in Lieu of the Adequacy of Net Worth Requirement

The SEC Net Capital and Customer Protection Rules address the same core financial responsibility concerns reflected in the adequacy of net worth requirement under § 1.408-2(e)(5)(ii), including the solvency of an entity holding customer accounts

[13] Of the approximately 770,400 claims satisfied in completed liquidations of broker-dealers under SIPA, as of December 31, 2025, a total of 355 were for cash and securities whose value was greater than the limits of protection afforded by SIPA. The 355 claims represent less than one percent of all claims satisfied. The unsatisfied portion of claims, $49.7 million, represents less than one percent of the total value of securities and cash distributed for accounts of customers in the 329 completed cases. *See* 2025 SIPC Annual Report.

and the protection of customer accounts. In addition, carrying broker-dealers subject to the SEC Net Capital and Customer Protection Rules are subject to substantial oversight, including by FINRA. Accordingly, for carrying broker-dealers, the SEC Net Capital and Customer Protection Rules are consonant with the adequacy of net worth requirement under § 1.408-2(e)(5)(ii). Thus, pursuant to § 1.408-2(e)(6)(ii), a carrying broker-dealer may demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules in lieu of demonstrating satisfaction of the adequacy of net worth requirement for nonbank trustees under § 1.408-2(e)(5)(ii). This alternative demonstration is not available to a broker-dealer that operates pursuant to an exemption report under SEC Rule 17a-5(d). Comments are requested on circumstances under which a carrying broker-dealer that has indicated it is satisfying the SEC Net Capital and Customer Protection Rules would be treated as no longer satisfying those rules and, therefore, would no longer be eligible to demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules in lieu of the adequacy of net worth requirement.

B. Procedures for Existing Nonbank Trustees That Are Carrying Broker-Dealers

A carrying broker-dealer that has received a nonbank trustee notice of approval from the IRS based on satisfaction of the adequacy of net worth requirement of § 1.408-2(e)(5)(ii) and would like to demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules in lieu of the adequacy of net worth requirement must notify the IRS in accordance with § 1.408-2(e)(6)(iv).

C. Procedures for Nonbank Trustee Applicants That Are Carrying Broker-Dealers

The procedures for applying to the IRS to become a nonbank trustee are described in Rev. Proc. 2026-4 (updated annually). The Treasury Department and the IRS anticipate updating the procedures for nonbank trustee applicants that are carrying broker-dealers that want to demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules in lieu of the adequacy of net worth requirement. Until the procedures are updated, applicants may demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules by applying a reasonable, good faith interpretation of this notice and Rev. Proc. 2026-4. Comments are requested on how these procedures should be updated, including what documentation a carrying broker-dealer should be required to submit with its application to demonstrate satisfaction of the SEC Net Capital and Customer Protection Rules, such as the carrying broker-dealer's most recent: (1) Financial and Operational Combined Uniform Single Report ("FOCUS Report"), Part II; and (2) audited annual report including a facing page (Form X-17A-5 Part III), statement of financial condition, statement of income, net capital computation, statement of cash flows, statement of changes in stockholders' or sole proprietor's equity, statement of changes in liabilities subordinated to claims of general creditors, and compliance report.

IV. APPLICABILITY DATE

This notice applies as of May 21, 2026.

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments as described in section III of this notice. Written comments should be submitted by July 20, 2026. The subject line for the comments should include a reference to Notice 2026-32. Comments may be

submitted electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (type IRS-2026-0628 in the search field on the regulations.gov homepage to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, CC:PA:01:PR (Notice 2026-32), Room 5503, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. All commenters are strongly encouraged to submit comments electronically. The Treasury Department and the IRS will publish for public availability any comment submitted electronically, or on paper, to the IRS's public docket on *https://www.regulations.gov*.

VI. PAPERWORK REDUCTION ACT

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain approval from the Office of Management and Budget (OMB) before collecting information from the public, whether such collection is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

This notice does not impose any new reporting, recordkeeping, or third-party disclosure requirements. Section III of this notice describes procedures for existing nonbank trustees that are carrying broker-dealers, as well as procedures for nonbank trustee applicants that are carrying broker-dealers under existing regulations (§ 1.408-2(e)(6)(iv)) and Rev. Proc. 2026-4. These requirements are already approved under OMB Control Numbers 1545-0930 and 1545-1520.

VII. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact (202) 317-6000 (not a toll-free number).