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PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Subpart A—Rules and Regulations Under the Securities Exchange Act of 1934

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240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.
240.19g2–1 Enforcement of compliance by national securities exchanges and registered securities associations with the Act and rules and regulations thereunder.
240.19h–1 Notice by a self-regulatory organization of proposed admission to or continuance in membership or particiption or association with a member of any person subject to a statutory disqualification, and applications to the Commission for relief therefrom.

INSPECTION AND PUBLICATION OF INFORMATION FILED UNDER THE ACT

240.24b–1 Documents to be kept public by exchanges.
240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.
240.24b–3 Information filed by issuers and others under sections 12, 13, 14, and 16.
240.24c -1 Access to nonpublic information.
240.31–1 Securities transactions exempt from transaction fees.

Subpart B—Rules and Regulations Under the Securities Investor Protection Act of 1970 [Reserved]

AUTHORITY: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

Sections 240.0–9, 240.0–11, 240.13e–1, 240.13e–100, 240.13e–101 and 240.14d–100 also issued under secs. 12, 13 and 14, 15 U.S.C. 78l, 78m and 78n;

Section 240.3a4–1 also issued under secs. 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121 as amended;

Section 240.3a12–8 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), and 23(a), 15 U.S.C. 78w(a);

Section 240.3a12–10 also issued under 15 U.S.C. 78b and c;

Section 240.3a12–9 also issued under secs. 3(a)(12), 7(c), 11(d)(1), 15 U.S.C. 78c(a)(12), 78g(c), 78k(d)(1));

Sections 240.3a43–1 and 240.3a44–1 also issued under sec. 3; 15 U.S.C. 78c;

Section 240.3b–6 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.3b–9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78o);

Section 240.9b–1 is also issued under sec. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 120, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57; sec. 505, 94 Stat. 2292; secs. 9, 15, 23(a), 48 Stat. 889, 895, 901; sec. 230(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; sec. 2, 52 Stat. 1075; secs. 6, 10, 78 Stat. 570–574, 580; sec. 11(d), 84 Stat. 121; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78o, 78w(a);

Section 240.10b–10 is also issued under secs. 2, 3, 9, 10, 11, 11A, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156, (15 U.S.C. 78b, 78c, 78i, 78j, 78k, 78k–1, 78o, 78q).

Section 240.12a–7 also issued under 15 U.S.C. 78a *et seq.*, particularly secs. 3(a)(12), 15 U.S.C. 78c(a)(12), 6, 15 U.S.C. 78(f), 11A, 15 U.S.C. 78k, 12, 15 U.S.C. 78(l), and 23(a)(1), 15 U.S.C. 78(w)(a)(1).

Sections 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended, 894, 895, as amended; 15 U.S.C. 78c, 78l, 78m, 78o;

Section 240.12g–3 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.12g3–2 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Sections 240.13e–4, 240.14d–7, 240.14d–10 and 240.14e–1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C 80a–23(c);

Sections 240.13e–4 to 240.13e–101 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 78c(b), 78i(a)(6), 78j(b), 78m(e), 78n(e), 78o(c); sec. 23(c) of the Investment Company Act of 1940; 54 Stat. 825; 15 U.S.C. 80a–23(c);

Section 240.13f-2(T) also issued under sec. 13(f)(1) (15 U.S.C. 78m(f)(1));

Sections 240.14a–1, 240.14a–3, 240.14a–13, 240.14b–1, 240.14b–2, 240.14c–1, and 240.14c–7 also issued under secs. 12, 15 U.S.C. 78l, and 14, Pub. L. 99–222, 99 Stat. 1737, 15 U.S.C. 78n;

Sections 240.14a–3, 240.14a–13, 240.14b–1 and 240.14c–7 also issued under secs. 12, 14 and 17, 15 U.S.C. 78l, 78n and 78g;

Sections 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n;

Section 240.14d–1 is also issued under 15 U.S.C. 77g, 77j, 77s(a), 77ttt(a), 79t, 80a–37.

Section 240.14e–2 is also issued under 15 U.S.C. 77g, 77h, 77s(a), 77sss, 79t, 80a–37(a).

Section 240.14e–4 also issued under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 14(e), 15(c), and 23(a) of the Exchange Act (15 U.S.C. 78c(b), 78j(a), 78j(b), 78n(e), 78*o*(c), and 78w(a)).

Section 240.15a–6, also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78*o*, and 78q;

Section 240.15b1–3 also issued under sec. 15, 17; 15 U.S.C. 78*o* 78q;

Sections 240.15b1–3 and 240.15b2–1 also issued under 15 U.S.C. 78*o*, 78*q*;

Section 240.15b2–2 also issued under secs. 3, 15; 15 U.S.C. 78c, 78*o*;

Sections 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704, secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78o, 78q, 12 U.S.C. 241 nt.;

Section 240.15c2–6, also issued under secs. 3, 10, and 15, 15 U.S.C. 78c, 78j, and 78o.

Section 240.15c2–11 also issued under 15 U.S.C. 78j(b), 78*o*(c), 78q(a), and 78w(a).

Section 240.15c2–12 also issued under 15 U.S.C. 78b, 78c, 78j, 78*o*, 78*o*–4 and 78q.

Section 240.15c3–1 is also issued under secs. 15(c)(3), 15 U.S.C. 78o(c)(3).

Section 240.15d–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a).

Section 240.15d–10 is also issued under 15 U.S.C. 80a–20(a), 80a–37(a).

Sections 240.15Ca1–1, 240.15Ca2–1, 240.15Ca2–2, 240.15Ca2–3, 240.15Ca2–4, 240.15Ca2–5, 240.15Cc1–1 also issued under secs. 3, 15C; 15 U.S.C. 78c, 78*o*–5;

Section 240.17a–3 also issued under secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78

Stat. 565–568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 781, 78n, 78q, 78w(a);

Section 240.17a–23 also issued under 15 U.S.C. 78b, 78c, 78o, 78q, and 78w(a).

Section 240.17f–1 is also authorized under sections 2, 17 and 17A, 48 Stat. 891, 89 Stat. 137, 141 (15 U.S.C. 78b, 78q, 78q–1);

Section 240.17h–1T also issued under 15 U.S.C. 78q.

Sections 240.17Ac2–1(c) and 240.17Ac2–2 also issued under secs. 17, 17A and 23(a); 48 Stat. 897, as amended, 89 Stat. 137, 141 and 48 Stat. 901 (15 U.S.C. 78q, 78q–1, 78w(a));

Section 240.17Ad–1 is also issued under secs. 2, 17, 17A and 23(a); 48 Stat. 841 as amended, 48 Stat. 897, as amended, 89 Stat. 137, 141, and 48 Stat. 901 (15 U.S.C. 78b, 78q, 78q–1, 78w);

Sections 240.17Ad–5 and 240.17Ad–10 are also issued under secs. 3 and 17A; 48 Stat. 882, as amended, and 89 Stat. (15 U.S.C. 78c and 78q–1);

Sections 240.19c–4 also issued under secs. 6, 11A, 14, 15A, 19 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3, and 78s);

Section 240.19c–5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k–1, and 78s.

Section 240.31–1 is also issued under sec. 31, 48 Stat. 904, as amended (15 U.S.C. 78ee).

EDITORIAL NOTE: For nomenclature changes to this part see 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

NOTE: In §§ 240.0–1 to 240.24b–3, the numbers to the right of the decimal point correspond with the respective rule numbers of the rules and regulations under the Securities Exchange Act of 1934.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

Subpart A—Rules and Regulations Under the Securities Exchange Act of 1934

RULES OF GENERAL APPLICATION

§ 240.0–1 Definitions.

(a) As used in the rules and regulations in this part, prescribed by the Commission pursuant to Title I of the Securities Exchange Act of 1934 (48 Stat. 881–905; 15 U.S.C. chapter 2B), unless the context otherwise specifically requires:

(1) The term *Commission* means the Securities and Exchange Commission.

(2) The term *act* means Title I of the Securities Exchange Act of 1934.

(3) The term *section* refers to a section of the Securities Exchange Act of 1934.[1]

(4) The term *rules and regulations* refers to all rules and regulations adopted by the Commission pursuant to the act, including the forms for registration and reports and the accompanying instructions thereto.

(5) The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§ 232.100 and 232.101 of this chapter, respectively).

(6) The term *electronic filing* means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

(b) Unless otherwise specifically stated, the terms used in this part shall have the meaning defined in the act.

(c) A rule or regulation which defines a term without express reference to the act or to the rules and regulations, or to a portion thereof, defines such term for all purposes as used both in the act and in the rules and regulations, unless the context otherwise specifically requires.

(d) Unless otherwise specified or the context otherwise requires, the term

[1] The provisions of paragraph (a)(3) of 17 CFR 240.0–1 relate to the terminology of rules and regulations as published by the Securities and Exchange Commission and are inapplicable to the terminology appearing in the Code of Federal Regulations.

prospectus means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

[13 FR 8178, Dec. 22, 1948, as amended at 13 FR 9321, Dec. 31, 1948; 19 FR 6730, Oct. 20, 1954; 58 FR 14682, Mar. 18, 1993; 62 FR 36459, July 8, 1997]

CROSS REFERENCES: For definition of ''listed'', see § 240.3b–1; ''officer'', § 240.3b–2; ''short sale'', § 240.3b–3. For additional definitions, see § 240.15c1–1.

§ 240.0–2 Business hours of the Commission.

(a) The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever currently is in effect in Washington, DC, *provided that* hours for the filing of documents pursuant to the Act or the rules and regulations thereunder are as set forth in paragraphs (b) and (c) of this section.

(b) *Submissions made in paper or on magnetic tape or diskette.* Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic tape or diskette under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

[58 FR 14682, Mar. 18, 1993]

CROSS REFERENCES: For registration and exemption of exchanges, see §§ 240.6a–1 to 240.6a–3. For forms for permanent registration of securities, see § 240.12b–1. For regulations relating to registration of securities, see §§ 240.12b–1 to 240.12b–36. For forms for applications for registration of brokers and dealers, see §§ 240.15b1–1 to 240.15b9–1.

§ 240.0–3 Filing of material with the Commission.

(a) All papers required to be filed with the Commission pursuant to the Act or the rules and regulations thereunder shall be filed at the principal office in Washington, DC. Material may be filed by delivery to the Commission, through the mails or otherwise. The date on which papers are actually received by the Commission shall be the date of filing thereof if all of the requirements with respect to the filing have been complied with, except that if the last day on which papers can be accepted as timely filed falls on a Saturday, Sunday or holiday, such papers may be filed on the first business day following.

(b) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Securities Exchange Act of 1934, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

(c) Each document filed shall contain an exhibit index, which should immediately precede the exhibits filed with such document. The index shall list each exhibit filed and identify by handwritten, typed, printed, or other legible form of notation in the manually signed original, the page number in the sequential numbering system described in paragraph (b) of this section where such exhibit can be found or where it is stated that the exhibit is incorporated by reference. Further, the first page of the manually signed document shall list the page in the filing where the exhibit index is located.

[44 FR 4666, Jan. 23, 1979, as amended at 45 FR 58828, Sept. 5, 1980]

§ 240.0–4 Nondisclosure of information obtained in examinations and investigations.

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation pursuant to section 17(a) (48 Stat. 897, section 4, 49 Stat. 1379; 15 U.S.C. 78q(a)) or 21(a) (48 Stat. 899; 15 U.S.C. 78u(a)) shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

(Sec. 19, 48 Stat. 85; sec. 20, 48 Stat. 86; sec. 21, 48 Stat. 899; sec. 23, 48 Stat. 901; sec. 18, 49 Stat. 831; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 321, 53 Stat. 1174; sec. 38, 54 Stat. 841; sec. 42, 54 Stat. 842; sec. 209, 54 Stat. 853; sec. 211, 54 Stat. 855; sec. 1, 76 Stat. 394. (15 U.S.C. 77s, 77t, 78u, 78w, 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, 78d–1))

[44 FR 50836, Aug. 30, 1979, as amended at 53 FR 17459, May 17, 1988]

§ 240.0–5 Reference to rule by obsolete designation.

Wherever in any rule, form, or instruction book specific reference is made to a rule by number or other designation which is now obsolete, such reference shall be deemed to be made to the corresponding rule or rules in the existing general rules and regulations.

[13 FR 8179, Dec. 22, 1948]

§ 240.0–6 Disclosure detrimental to the national defense or foreign policy.

(a) Any requirement to the contrary notwithstanding, no registration statement, report, proxy statement or other document filed with the Commission or any securities exchange shall contain any document or information which, pursuant to Executive order, has been classified by an appropriate department or agency of the United States for protection in the interests of national defense or foreign policy.

(b) Where a document or information is omitted pursuant to paragraph (a) of this section, there shall be filed, in lieu of such document or information, a statement from an appropriate department or agency of the United States to the effect that such document or information has been classified or that the status thereof is awaiting determination. Where a document is omitted pursuant to paragraph (a) of this section, but information relating to the subject matter of such document is nevertheless included in material filed with the Commission pursuant to a determination of an appropriate department or agency of the United States that disclosure of such information would not be contrary to the interests of national defense or foreign policy, a statement from such department or agency to that effect shall be submitted for the information of the Commission. A registrant may rely upon any such statement in filing or omitting any document or information to which the statement relates.

(c) The Commission may protect any information in its possession which may require classification in the interests of national defense or foreign policy pending determination by an appropriate department or agency as to whether such information should be classified.

(d) It shall be the duty of the registrant to submit the documents or information referred to in paragraph (a) of this section to the appropriate department or agency of the United

States prior to filing them with the Commission and to obtain and submit to the Commission, at the time of filing such documents or information, or in lieu thereof, as the case may be, the statements from such department or agency required by paragraph (b) of this section. All such statements shall be in writing.

[33 FR 7682, May 24, 1968]

§ 240.0–8 Application of rules to registered broker-dealers.

Any provision of any rule or regulation under the Act which prohibits any act, practice, or course of business by any person if the mails or any means or instrumentality of interstate commerce are used in connection therewith, shall also prohibit any such act, practice, or course of business by any broker or dealer registered pursuant to section 15(b) of the Act, or any person acting on behalf of such a broker or dealer, irrespective of any use of the mails or any means or instrumentality of interstate commerce.

[29 FR 12555, Sept. 3, 1964]

§ 240.0–9 Payment of fees.

All payment of fees shall be made in cash, certified check or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[61 FR 49959, Sept. 24, 1996]

§ 240.0–10 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 *et seq.*), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term *small business* or *small organization* shall:

(a) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, under section 12, 13, 14, 15(d) or 16(b) of the Securities Exchange Act of 1934, mean an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;

(b) When used with reference to an ''issuer'' or ''person'' that is an investment company, mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year;

(c) When used with reference to a broker or dealer, mean a broker or dealer that:

(1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to § 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and

(2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(d) When used with reference to a clearing agency, mean a clearing agency that:

(1) Compared, cleared and settled less than $500 million in securities transactions during the preceding fiscal year (or in the time that it has been in business, if shorter);

(2) Had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(e) When used with reference to an exchange, mean any exchange that has been exempted from the reporting requirements of § 240.11Aa3–1;

(f) When used with reference to a municipal securities dealer that is a bank (including any separately identifiable department or division of a bank), mean any such municipal securities dealer that:

(1) Had, or is a department of a bank that had, total assets of less than $10

million at all times during the preceding fiscal year (or in the time that it has been in business, if shorter);

(2) Had an average monthly volume of municipal securities transactions in the preceding fiscal year (or in the time it has been registered, if shorter) of less than $100,000; and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section;

(g) When used with reference to a securities information processor, mean a securities information processor that:

(1) Had gross revenues of less than $10 million during the preceding fiscal year (or in the time it has been in business, if shorter);

(2) Serviced less than 100 interrogation devices or moving tickers as those terms are defined in § 240.11Aa–3–1 at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section; and

(h) When used with reference to a transfer agent, mean a transfer agent that:

(1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter);

(2) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and

(3) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

(i) For purposes of paragraphs (c) through (h) of this section, a person is affiliated with another person if that person controls, is controlled by, or is under common control with such other person; a person shall be deemed to control another person if that person has the right to vote 25% or more of the voting securities of such other person or is entitled to receive 25% or more of the net profits of such other person or is otherwise able to direct or cause the direction of the management or policies of such other person.

[47 FR 5222, Feb. 4, 1982, as amended at 51 FR 25362, July 14, 1986]

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; the fee requirements under section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal

amount, par value or stated value of the securities shall be used.

(5) The cover page of the filing shall set forth the calculation of the fee in tabular format, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them:

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a–6(a) or preliminary information statement pursuant to Rule 14c–5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary material involving a vote upon a merger, consolidation or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, no filing fee is required to be paid.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as at liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D–1 filings.* At the time of filing a Schedule 14D–1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

[51 FR 2476, Jan. 17, 1986, as amended at 58 FR 14682, Mar. 18, 1993; 61 FR 49959, Sept. 24, 1996]

§ 240.0–12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

(a) The application shall be in writing in the form of a letter, must include any supporting documents necessary to make the application complete, and otherwise must comply with § 240.0–3. All applications must be submitted to the Office of the Secretary of the Commission. Requestors may seek confidential treatment of their applications to the extent provided under § 200.81 of this chapter. If an application is incomplete, the Commission, through the Division handling the application, may request that the application be withdrawn unless the applicant can justify, based on all the facts and circumstances, why supporting materials have not been submitted and undertakes to submit the omitted materials promptly.

(b) An applicant may submit a request electronically in standard electronic mail text or ASCII format. The electronic mailbox to use for these applications is described on the Commission's website at www.sec.gov in the ''Exchange Act Exemptive Applications'' subsection located under the ''Current SEC Rulemaking'' section. In the event electronic mailboxes are revised in the future, applicants can find the appropriate mailbox by accessing the Commission's website directory of electronic mailboxes at http://www.sec.gov/asec/mailboxs.htm.

(c) An applicant also may submit a request in paper format. Five copies of every paper application and every amendment to such an application must be submitted to the Office of the Secretary at 450 Fifth Street, N.W., Washington, D.C. 20549. Applications must be on white paper no larger than 8½ by 11 inches in size. The left margin of applications must be at least 1½ inches wide, and if the application is bound, it must be bound on the left side. All typewritten or printed material must be on one side of the paper only and must be set forth in black ink so as to permit photocopying.

(d) Every application (electronic or paper) must contain the name, address and telephone number of each applicant and the name, address, and telephone number of a person to whom any questions regarding the application should be directed. The Commission will not consider hypothetical or anonymous requests for exemptive relief. Each applicant shall state the basis for the relief sought, and identify the anticipated benefits for investors and any conditions or limitations the applicant believes would be appropriate for the protection of investors. Applicants should also cite to and discuss applicable precedent.

(e) Amendments to the application should be prepared and submitted as set forth in these procedures and should be marked to show what changes have been made.

(f) After the filing is complete, the applicable Division will review the application. Once all questions and issues have been answered to the satisfaction of the Division, the staff will make an appropriate recommendation to the Commission. After consideration of the recommendation by the Commission, the Commission's Office of the Secretary will issue an appropriate response and will notify the applicant. If the application pertains to a section of the Exchange Act pursuant to which the Commission has delegated its authority to the appropriate Division, the Division Director or his or her designee will issue an appropriate response and notify the applicant.

(g) The Commission, in its sole discretion, may choose to publish in the FEDERAL REGISTER a notice that the application has been submitted. The notice would provide that any person may, within the period specified therein, submit to the Commission any information that relates to the Commission action requested in the application. The notice also would indicate the earliest date on which the Commission would take final action on the application, but in no event would such action be taken earlier than 25 days following publication of the notice in the FEDERAL REGISTER.

(h) The Commission may, in its sole discretion, schedule a hearing on the matter addressed by the application.

[63 FR 8102, Feb. 18. 1998]

DEFINITION OF ''EQUITY SECURITY'' AS USED IN SECTIONS 12(g) AND 16

§ 240.3a4–1 Associated persons of an issuer deemed not to be brokers.

(a) An associated person of an issuer of securities shall not be deemed to be a broker solely by reason of his participation in the sale of the securities of such issuer if the associated person:

(1) Is not subject to a statutory disqualification, as that term is defined in section 3(a)(39) of the Act, at the time of his participation; and

(2) Is not compensated in connection with his participation by the payment of commissions or other remuneration based either directly or indirectly on transactions in securities; and

(3) Is not at the time of his participation an associated person of a broker or dealer; and

(4) Meets the conditions of any one of paragraph (a)(4) (i), (ii), or (iii) of this section.

(i) The associated person restricts his participation to transactions involving offers and sales of securities:

(A) To a registered broker or dealer; a registered investment company (or registered separate account); an insurance company; a bank; a savings and loan association; a trust company or similar institution supervised by a state or federal banking authority; or a trust for which a bank, a savings and loan association, a trust company, or a registered investment adviser either is the trustee or is authorized in writing to make investment decisions; or

(B) That are exempted by reason of section 3(a)(7), 3(a)(9) or 3(a)(10) of the Securities Act of 1933 from the registration provisions of that Act; or

(C) That are made pursuant to a plan or agreement submitted for the vote or consent of the security holders who will receive securities of the issuer in connection with a reclassification of securities of the issuer, a merger or consolidation or a similar plan of acquisition involving an exchange of securities, or a transfer of assets of any other person to the issuer in exchange for securities of the issuer; or

(D) That are made pursuant to a bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees of an issuer or a subsidiary of the issuer;

(ii) The associated person meets all of the following conditions:

(A) The associated person primarily performs, or is intended primarily to perform at the end of the offering, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in securities; and

(B) The associated person was not a broker or dealer, or an associated person of a broker or dealer, within the preceding 12 months; and

(C) The associated person does not participate in selling an offering of securities for any issuer more than once every 12 months other than in reliance on paragraph (a)(4)(i) or (iii) of this section, except that for securities issued pursuant to rule 415 under the Securities Act of 1933, the 12 months shall begin with the last sale of any security included within one rule 415 registration.

(iii) The associated person restricts his participation to any one or more of the following activities:

(A) Preparing any written communication or delivering such communication through the mails or other means that does not involve oral solicitation by the associated person of a potential purchaser; *Provided, however*, that the content of such communication is approved by a partner, officer or director of the issuer;

(B) Responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser; *Provided, however*, That the content of such responses are limited to information contained in a registration statement filed under the Securities Act of 1933 or other offering document; or

(C) Performing ministerial and clerical work involved in effecting any transaction.

(b) No presumption shall arise that an associated person of an issuer has violated section 15(a) of the Act solely by reason of his participation in the sale of securities of the issuer if he does not meet the conditions specified in paragraph (a) of this section.

(c) *Definitions.* When used in this section:

(1) The term *associated person of an issuer* means any natural person who is a partner, officer, director, or employee of:

(i) The issuer;

(ii) A corporate general partner of a limited partnership that is the issuer;

(iii) A company or partnership that controls, is controlled by, or is under common control with, the issuer; or

(iv) An investment adviser registered under the Investment Advisers Act of 1940 to an investment company registered under the Investment Company Act of 1940 which is the issuer.

(2) The term *associated person of a broker or dealer* means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial and any person who is required under the laws of any State to register as a broker or dealer in that State solely because such person is an issuer of securities or associated person of an issuer of securities shall not be included in the meaning of such term for purposes of this section.

[50 FR 27946, July 9, 1985]

§ 240.3a11–1 Definition of the term "equity security".

The term *equity security* is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle, or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

(Sec. 3, 48 Stat. 882, 15 U.S.C. 78)
[38 FR 11449, May 8, 1973]

MISCELLANEOUS EXEMPTIONS

§ 240.3a12–1 Exemption of certain mortgages and interests in mortgages.

Mortgages, as defined in section 302(d) of the Emergency Home Finance Act of 1970, which are or have been sold by the Federal Home Loan Mortgage Corporation are hereby exempted from the operation of such provisions of the Act as by their terms do not apply to an ''exempted security'' or to ''exempted securities''.

(Sec. 3(a)(12), 48 Stat. 882, 15 U.S.C. 78(c))
[37 FR 25167, Nov. 28, 1972]

§ 240.3a12–2 [Reserved]

§ 240.3a12–3 Exemption from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

(a) Securities for which the filing of registration statements on Form 18 [17 CFR 249.218] are authorized shall be exempt from the operation of sections 14 and 16 of the Act.

(b) Securities registered by a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

[44 FR 70137, Dec. 6, 1979, as amended at 47 FR 54780, Dec. 6, 1982; 56 FR 30067, July 1, 1991]

§ 240.3a12–4 Exemptions from sections 15(a) and 15(c)(3) for certain mortgage securities.

(a) When used in this Rule the following terms shall have the meanings indicated:

(1) The term *whole loan mortgage* means an evidence of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or upon leasehold interests therein where the entire mortgage, deed or other lien is transferred with the entire evidence of indebtedness.

(2) The term *aggregated whole loan mortgage* means two or more whole loan mortgages that are grouped together

and sold to one person in one transaction.

(3) The term *participation interest* means an undivided interest representing one of only two such interests in a whole loan mortgage or in an aggregated whole loan mortgage, provided that the other interest is retained by the originator of such participation interest.

(4) The term *commitment* means a contract to purchase a whole loan mortgage, an aggregated whole loan mortgage or a participation interest which by its terms requires that the contract be fully executed within 2 years.

(5) The term *mortgage security* means a whole loan mortgage, an aggregated whole loan mortgage, a participation interest, or a commitment.

(b) A mortgage security shall be deemed an ''exempted security'' for purposes of subsections (a) and (c)(3) of section 15 of the Act provided that, in the case of and at the time of any sale of the mortgage security by a broker or dealer, such mortgage security is not in default and has an unpaid principal amount of at least $50,000.

[39 FR 19945, June 5, 1974]

§ 240.3a12–5 Exemption of certain investment contract securities from sections 7(c) and 11(d)(1).

(a) An investment contract security involving the direct ownership of specified residential real property shall be exempted from the provisions of sections 7(c) and 11(d)(1) of the Act with respect to any transaction by a broker or dealer who, directly or indirectly, arranges for the extension or maintenance of credit on the security to or from a customer, if the credit:

(1) Is secured by a lien, mortgage, deed of trust, or any other similar security interest related only to real property: *Provided, however,* That this provision shall not prevent a lender from requiring (i) a security interest in the common areas and recreational facilities or furniture and fixtures incidental to the investment contract if the purchase of such furniture and fixtures is required by, or subject to the approval of, the issuer, as a condition of purchase; or (ii) an assignment of future rentals in the event of default by the purchaser or a co-signer or guarantor on the debt obligation other than the issuer, its affiliates, or any broker or dealer offering such securities;

(2) Is to be repaid by periodic payments of principal and interest pursuant to an amortization schedule established by the governing instruments: *Provided, however,* That this provision shall not prevent the extension of credit on terms which require the payment of interest only, if extended in compliance with the other provisions of this rule; and

(3) Is extended by a lender which is not, directly or indirectly controlling, controlled by, or under common control with the broker or dealer or the issuer of the securities or affiliates thereof.

(b) For purposes of this rule:

(1) *Residential real property* shall mean real property containing living accommodations, whether used on a permanent or transient basis, and may include furniture or fixtures if required as a condition of purchase of the investment contract or if subject to the approval of the issuer.

(2) *Direct ownership* shall mean ownership of a fee or leasehold estate or a beneficial interest in a trust the purchase of which, under applicable local law, is financed and secured by a security interest therein similar to a mortgage or deed of trust, but it shall not include an interest in a real estate investment trust, an interest in a general or limited partnership, or similar indirect interest in the ownership of real property.

(Sec. 3(a)(12), 48 Stat. 882, as amended 84 Stat. 718, 1435, 1499 (15 U.S.C. 78c(12)); sec. 7(c), 48 Stat. 886, as amended 82 Stat. 452 (15 U.S.C. 78g(c)); sec. 11(d)(1), 48 Stat. 891 as amended 68 Stat. 636 (15 U.S.C. 78k(d)(1)); sec. 15(c), 48 Stat. 895, as amended 52 Stat. 1075, 84 Stat. 1653 (15 U.S.C. 78o(c)); sec. 23(a), 48 Stat. 901, as amended 49 Stat. 704, 1379 (15 U.S.C. 78w(a)))

[40 FR 6646, Feb. 13, 1975]

§ 240.3a12–6 Definition of "common trust fund" as used in section 3(a)(12) of the act.

The term *common trust fund* as used in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)) shall include a common trust fund which is maintained by a

bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided*, That:

(a) The common trust fund is operated in compliance with the same state and federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 78c(b))
[43 FR 2392, Jan. 17, 1978]

§ 240.3a12–7 Exemption for certain derivative securities traded otherwise than on a national securities exchange.

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to section 3(a)(12) of the Act, shall be exempt from all provisions of the Act which by their terms do not apply to any ''exempted security'' or ''exempted securities,'' provided that the securities underlying such put, call, straddle, option or privilege represent an obligation equal to or exceeding $250,000 principal amount.

(15 U.S.C. 78a *et seq.*, and particularly secs. 3(a)(12), 15(a)(2) and 23(a) (15 U.S.C. 78c(a)(12), 78*o*(a)(2) and 78w(a)))
[49 FR 5073, Feb. 10, 1984]

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) When used in this Rule, the following terms shall have the meaning indicated:

(1) The term *designated foreign government security* shall mean a security not registered under the Securities Act of 1933 nor the subject of any American depositary receipt so registered, and representing a debt obligation of the government of

(i) The United Kingdom of Great Britain and Northern Ireland;

(ii) Canada;

(iii) Japan;

(iv) The Commonwealth of Australia;

(v) The Republic of France;

(vi) New Zealand;

(vii) The Republic of Austria;

(viii) The Kingdom of Denmark;

(ix) The Republic of Finland;

(x) The Kingdom of the Netherlands;

(xi) Switzerland;

(xii) The Federal Republic of Germany;

(xiii) The Republic of Ireland;

(xiv) The Republic of Italy;

(xv) The Kingdom of Spain;

(xvi) The United Mexican States;

(xvii) The Federative Republic of Brazil;

(xviii) The Republic of Argentina; or

(xix) The Republic of Venezuela.

(2) The term *qualifying foreign futures contracts* shall mean any contracts for the purchase or sale of a designated foreign government security for future delivery, as ''future delivery'' is defined in 7 U.S.C. 2, provided such contracts require delivery outside the United States, any of its possessions or territories, and are traded on or through a board of trade, as defined at 7 U.S.C. 2.

(b) Any designated foreign government security shall, for purposes only of the offer, sale or confirmation of sale of qualifying foreign futures contracts, be exempted from all provisions of the Act which by their terms do not apply to an ''exempted security'' or ''exempted securities.''

(15 U.S.C. 78a *et seq.*, and particularly secs. 3(a)(12), and 23(a) 15 U.S.C. 78c(a)(12), and 78w(a))

[49 FR 8599, Mar. 8, 1984, as amended at 51 FR 25998, July 18, 1986; 52 FR 8877, Mar. 20, 1987; 52 FR 42279, Nov. 4, 1987; 53 FR 43863, Oct. 31, 1988; 57 FR 1378, Jan. 14, 1992; 59 FR 54815, Nov. 2, 1994; 60 FR 62326, Dec. 6, 1995; 61 FR 10274, Mar. 13, 1996]

§ 240.3a12–9 Exemption of certain direct participation program securities from the arranging provisions of sections 7(c) and 11(d)(1).

(a) Direct participation program securities sold on a basis whereby the purchase price is paid to the issuer in one or more mandatory deferred payments shall be deemed to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act, provided that:

(1) The securities are registered under the Securities Act of 1933 or are sold or offered exclusively on an intrastate basis in reliance upon section 3(a)(11) of that Act;

(2) The mandatory deferred payments bear a reasonable relationship to the capital needs and program objectives described in a business development plan disclosed to investors in a registration statement filed with the Commission under the Securities Act of 1933 or, where no registration statement is required to be filed with the Commission, as part of a statement filed with the relevant state securities administrator;

(3) Not less than 50 percent of the purchase price of the direct participation program security is paid by the investor at the time of sale;

(4) The total purchase price of the direct participation program security is due within three years in specified property programs or two years in nonspecified property programs. Such pay-in periods are to be measured from the earlier of the completion of the offering or one year following the effective date of the offering.

(b) For purposes of this rule:

(1) *Direct participation program* shall mean a program financed through the sale of securities, other than securities that are listed on an exchange, quoted on NASDAQ, or will otherwise be actively traded during the pay-in period as a result of efforts by the issuer, underwriter, or other participants in the initial distribution of such securities, that provides for flow-through tax consequences to its investors; *Provided, however*, That the term ''direct participation program'' does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code (''Code''), tax shelter annuities under section 403(b) of the Code, individual retirement plans under section 408 of the Code, and any issuer, including a separate account, that is registered under the Investment Company Act of 1940.

(2) *Business development plan* shall mean a specific plan describing the program's anticipated economic development and the amounts of future capital contributions, in the form of mandatory deferred payments, to be required at specified times or upon the occurrence of certain events.

(3) *Specified property program* shall mean a direct participation program in which, at the date of effectiveness, more than 75 percent of the net proceeds from the sale of program securities are committed to specific purchases or expenditures. *Non-specified property program* shall mean any other direct participation program.

[51 FR 8801, Mar. 14, 1986]

§ 240.3a12–10 Exemption of certain securities issued by the Resolution Funding Corporation.

Securities that are issued by the Resolution Funding Corporation pursuant to section 21B(f) of the Federal Home Loan Bank Act (12 U.S.C. 1421 *et seq.*) are exempt from the operation of all provisions of the Act that by their terms do not apply to any ''exempted security'' or to ''exempted securities.''

[54 FR 37789, Sept. 13, 1989]

§ 240.3a12–11 Exemption from sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall be exempt from sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)), *except that* §§ 240.14a-1, 240.14a-2(a), 240.14a-9, 240.14a-13, 240.14b-1, 240.14b-2, 240.14c-1, 240.14c-6 and 240.14c-7 shall continue to apply.

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not ''equity securities'' as defined in section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) and § 240.3a11–1 thereunder.

[59 FR 55347, Nov. 7, 1994]

§ 240.3a40–1 Designation of financial responsibility rules.

The term *financial responsibility rules* for purposes of the Securities Investor Protection Act of 1970 shall include:

(a) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a) or 17(e)(1)(A) of the Securities Exchange Act of 1934;

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

(c) Any rule adopted by any self-regulatory organization relating to capital, margin, recordkeeping, hypothecation or lending requirements; and

(d) Any other rule adopted by the Commission or any self-regulatory organization relating to the protection of funds or securities.

(Secs. 3, 15(c)(3), 17(a) and 23 (15 U.S.C. 78c, 78o, 78q(a) and 78u))

[44 FR 28318, May 15, 1979]

§ 240.3a43–1 Customer-related government securities activities incidental to the futures-related business of a futures commission merchant registered with the Commodity Futures Trading Commission.

(a) A futures commission merchant registered with the Commodity Futures Trading Commission (''CFTC'') is not a government securities broker or government securities dealer solely because such futures commission merchant effects transactions in government securities that are defined in paragraph (b) of this section as incidental to such person's futures-related business.

(b) Provided that the futures commission merchant maintains in a regulated account all funds and securities associated with such government securities transactions (except funds and securities associated with transactions under paragraph (b)(1)(i) of this section and does not advertise that it is in the business of effecting transactions in government securities otherwise than in connection with futures or options on futures trading or the investment of margin or excess funds related to such trading or the trading of any other instrument subject to CFTC jurisdiction, the following transactions in government securities are incidental to the futures-related business of such a futures commission merchant:

(1) Transactions as agent for a customer—

(i) To effect delivery pursuant to a futures contract; or

(ii) For risk reduction or arbitrage of existing or contemporaneously created postions in futures or options on futures;

(2) Transactions as agent for a customer for investment of margin and excess funds related to futures or options on futures trading or the trading of other instruments subject to CFTC jurisdiction, provided further that,

(i) Such transactions involve Treasury securities with a maturity of less than 93 days at the time of the transation.

(ii) Such transactions generate no monetary profit for the futures commission merchant in excess of the costs of executing such transactions, or

(iii) Such transactions are unsolicited, and commissions and other income generated on transactions pursuant to this paragraph (b)(2)(iii) (including transactional fees paid by the futures commission merchant and charged to its customer) do not exceed 2% of such futures commission merchant's total commission revenues;

(3) Exchange of futures for physicals transactions as agent for or as principal with a customer; and

(4) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures-related business of a specified futures commission merchant, a specified

category of futures commission merchants, or futures commission merchants generally.

(c) Definitions. (1) *Customer* means any person for whom the futures commission merchant effects or intends to effect transactions in futures, options on futures, or any other instruments subject to CFTC jurisdiction.

(2) *Regulated account* means a customer segregation account subject to the regulations of the CFTC; provided, however, that, where such regulations do not permit to be maintained in such an account or require to be maintained in a separate regulated account funds or securities in proprietary accounts or funds or securities used as margin for or excess funds related to futures contracts, options on futures or any other instruments subject to CFTC jurisdiction that trade outside the United States, its territories, or possessions, the term *regulated account* means such separate regulated account or any other account subject to record-keeping regulations of the CFTC.

(3) *Unsolicited transaction* means a transaction that is not effected in a discretionary account or recommended to a customer by the futures commission merchant, an associated person of a futures commission merchant, a business affiliate that is controlled by, controlling, or under common control with the futures commission merchant, or an introducing broker that is guaranteed by the futures commission merchant.

(4) *Futures* and *futures contracts* mean contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(5) *Options on futures* means puts or calls on a futures contract traded on or subject to the rules of a contract market designated by the CFTC or traded or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

[52 FR 27969, July 24, 1987]

§ 240.3a44–1 Proprietary government securities transactions incidental to the futures-related business of a CFTC-regulated person.

(a) A person registered with the Commodity Futures Trading Commission (''CFTC''), a contract market designated by the CFTC, such a contract market's affiliated clearing organization, or any floor trader or such a contract market (hereinafter referred to collectively as a ''CFTC-regulated person'') is not a government securities dealer solely because such person effects transactions for its own account in government securities that are defined in paragraph (b) of this section as incidental to such person's futures-related business.

(b) Provided that a CFTC-regulated person does not advertise or otherwise hold itself out as a government securities dealer except as permitted under rule 3a43-1 (§ 240.3a43–1) the following transactions in government securities for its own account are incidental to the futures-related business of such a CFTC-regulated person:

(1) Transactions to effect delivery of a government security pursuant to a futures contract;

(2) Exchange of futures for physicals transactions with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(3) Transactions (including repurchase agreements and reverse repurchase agreements) involving segregated customer funds and securities or funds and securities held by a clearing organization with (i) a government securities broker or government securities dealer that has registered with the Commission of filed notice pursuant to section 15C(a) of the Act or (ii) a bank;

(4) Transactions for risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures with (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act or (ii) a CFTC-regulated person;

(5) Repurchase and reverse repurchase agreement transactions between a futures commission merchant acting in a proprietary capacity and another CFTC-regulated person acting in a proprietary capacity and contemporaneous offsetting transactions between such a futures commission merchant and (i) a government securities broker or government securities dealer that has registered with the Commission or filed notice pursuant to section 15C(a) of the Act, (ii) a bank, or (iii) a CFTC-regulated person acting in a proprietary capacity; and

(6) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures related business of a specified CFTC-regulated person, a specified category of CFTC-regulated persons, or CFTC-regulated persons generally.

(c) Definitions. (1) *Segregated customer funds* means funds subject to CFTC segregation requirements.

(2) *Futures* and *futures contracts* means contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

(3) *Options on futures* means puts or calls on a futures contract traded on or subject to the rules of a contract market designated by the CFTC or traded on or subject to the rules of any board of trade located outside the United States, its territories, or possessions.

[52 FR 27970, July 24, 1987]

§ 240.3a51–1 Definition of "penny stock".

For purposes of section 3(a)(51) of the Act, the term ''penny stock'' shall mean any equity security other than a security:

(a) That is a reported security, as defined in 17 CFR 240.11Aa3–1(a) of this chapter;

except that a security that is registered on the American Stock Exchange, Inc. pursuant to the listing criteria of the Emerging Company Marketplace, but that does not otherwise satisfy the requirements of paragraph (b), (c), or (d) of this section, shall be a penny stock for purposes of section 15(b)(6) of the Act;

(b) That is issued by an investment company registered under the Investment Company Act of 1940;

(c) That is a put or call option issued by the Options Clearing Corporation;

(d) Except for purposes of section 7(b) of the Securities Act and Rule 419 (17 CFR 230.419), that has a price of five dollars or more;

(1) For purposes of paragraph (d) of this section:

(i) A security has a price of five dollars or more for a particular transaction if the security is purchased or sold in that transaction at a price of five dollars or more, excluding any broker or dealer commission, commission equivalent, mark-up, or mark-down; and

(ii) Other than in connection with a particular transaction, a security has a price of five dollars or more at a given time if the inside bid quotation is five dollars or more; *provided, however,* that if there is no such inside bid quotation, a security has a price of five dollars or more at a given time if the average of three or more interdealer bid quotations at specified prices displayed at that time in an interdealer quotation system, as defined in 17 CFR 240.15c2–7(c)(1), by three or more market makers in the security, is five dollars or more.

(iii) The term ''inside bid quotation'' shall mean the highest bid quotation for the security displayed by a market maker in the security on an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this section, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotations for the security at specified prices.

(2) If a security is a unit composed of one or more securities, the unit price divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be five dollars or more, as determined in accordance with paragraph (d)(1) of this section, and any share of the unit that is a warrant, option, right, or

similar security, or a convertible security, must have an exercise price or conversion price of five dollars or more;

(e) That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to 17 CFR 240.11Aa3–1 of this chapter, provided that:

(1) Price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the national securities exchange; and

(2) The security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of a distribution of the security;

except that a security that satisfies the requirements of this paragraph, but that does not otherwise satisfy the requirements of paragraph (a), (b), (c), or (d) of this section, shall be a penny stock for purposes of Section 15(b)(6) of the Act;

(f) That is authorized, or approved for authorization upon notice of issuance, for quotation in the National Association of Securities Dealers' Automated Quotation system (NASDAQ), provided that price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the National Association of Securities Dealers, Inc.;

except that a security that satisfies the requirements of this paragraph, but that does not otherwise satisfy the requirements of paragraphs (a), (b), (c), or (d) of this section, shall be a penny stock for purposes of section 15(b)(6) of the Act; or

(g) Whose issuer has:

(1) Net tangible assets (*i.e.*, total assets less intangible assets and liabilities) in excess of $2,000,000, if the issuer has been in continuous operation for at least three years, or $5,000,000, if the issuer has been in continuous operation for less than three years; or

(2) Average revenue of at least $6,000,000 for the last three years.

(3) For purposes of paragraph (g) of this section, net tangible assets or average revenues must be demonstrated by financial statements dated less than fifteen months prior to the date of the transaction that the broker or dealer has reviewed and has a reasonable basis for believing are accurate in relation to the date of the transaction, and:

(i) If the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2–02; or

(ii) If the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission or furnished to the Commission pursuant to 17 CFR 240.12g3–2(b); *provided, however,* that if financial statements for the issuer dated less than fifteen months prior to the date of the transaction have not been filed with or furnished to the Commission, financial statements dated within fifteen months prior to the transaction shall be prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(4) The broker or dealer shall preserve, as part of its records, copies of the financial statements required by paragraph (g)(3) of this section for the period specified in 17 CFR 240.17a–4(b).

[57 FR 18032, Apr. 28, 1992, as amended at 58 FR 58101, Oct. 29, 1993]

DEFINITIONS

§ 240.3b–1 Definition of "listed".

The term *listed* means admitted to full trading privileges upon application by the issuer or its fiscal agent or, in the case of the securities of a foreign corporation, upon application by a banker engaged in distributing them; and includes securities for which authority to add to the list on official notice of issuance has been granted.

(Sec. 3, 48 Stat. 884; 15 U.S.C. 78c)
[13 FR 8179, Dec. 22, 1948]

§ 240.3b–2 Definition of "officer".

The term *officer* means a president, vice president, secretary, treasury or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

[47 FR 11464, Mar. 16, 1982; 47 FR 11819, Mar. 19, 1982]

§ 240.3b–3 Definition of "short sale".

The term *short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A person shall be deemed to own a security if (a) he or his agent has the title to it; or (b) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it; or (c) he owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (d) he has an option to purchase or acquire it and has exercised such option; or (e) he has rights or warrants to subscribe to it and has exercised such rights or warrants: *Provided, however,* That a person shall be deemed to own securities only to the extent that he has a net long position in such securities.

[40 FR 25444, June 16, 1975]

CROSS REFERENCE: For regulations relating to ''short sale'', see §§ 240.10a–1, and 240.10a–2.

§ 240.3b–4 Definition of "foreign government, foreign issuer" and "foreign private issuer."

(a) The term *foreign government* means the government of any foreign country or of any political subdivision of a foreign country.

(b) The term *foreign issuer* means any issuer which is a foreign government, a national of any foreign country or a corporation or other organization incorporated or organized under the laws of any foreign country.

(c) *Foreign private issuer:* The term ''foreign private issuer'' means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the outstanding voting securities of such issuer are held of record either directly or through voting trust certificates or depositary receipts by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents,

(ii) More than 50 percent of the assets of the issuer are located in the United States, or

(iii) The business of the issuer is administered principally in the United States. For the purpose of this paragraph, the term ''resident,'' as applied to security holders, shall mean any person whose address appears on the records of the issuer, the voting trustee, or the depositary as being located in the United States.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78*o*(d), 78w(a))

[32 FR 7848, May 30, 1967, as amended at 48 FR 46739, Oct. 14, 1983]

§ 240.3b–5 Non-exempt securities issued under governmental obligations.

(a) Any part of an obligation evidenced by any bond, note, debenture, or other evidence of indebtedness issued by any governmental unit specified in section 3(a)(12) of the Act which is payable from payments to be made in respect of property or money which is or will be used, under a lease, sale, or loan arrangement, by or for industrial or commercial enterprise, shall be deemed to be a separate ''security'' within the meaning of section 3(a)(10) of the Act, issued by the lessee or obligor under the lease, sale or loan arrangement.

(b) An obligation shall not be deemed a separate ''security'' as defined in paragraph (a) of this section if, (1) the obligation is payable from the general revenues of a governmental unit, specified in section 3(a)(12) of the Act, having other resources which may be used for the payment of the obligation, or (2) the obligation relates to a public project or facility owned and operated by or on behalf of and under the control of a governmental unit specified in such section, or (3) the obligation relates to a facility which is leased to and under the control of an industrial or commercial enterprise but is a part of a public project which, as a whole, is owned by and under the general control of a governmental unit specified in such section, or an instrumentality thereof.

(c) This rule shall apply to transactions of the character described in paragraph (a) of this section only with respect to bonds, notes, debentures or other evidences of indebtedness sold after December 31, 1968.

(Sec. 3, 48 Stat. 882; 15 U.S.C. 78c, 77s)
[33 FR 12648, Sept. 6, 1968, as amended at 35 FR 6000, Apr. 11, 1970]

§ 240.3b–6 Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, § 249.308a of this chapter, or in an annual report to share–holders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided*, That:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K and Form 10–KSB or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 offering statement or solicitation of interest written document or broadcast script under Regulation A or pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information which is disclosed in a document filed with the Commission in Part I of a quarterly report on Form 10–Q and Form 10–QSB (§ 249.308a of this chapter) or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934 (§§ 240.14a–3 (b) and (c) or 240.14c–3 (a) and (b) of this chapter) and which relates to (i) the effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter) or Regulation S–B (§ 228.303 of this chapter) or Item 9 of Form 20–F (§ 249.220f of this chapter), ''Management's discussion and analysis of financial condition and results of operations,'' or Item 302 of Regulation S–K (§ 229.302 of this chapter), ''Supplementary financial information,'' or

Rule 3–20(c) of Regulation S–X (§ 210.3–20(c)) of this chapter) or (ii) the value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S–K (§ 229.302 of this chapter).

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter) or Item 9 of Form 20–F or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Securities Exchange Act of 1934 or the rules or regulations promulgated thereunder.

[46 FR 13990, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11464, Mar. 16, 1982; 47 FR 54780, Dec. 6, 1982; 47 FR 57915, Dec. 29, 1982; 48 FR 19876, May 3, 1983; 56 FR 30067, July 1, 1991; 57 FR 36494, Aug. 13, 1992]

§ 240.3b–7 Definition of "executive officer".

The term *executive officer*, when used with reference to a registrant, means its president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy making function or any other person who performs similar policy making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the registrant if they perform such policy making functions for the registrant.

[47 FR 11464, Mar. 16, 1982, as amended at 56 FR 7265, Feb. 21, 1991]

§ 240.3b–8 Definitions of "Qualified OTC Market Maker, Qualified Third Market Maker" and "Qualified Block Positioner".

For the purposes of Regulation U under the Act (12 CFR part 221):

(a) The term *Qualified OTC Market Maker* in an over-the-counter (''OTC'') margin security means a dealer in any ''OTC Margin Security'' (as that term is defined in section 2(j) of Regulation U (12 CFR 221.2(j)) who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and is in compliance with Rule 15c3–1 (17 CFR 240.15c3–1), (3) has and maintains minimum net capital, as defined in Rule 15c3–1, of the lesser of (i) $250,000 or (ii) $25,000 plus $5,000 for each security in excess of five with regard to which the broker or dealer is, or is seeking to become a Qualified OTC Market Maker, and (4) except when such activity is unlawful, meets all of the following conditions with respect to such security: (i) He regularly publishes bona fide, competitive bid and offer quotations in a recognized inter-dealer quotation system, (ii) he furnishes bona fide, competitive bid and offer quotations to other brokers and dealers on request, (iii) he is ready, willing and able to effect transactions in reasonable amounts, and at his quoted prices, with other brokers and dealers, and (iv) he has a reasonable average rate of inventory turnover in such security.

(b) The term *Qualified Third Market Maker* means a dealer in any stock registered on a national securities exchange (''exchange'') who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and is in compliance with Rule 15c3–1 (17 CFR 240.15c3–1), (3) has and maintains minimum net capital, as defined in Rule 15c3–1, of the lesser of (i) $500,000 or (ii) $100,000 plus $20,000 for each security in excess of five with regard to which the broker or dealer is, or is seeking to become, a Qualified Third Market Maker, and (4) except when such activity is unlawful, meets all of the following conditions with respect to such security: (i) He furnishes bona fide, competitive bid and offer quotations at all times to other brokers and dealers on request, (ii) he is ready, willing and able to effect transactions for his own account in reasonable amounts, and at his quoted prices with other brokers and dealers, and (iii) he has a reasonable average rate of inventory turnover in such security.

(c) The term *Qualified Block Positioner* means a dealer who (1) is a broker or dealer registered pursuant to section 15 of the Act, (2) is subject to and in compliance with Rule 15c3–1 (17 CFR 240.15c3–1), (3) has and maintains minimum net capital, as defined in Rule 15c3–1 of $1,000,000 and (4) except when such activity is unlawful, meets all of the following conditions: (i) He engages in the activity of purchasing long or selling short, from time to time, from or to a customer (other than a partner or a joint venture or other entity in which a partner, the dealer, or a person associated with such dealer, as defined in section 3(a) (18) of the Act, participates) a block of stock with a current market value of $200,000 or more in a single transaction, or in several transactions at approximately the same time, from a single source to facilitate a sale or purchase by such customer, (ii) he has determined in the exercise of reasonable diligence that the block could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94–29 (June 4, 1975), particularly secs. 2, 3, 11, 15, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78k, 78*o*, 78q and 78w))

[48 FR 39606, Sept. 1, 1983]

§ 240.3b–9 Definition of "bank" for purposes of section 3(a) (4) and (5) of the Act.

(a) The term *bank* as used in the definition of *broker* and *dealer* in section 3(a) (4) and (5) of the Act does not include a bank that:

(1) Publicly solicits brokerage business for which it receives transaction-related compensation, unless the bank enters into a contractual or other arrangement with a broker-dealer registered under the Act pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that:

(i) Such broker-dealer is clearly identified as the person performing the brokerage services;

(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations;

(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations; and

(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

(2) Directly or indirectly receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, provided, however, that this subsection shall not apply if the bank executes transactions through a registered broker-dealer and:

(i) Each account independently chooses the broker-dealer through which execution is effected;

(ii) The bank's personnel do not receive, directly or indirectly, transaction-related compensation or compensation based upon the number of accounts choosing to use the registered broker-dealer; and

(iii) The brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed; or

(3) Deals in or underwrites securities.

(b) This rule shall not apply to any bank that engages in one or more of the following activities only:

(1) Effects transactions in exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(2) Effects no more than 1,000 transactions each year in securities other than exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(3) Effects transactions for the investment portfolio of affiliated companies;

(4) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less;

(5) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries;

(6) Effects transactions pursuant to sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; or

(7) Is subject to section 15(e) of the Act.

(c) The Commission, upon written request, or upon its own motion, may exempt a bank, either unconditionally or on specific terms and conditions, where the Commisison determines that the bank's activities are not within the intended meaning and purpose of this rule.

(d) For purposes of this section, the term *transaction-related compensation* shall mean monetary profit to the bank in excess of cost recovery for providing brokerage execution services.

[50 FR 28394, July 12, 1985]

§ 240.3b–10 [Reserved]

§ 240.3b–11 Definitions relating to limited partnership roll-up transactions for purposes of sections 6(b)(9), 14(h) and 15A(b)(12)–(13).

For purposes of sections 6(b)(9), 14(h) and 15A(b)(12)–(13) of the Act (15 U.S.C. 78f(b)(9), 78n(h) and 78o–3(b)(12)–(13)):

(a) The term *limited partnership roll-up transaction* does not include a transaction involving only entities that are not ''finite-life'' as defined in Item 901(b)(2) of Regulation S–K (§ 229.901(b)(2) of this chapter).

(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a–2(a)(48)).

(c) The term *regularly traded* shall be defined as in Item 901(c)(2)(v)(C) of Regulation S–K (§ 229.901(c)(2)(v)(C) of this chapter).

[59 FR 63684, Dec. 8, 1994]

REGISTRATION AND EXEMPTION OF EXCHANGES

§ 240.6a–1 Form of application and amendments.

(a) An application of an exchange for registration as a national securities exchange, or for exemption from such registration, shall be made in duplicate on Form 1 (§ 249.1 of this chapter), each of which shall be accompanied by the statement and exhibits prescribed to be filed in connection therewith.

(b) An amendment to such application shall be made in duplicate on Form 1–A (§ 249.1a of this chapter), and each amendment shall be dated and numbered in order of filing.

(c) Promptly after the discovery that any information in the statement, any exhibit, or any amendment was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(d) Whenever the number of changes to be reported in an amendment, or the

number of amendments filed, are so great that the purpose of clarity will be promoted by the filing of a new complete statement and exhibits, an exchange may, at its election, or shall, upon request of the Commission, file as an amendment a complete new statement together with all exhibits which are prescribed to be filed in connection with Form 1.

(Secs. 5, 6, 17, 48 Stat. 885, 897, as amended; 15 U.S.C. 78e, 78f, 78q)
[14 FR 7759, Dec. 29, 1949]

§ 240.6a–2 Periodic amendments to registration statements or exemption statements of exchanges.

(a) Unless exempted pursuant to paragraph (c) of this section, on or before June 30 of each year, each exchange registered as a national securities exchange or exempted from such registration shall file an annual amendment setting forth:

(1) All changes, and the effective dates thereof, which have been effected in any of the information contained or incorporated in the statement, and which have not previously been reported in an annual amendment. Such amendment shall bring the statement up to date as of the latest practicable date within one month of the date on which the amendment is filed. In the event that no changes have occurred in any of this material during the period covered by the amendment, a statement to that effect shall be set forth in the amendment.

(2) Complete Exhibits E and F as of the end of the latest fiscal year of the exchange, or, in the case of the unconsolidated financial statements of an affiliate or subsidiary required under Exhibit F, as of the end of the latest fiscal year of such affiliate. In the event that no change has occurred in the status of an affiliate or subsidiary listed in a previous Exhibit F as one that is required by another Commission rule to file annual financial statements equivalent to those described in Exhibit F, a statement to that effect shall be included.

(3) Complete Exhibits G, H, J, L and M, which shall be up to date as of the latest practicable date within 3 months of the date on which the annual amendment is filed, except that:

(i) Exhibit J need only contain the name and principal place of business of each member organization, and for each member organization elected to membership after December 31, 1994, the date of election to membership;

(ii) If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date;

(iii) If a national securities exchange keeps the information required in Exhibits L and M up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit, a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

(b) Unless exempted pursuant to paragraph (c) of this section, on or before June 30, 1983, and every three years thereafter each exchange registered as a national securities exchange shall file complete Exhibits A(1), A(2) and A(3) to its registration statement, which shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed, except that:

(1) If a national securities exchange publishes or cooperates in the publication of the information required in these exhibits on an annual or more frequent basis, in lieu of filing such an exhibit a national securities exchange may:

(i) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(ii) Certify to the accuracy of such information as of its date;

(2) If a national securities exchange keeps the information required in these

exhibits up to date and makes it available to the Commission and the public on request, in lieu of filing such an exhibit, a national securities exchange may certify that the information is kept up to date and is available to the Commission and the public upon request.

(c) The Commission may exempt a national securities exchange from making the periodic amendments required by this rule for any affiliate or subsidiary listed in response to Item 7 of the exchange's registration statement, as amended, that either (1) is listed in response to Item 7 of the registration statement, as amended, of one or more other national securities exchanges; or (2) was an inactive subsidiary throughout the subsidiary's latest fiscal year. The Commission may grant such exemptions upon such terms and conditions as it deems are necessary and appropriate for the protection of investors and the public interest, provided, however, that at least one national securities exchange shall be required to make the periodic amendments required by this rule for an affiliate or subsidiary described in (c)(1) of this section.

(15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94–29 (June 4, 1975), and particularly secs. 3, 5, 6, 17, 19 and 23 thereof (15 U.S.C. 78, 78e, 78f, 78g, 78s and 78w))

[48 FR 24666, June 2, 1983, as amended at 59 FR 66700, Dec. 28, 1994]

§ 240.6a–3 Supplemental material.

Each exchange registered as a national securities exchange or exempted from such registration shall furnish the following supplemental material:

(a) Within 10 days after any action is taken which renders no longer accurate any of the information contained or incorporated in the statement or in any exhibit (except Exhibits E, F, L and M), or in any amendment thereto, the exchange shall file with the Commission written notification in triplicate setting forth the nature of such action and the effective date thereof. Such notification may be filed either in the form of a letter or in the form of a notice made generally available to members of the exchange.

(b) Within 10 days after issuing or making generally available to members of the exchange any material (including notices, circulars, bulletins, lists, periodicals, etc.) the exchange shall file with the Commission three copies of such material.

(c) Within 15 days after the end of each calendar month the exchange shall file with the Commission a report concerning the securities sold on such exchange during such calendar month, setting forth:

(1) The number of shares of stock sold and the aggregate dollar amount thereof;

(2) The principal amount of bonds sold and the aggregate dollar amount thereof; and

(3) The number of units of rights and warrants sold and the aggregate dollar amount thereof.

(Secs. 5, 6, 17, 48 Stat. 885, 897, as amended; 15 U.S.C. 78e, 78f, 78q)

[14 FR 7759, Dec. 29, 1949, as amended at 19 FR 4723, July 31, 1954]

§ 240.7c2–1 [Reserved]

HYPOTHECATION OF CUSTOMERS' SECURITIES

§ 240.8c–1 Hypothecation of customers' securities.

(a) *General provisions.* No member of a national securities exchange, and no broker or dealer who transacts a business in securities through the medium of any such member shall, directly or indirectly, hypothecate or arrange for or permit the continued hypothecation of any securities carried for the account of any customer under circumstances:

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such member, broker or dealer under a lien for a loan made to such member, broker or dealer; or

(3) That will permit securities carried for the account of customers to be hypothecated or subjected to any lien

or liens or claim or claims of the pledges or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day, provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subjected as promptly as practicable after such reduction occurs, but before the lapse of one-half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such member, broker or dealer are payable and, in any event, before such member, broker or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(b) *Definitions.* For the purposes of this section:

(1) The term *customer* shall not be deemed to include any general or special partner or any director or officer of such member, broker, or dealer, or any participant, as such, in any joint group or syndicate account with such member, broker, or dealer or with any partner, officer or director thereof;

(2) The term *securities carried for the account of any customer* shall be deemed to mean:

(i) Securities received by or on behalf of such member, broker or dealer for the account of any customer;

(ii) Securities sold and appropriated by such member, broker or dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be deemed to be ''securities carried for the account of any customer'' pending their release from such lien as promptly as practicable:

(iii) Securities sold, but not appropriated, by such member, broker or dealer to a customer who has made any payment therefor, to the extent that such member, broker or dealer owns and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they shall not be deemed to be ''securities carried for the account of any customer'' pending their release from such lien as promptly as practicable:

(3) ''Aggregate indebtedness'' shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(4) In computing the sum of the liens or claims to which securities carried for the account of customers of a member, broker or dealer are subject, any rehypothecation of such securities by another member, broker or dealer who is subject to this section or to § 240.15c2–1 shall be disregarded.

(c) *Exemption for cash accounts.* The provisions of paragraph (a)(1) of this section shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of 12 CFR 220.4(c): *Provided,* That at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to, such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers. The term *the completion of the transaction* shall have the meaning given to such term by § 240.15c1–1(b).

(d) *Exemption for clearinghouse liens.* The provisions of paragraphs (a)(2), (a)(3), and (f) of this section shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department,

or association: *Provided, however,* That for the purpose of paragraph (a)(3) of this section, ''aggregate indebtedness of all customers in respect of securities carried for their accounts'' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(e) *Exemption for certain liens on securities of noncustomers.* The provisions of paragraph (a)(2) of this section shall not be deemed to prevent such member, broker or dealer from permitting securities not carried for the account of a customer to be subjected (1) to a lien for a loan made against securities carried for the account of customers, or (2) to a lien for a loan made and to be repaid on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be ''made against securities carried for the account of customers'' if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(f) *Notice and certification requirements.* No person subject to this section shall hypothecate any security carried for the account of a customer unless at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this section, except that in the case of an omnibus account the members, broker or dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such member, broker or dealer will be securities carried for the account of his customers and that the hypothecation thereof by such member, broker or dealer will not contravene any provision of this section. The provisions of this paragraph shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by paragraph (a)(1) or (a)(2) of this section, whenever a participating member, broker or dealer hypothecates securities in accordance with such system: *Provided, however,* That (1) any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse to refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure or similar notice, or order or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face affects such securities; (2) such systems shall have safeguards in the handling, transfer and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and (3) the provisions of this paragraph shall not be effective with respect to any particular system unless the agreement required by paragraph (g)(1) of this section and the safeguards and provisions required by paragraph (g)(2) of this section shall have been deemed adequate by the Commission for the protection of investors, and unless any subsequent amendments to such agreement, safeguards or provisions shall have been deemed adequate by the

Commission for the protection of investors.

(Secs. 3, 8, 15, 48 Stat. 882, 888, 895; 15 U.S.C. 78c, 78h, 78*o*)

[13 FR 8180, Dec. 22, 1948, as amended at 31 FR 7740, June 1, 1966; 37 FR 73, Jan. 5, 1973]

CROSS REFERENCE: For interpretative releases applicable to § 240.8c–1, see Nos. 2690 and 2822 in tabulation, part 241 of this chapter.

§ 240.9b–1 Options disclosure document.

(a) *Definitions.* The following definitions shall apply for the purpose of this rule.

(1) *Options market* means a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded.

(2) *Options class* means all options contracts covering the same underlying instrument.

(3) *Options disclosure document* means a document prepared by one or more options markets which contains the information required by this rule with respect to the options classes covered by the document.

(4) *Standardized options* are options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

(b)(1) Five preliminary copies of an options disclosure document containing the information specified in paragraph (c) of this section shall be filed with the Commission by an options market at least 60 days prior to the date definitive copies are furnished to customers, unless the commission determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document shall be filed with the Commission not later than the date the options disclosure document is furnished to customers. Notwithstanding the above, the use of an options disclosure document shall not be permitted unless the options class to which such document relates is the subject of an effective registration statement on Form S–20 under the Securities Act.

(2)(i) If the information contained in the options disclosure document becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the disclosure document not misleading, the options market shall amend its options disclosure document by filing five copies of an amendment to such document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document, as amended, shall be filed with the Commission not later than the date the amended options disclosure document is furnished to customers.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, an options market may distribute such materials prior to such 30-day period if it determines, in good faith, that such delivery is necessary to ensure timely and accurate disclosure with respect to the subject standardized options contracts. Five copies of any amendment distributed pursuant to this paragraph shall be filed with the Commission at the time of distribution. In that instance, if the Commission determines, having given due regard to the adequacy of the information disclosed and the public interest and the protection of investors, it may require refiling of the amendment pursuant to paragraph (b)(2)(i) of this Rule.

(c) *Information required in an options disclosure document.* An options disclosure document shall contain the following information, unless otherwise provided by the Commission, with respect to the options classes covered by the document:

(1) A glossary of terms;

(2) The mechanics of buying, writing and exercising the options, including settlement procedures;

(3) The risks of trading the options;

(4) The market for the options;

(5) A brief reference to the transaction costs, margin requirements and tax consequences of options trading;

(6) Identification of the issuer of the options;

(7) Identification of the instrument or instruments underlying the options class; and

(8) The registration of the options on Form S–20 and the availability of the prospectus and the information in Part II of the registration statement; and

(9) Such other information as the Commission may specify.

(d) *Broker-dealer obligations.* (1) No broker or dealer shall accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of an options disclosure document, or approve the customer's account for the trading of such option, unless the broker or dealer furnishes or has furnished to the customer the options disclosure document.

(2) If an options disclosure document is amended, each broker and dealer shall promptly send the information contained in the definitive amendment to each customer whose account is approved for trading the options class(es) to which the options disclosure document relates.

(Sec. 2, 7, 10, 19(a), 48 Stat. 74, 78, 81, 85; secs. 201, 205, 209, 210, 48 Stat. 905, 906, 908; secs. 1–4, 8, 68 Stat. 683, 685; sec. 12(a), 73 Stat. 143; sec. 7(a), 74 Stat. 412; sec. 27(a), 84 Stat. 1433; sec. 308(a)(2), 90 Stat. 57; sec. 505, 94 Stat. 2292; secs. 9, 15, 23(a), 48 Stat. 889, 895, 901; sec. 230(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; sec. 2, 52 Stat. 1075; secs. 6, 10, 78 Stat. 570–574, 580; sec. 11(d), 84 Stat. 121; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 77b, 77g, 77j, 77s(a), 78i, 78o, 78w(a))

[47 FR 41956, Sept. 23, 1982, as amended at 51 FR 14982, Apr. 22, 1986]

SHORT SALES

§ 240.10a–1 Short sales.

(a)(1)(i) No person shall, for his own account or for the account of any other person, effect a short sale of any security registered on, or admitted to unlisted trading privileges on, a national securities exchange, if trades in such security are reported pursuant to an ''effective transaction reporting plan'' as defined in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act), and information as to such trades is made available in accordance with such plan on a real-time basis to vendors of market transaction information, (A) below the price at which the last sale thereof, regular way, was reported pursuant to an effective transaction reporting plan; or (B) at such price unless such price is above the next proceeding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.

(ii) The provisions of paragraph (a)(1)(i) of this section hereof shall not apply to transactions by any person in NASDAQ securities as defined in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) except for those NASDAQ securities for which transaction reports are collected, processed, and made available pursuant to the plan originally submitted to the Commission pursuant to Rule 17a–15 (subsequently amended and redesignated as Rule 11Aa3–1) under the Act, which plan was declared effective as of May 17, 1974.

(2) Notwithstanding paragraph (a)(1) of this section, any exchange, by rule, may require that no person shall, for his own account or the account of any other person, effect a short sale of any such security on that exchange (i) below the price at which the last sale thereof, regular way, was effected on such exchange, or (ii) at such price unless such price is above the next preceding different price at which a sale of such securities, regular way, was effected on such exchange, if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors; and, if an exchange adopts such a rule, no person shall, for his own account or for the account of any other person, effect a short sale of any such security on such exchange otherwise than in accordance with such rule, and compliance with any such rule of an exchange shall constitute compliance with this paragraph (a).

(3) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the ''ex'' date may be reduced by the value of such distribution.

(b) No person shall, for his own account or for the account of any other

person, effect on a national securities exchange a short sale of any security not covered by paragraph (a) of this rule, (1) below the price at which the last sale thereof, regular way, was effected on such exchange, or (2) at such price unless such price is above the next preceding different price at which a sale of such security, regular way, was effected on such exchange. In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all sale prices prior to the ''ex'' date may be reduced by the value of such distribution.

(c) No broker or dealer shall, by the use of any facility of a national securities exchange, or any means or instrumentality of interstate commerce, or of the mails, effect any sell order for a security registered on, or admitted to unlisted trading privileges on, a national securities exchange unless such order is marked either ''long'' or ''short.''

(d) No broker or dealer shall mark any order to sell a security registered on, or admitted to unlisted trading privileges on, a national securities exchange ''long'' unless (1) the security to be delivered after sale is carried in the account for which the sale is to be effected, or (2) such broker or dealer is informed that the seller owns the security ordered to be sold and, as soon as is possible without undue inconvenience or expense, will deliver the security owned to the account for which the sale is to be effected.

(e) The provisions of paragraphs (a) and (b) of this section (and of any exchange rule adopted in accordance with paragraph (a) of this section) shall not apply to:

(1) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(2) Any broker or dealer in respect of a sale, for an account in which he has no interest, pursuant to an order to sell which is marked ''long'';

(3) Any sale by an odd-lot dealer or an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker to offset odd-lot orders of customers;

(4) Any sale by an odd-lot dealer on an exchange with which it is registered for such security, or any over-the-counter sale by a third market maker to liquidate a long position which is less than a round lot, provided such sale does not change the position of such odd-lot dealer or such market maker by more than the unit of trading;

(5) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with § 242.104 of this chapter) by a registered specialist or registered exchange market maker for its own account on any exchange with which it is registered for such security, or by a third market maker for its own account over-the-counter,

(i) Effected at a price equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan; or

(ii) Effected at a price equal to the most recent offer communicated for the security by such registered specialist, registered exchange market maker or third market maker to an exchange or a national securities association (''association'') pursuant to § 240.11Ac1–1, if such offer, when communicated, was equal to or above the last sale, regular way, reported for such security pursuant to an effective transaction reporting plan:

Provided, however, That any exchange, by rule, may prohibit its registered specialist and registered exchange market makers from availing themselves of the exemption afforded by this paragraph (e)(5) if that exchange determines that such action is necessary or appropriate in its market in the public interest or for the protection of investors;

(6) Any sale of a security covered by paragraph (b) of this section on a national securities exchange (except a sale to a stabilizing bid complying with § 242.104 of this chapter) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national

securities exchange which is the principal exchange market for such security;

(7) Any sale of a security for a special arbitrage acccount by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase with such sale offsets, is effected for the bona fide purpose of profitting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(8) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profitting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately;

(9) [Reserved]

(10) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment; or

(11) Any sale of a security covered by paragraph (a) of this section (except a sale to a stabilizing bid complying with §242.104 of this chapter) by any broker or dealer, for his own account or for the account of any other person, effected at a price to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to §240.11Ac1-1 in an amount less than or equal to the quotation size associated with such offer, if such offer, when communicated, was (i) above the price at which the last sale, regular way, for such security was reported pursuant to an effective transaction reporting plan; or (ii) at such last sale price, if such last sale price is above the next preceding different price at which a sale of such security, regular way, was reported pursuant to an effective transaction reporting plan.

(12) For the purposes of paragraph (e)(8) of this section, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt. For the purposes of paragraphs (e)(3), (4) and (5) of this section, the term ''third market maker'' shall mean any broker or dealer who holds itself out as being willing to buy and sell a reported security for its own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

(13) A broker-dealer that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of Rule 3b–3 (§240.3b–3) and of this section not withstanding that such broker-dealer may not have a net long position in such security if and to the extent that such broker-dealer's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(f) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78*o*, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78*o*–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1); 15 U.S.C. 78a *et seq.*, and particularly secs. 2, 3, 10(a), 10(b), 15(c), and

23(a), 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(a), 78j(b), 78o(c), and 78w(a))

[40 FR 25444, June 16, 1975, as amended at 45 FR 12390, Feb. 26, 1980; 45 FR 79021, Nov. 28, 1981; 46 FR 49114, Oct. 8, 1981; 49 FR 9415, Mar. 13, 1984; 51 FR 8804, Mar. 14, 1986; 52 FR 24152, June 29, 1987; 58 FR 18146, Apr. 8, 1993: 62 FR 543, Jan. 3, 1997]

CROSS REFERENCES: For interpretative release applicable to § 240.10a–1, see No. 1571 in tabulation, part 241 of this chapter; for definition of ''short sale'', see § 240.3b–3.

§ 240.10a–2 Requirements for covering purchases.

(a) No broker or dealer shall lend, or arrange for the loan of, any security registered on, or admitted to unlisted trading privileges on, a national securities exchange for delivery to the broker for the purchaser after sale, or shall fail to deliver a security on the date delivery is due, if such broker or dealer knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked ''long,'' unless such broker or dealer knows, or has been informed by the seller (1) that the security sold has been forwarded to the account for which the sale was effected, or (2) that the seller owns the security sold, that it is then impracticable to deliver to such account the security owned and that he will deliver such security to such account as soon as it is possible without undue inconvenience or expense.

(b) The provisions of paragraph (a) of this section shall not apply (1) to the lending of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange by a broker or dealer through the medium of a loan to another broker or dealer, or (2) to any loan, or arrangement for the loan, of any such security, or to any failure to deliver any such security if, prior to such loan, arrangement or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds (i) that such sale resulted from a mistake made in good faith, (ii) that due diligence was used to ascertain that the circumstances specified in § 240.10a–1(d)(1) existed or to obtain the information specified in clause (2) thereof, and (iii) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a ''purchase for cash'' or that the mistake was made by the seller's broker and the sale was at a price permissible for a short sale under § 240.10a–1 (a) or (b).

(Sec. 10, 48 Stat. 891, as amended, 64 Stat. 1265, 15 U.S.C. 78j(a); sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 704, as amended, 49 Stat. 1379, as amended, Pub. L. 94–29 § 18 (June 4, 1975), 15 U.S.C. 78w(a))

[40 FR 25445, June 16, 1975]

CROSS REFERENCE: For interpretative release applicable to § 240.10a–2, see No. 1571 in tabulation, Part 241 of this chapter.

MANIPULATIVE AND DECEPTIVE DEVICES AND CONTRIVANCES

§ 240.10b–1 Prohibition of use of manipulative or deceptive devices or contrivances with respect to certain securities exempted from registration.

The term *manipulative or deceptive device or contrivance*, as used in section 10(b) (48 Stat. 891; 15 U.S.C. 78j(b)), is hereby defined to include any act or omission to act with respect to any security exempted from the operation of section 12(a) (48 Stat. 892; 15 U.S.C. 78*l*(a)) pursuant to any section in this part which specifically provides that this section shall be applicable to such security if such act or omission to act would have been unlawful under section 9(a) (48 Stat. 889; 15 U.S.C. 78i(a)), or any rule or regulation heretofore or hereafter prescribed thereunder, if done or omitted to be done with respect to a security registered on a national securities exchange, and the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to use or employ any such device or contrivance in connection with the purchase or sale of any such security is hereby prohibited.

(Secs. 10, 12, 48 Stat. 891, 892; 15 U.S.C. 78j, 78*l*)

[13 FR 8183, Dec. 22, 1948]

CROSS REFERENCES: For applicability of this section, see §§ 240.12a–4 and 240.12a–5. For

regulations relating to employment of manipulative and deceptive devices, see §§ 240.10b–3 and 240.10b–5.

§ 240.10b–2 [Reserved]

§ 240.10b–3 Employment of manipulative and deceptive devices by brokers or dealers.

(a) It shall be unlawful for any broker or dealer, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term ''manipulative, deceptive, or other fraudulent device or contrivance'', as such term is used in section 15(c)(1) of the act.

(b) It shall be unlawful for any municipal securities dealer directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any municipal security, any act, practice, or course of business defined by the Commission to be included within the term ''manipulative, deceptive, or other fraudulent device or contrivance,'' as such term is used in section 15(c)(1) of the act.

(Secs. 10, 12, 48 Stat. 891, 892, as amended; 15 U.S.C. 78j, 78*l*)
[13 FR 8183, Dec. 22, 1948, as amended at 19 FR 8017, Dec. 4, 1954; 41 FR 22824, June 7, 1976]

CROSS REFERENCES: See also § 240.10b–5. For regulation relating to prohibition of manipulative or deceptive devices, see § 240.10b–1. For the term ''manipulative, deceptive, or other fraudulent device or contrivance'', as used in section 15(c)(1) of the act, see §§ 240.15c1–2 to 240.15c1–9.

§ 240.10b–4 [Reserved]

§ 240.10b–5 Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

(Sec. 10; 48 Stat. 891; 15 U.S.C. 78j)
[13 FR 8183, Dec. 22, 1948, as amended at 16 FR 7928, Aug. 11, 1951]

§ 240.10b–6—8 [Reserved]

§ 240.10b–9 Prohibited representations in connection with certain offerings.

(a) It shall constitute a *manipulative or deception device or contrivance*, as used in section 10(b) of the Act, for any person, directly or indirectly, in connection with the offer or sale of any security, to make any representation:

(1) To the effect that the security is being offered or sold on an ''all-or-none'' basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be promptly refunded to the purchaser unless (i) all of the securities being offered are sold at a specified price within a specified time, and (ii) the total amount due to the seller is received by him by a specified date; or

(2) To the effect that the security is being offered or sold on any other basis whereby all or part of the consideration paid for any such security will be refunded to the purchaser if all or some of the securities are not sold, unless the security is part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for such security will be promptly refunded to the purchaser unless (i) a specified number of units of the security are sold at a specified price within a specified time, and (ii) the total amount due to the seller is received by him by a specified date.

(b) This rule shall not apply to any offer or sale of securities as to which the seller has a firm commitment from underwriters or others (subject only to customary conditions precedent, including ''market outs'') for the purchase of all the securities being offered.

(Sec. 10, 48 Stat. 891, as amended; 15 U.S.C. 78j)
[27 FR 9943, Oct. 10, 1962]

§ 240.10b–10 Confirmation of transactions.

PRELIMINARY NOTE. This section requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.

(a) *Disclosure requirement*. It shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing:

(1) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request to such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(2) Whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and if the broker or dealer is acting as principal, whether it is a market maker in the security (other than by reason of acting as a block positioner); and

(i) If the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person:

(A) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer; and

(B) The amount of any remuneration received or to be received by the broker from such customer in connection with the transaction unless remuneration paid by such customer is determined pursuant to written agreement with such customer, otherwise than on a transaction basis; and

(C) For a transaction in any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in section 17B of this Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and the fact that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; and

(D) The source and amount of any other remuneration received or to be received by the broker in connection with the transaction: *Provided, however*, that if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and the fact that the source and amount of such other remuneration will be furnished upon written request of such customer; or

(ii) If the broker or dealer is acting as principal for its own account:

(A) In the case where such broker or dealer is not a market maker in an equity security and, if, after having received an order to buy from a customer, the broker or dealer purchased the equity security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the broker or dealer sold the security to another person to offset a contemporaneous purchase from such customer, the difference between the price to the

customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales); or

(B) In the case of any other transaction in a reported security, or an equity security that is quoted on NASDAQ or traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(3) Whether any odd-lot differential or equivalent fee has been paid by such customer in connection with the execution of an order for an odd-lot number of shares or units (or principal amount) of a security and the fact that the amount of any such differential or fee will be furnished upon oral or written request: *Provided, however,* that such disclosure need not be made if the differential or fee is included in the remuneration disclosure, or exempted from disclosure, pursuant to paragraph (a)(2)(i)(B) of this section; and

(4) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and the fact that additional information is available upon request; and

(5) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price: *Provided, however,* that this paragraph (a)(5)(ii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and

(6) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (*e.g.*, current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; *Provided, however,* that this paragraph (a)(6)(iii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and

(7) In the case of a transaction in a debt security that is an asset-backed security, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and

(i)–(ii) [Reserved]

(iii) For a transaction in any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in Section 17B of the Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and that the source and nature of the compensation received in

connection with the particular transaction will be furnished upon written request of the customer; and

(iv) The source and amount of any other remuneration received or to be received by him in connection with the transaction: *Provided, however,* That if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer; and

(8) If he is acting as principal for his own account. (i)(A) If he is not a market maker in that security and, if, after having received an order to buy from such customer, he purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from such customer, he sold the security to another person to offset a contemporaneous purchase from such a customer, the amount of any mark-up, mark-down, or similar remuneration received in an equity security; or

(B) In any other case of a transaction in a reported security, the trade price reported in accordance with an effective transaction reporting plan, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(ii) In the case of a transaction in an equity security, whether he is a market maker in the security (otherwise than by reason of his acting as a block positioner in that security).

(9) That the broker or dealer is not a member of the Securities Investor Protection Corporation (SIPC), or that the broker or dealer clearing or carrying the customer account is not a member of SIPC, if such is the case: *Provided, however,* that this paragraph (a)(9) shall not apply in the case of a transaction in shares of a registered open-end investment company or unit investment trust if:

(i) The customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or other designated agent, and such person is not an associated person of the broker or dealer required by paragraph (a) of this section to send written notification to the customer; and

(ii) The written notification required by paragraph (a) of this section is sent on behalf of the broker or dealer to the customer by a person described in paragraph (a)(9)(i) of this section.

(b) *Alternative periodic reporting.* A broker or dealer may effect transactions for or with the account of a customer without giving or sending to such customer the written notification described in paragraph (a) of this section if:

(1) Such transactions are effected pursuant to a periodic plan or an investment company plan, or effected in shares of any open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share: *Provided, however,* that no sales load is deducted upon the purchase or redemption of shares in the money market fund; and

(2) Such broker or dealer gives or sends to such customer within five business days after the end of each *quarterly* period, for transactions involving investment company and periodic plans, and after the end of each *monthly* period, for other transactions described in paragraph (c)(1) of this section, a written statement disclosing each purchase or redemption, effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: *Provided, however,* that the written statement

may be delivered to some other person designated by the customer for distribution to the customer; and

(3) Such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in paragraph (c)(1) of this section in lieu of an immediate confirmation.

(c) A broker or dealer shall give or send to a customer information requested pursuant to this rule within 5 business days of receipt of the request: *Provided, however*, That in the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.

(d) *Definitions*. For the purposes of this section:

(1) *Customer* shall not include a broker or dealer;

(2) *Completion of the transaction* shall have the meaning provided in rule 15c1–1 under the Act;

(3) *Time of the transaction* means the time of execution, to the extent feasible, of the customer's order;

(4) *Debt security* as used in paragraphs (a)(3), (4), and (5) only, means any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any such security that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing: *Provided, however*, That securities issued by an investment company registered under the Investment Company Act of 1940 shall not be included in this definition;

(5) *Periodic plan* means any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them); and

(6) *Investment company plan* means any plan under which securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 are purchased by a customer (the payments being made directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company), or sold by a customer pursuant to:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code;

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, such securities in specified amounts (calculated in security units or dollars) at specified time intervals and setting forth the commissions or charges to be paid by such customer in connection therewith (or the manner of calculating them; or

(iii) Any other arrangement involving a group of two or more customers and contemplating periodic purchases of such securities by each customer through a person designated by the group: *Provided*, That such arrangement requires the registered investment company or its agent—

(A) To give or send to the designated person, at or before the completion of the transaction for the purchase of such securities, a written notification of the receipt of the total amount paid by the group;

(B) To send to anyone in the group who was a customer in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on his behalf; and

(C) To advise each customer in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and thereafter to send to each such customer the written notification described in paragraph (a) of this section for the next three succeeding payments.

(7) *Reported security* shall have the meaning provided in Rule 11Aa3–1 under the Act.

(8) *Effective transaction reporting plan* shall have the meaning provided in Rule 11Aa3–1 under the Act.

(9) *Payment for order flow* shall mean any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, national securities exchange, registered securities association, or exchange member in return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer's unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.

(10) *Asset-backed security* means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(e) The Commission may exempt any broker or dealer from the requirements of paragraphs (a) and (b) of this section with regard to specific transactions of specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of this section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose.

(Secs. 3, 9, 10, 11, 15, 17, 23, 48 Stat. 891, 89 Stat. 97, 121, 137, 156 (15 U.S.C. 78c, 78i, 78j, 78k, 78*o*, 78q, 78w))

[43 FR 47503, Oct. 16, 1978, as amended at 48 FR 17585, Apr. 25, 1983; 50 FR 37654, Sept. 17, 1985; 53 FR 40721, Oct. 18, 1988; 59 FR 55012, Nov. 2, 1994; 59 FR 59620, Nov. 17, 1994; 59 FR 60555, Nov. 25, 1994]

§ 240.10b–13 Prohibiting other purchases during tender offer or exchange offer.

(a) No person who makes a cash tender offer or exchange offer for any equity security shall, directly or indirectly, purchase, or make any arrangement to purchase, any such security (or any other security which is immediately convertible into or exchangeable for such security), otherwise than pursuant to such tender offer or exchange offer, from the time such tender offer or exchange offer is publicly announced or otherwise made known by such person to holders of the security to be acquired until the expiration of the period, including any extensions thereof, during which securities tendered pursuant to such tender offer or exchange offer may by the terms of such offer be accepted or rejected: *Provided, however,* That if such person is the owner of another security which is immediately convertible into or exchangeable for the security which is the subject of the offer, his subsequent exercise of his right of conversion or exchange with respect to such other security shall not be prohibited by this section.

(b) The term *exchange offer* as used in this section shall include a tender offer for, or request or invitation for tenders of, any security in exchange for any consideration other than for all cash.

(c) The provisions of this section shall not apply to a purchase of a security of the same class as that which is the subject of a cash tender offer or exchange offer (or of any other security which is immediately convertible into or exchangeable for such security) if such purchase is made by the issuer, by participating employees of the issuer or the employees of its subsidiaries, or by the trustee or other person acquiring such security for the account of such employees, pursuant to (1) a stock option plan involving only ''qualified stock options,'' or qualifying as an

''employee stock purchase plan'' as those terms are defined in sections 422 and 423 of the Internal Revenue Code of 1954, as amended, or ''restricted stock options'' as defined in section 424(b) of the Internal Revenue Code of 1954, as amended: *Provided, however,* That for the purposes of this paragraph an option which meets all of the conditions of that section other than the date of issuance shall be deemed to be ''restricted stock options''; or (2) a savings, investment, pension or other stock purchase plan providing for both (i) periodic payments (or payroll deductions) for acquisition of securities by or on behalf of participating employees and (ii) periodic purchases of the securities by participating employees, or the person acquiring them for the account of such employees.

(d) This section shall not prohibit any transaction or transactions if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance or a fraudulent, or deceptive or manipulative act or practice comprehended within the purpose of this section.

(15 U.S.C. 78j, 78m, 78n)
[34 FR 15839, Oct. 15, 1969]

§ 240.10b–16 Disclosure of credit terms in margin transactions.

(a) It shall be unlawful for any broker or dealer to extend credit, directly or indirectly, to any customer in connection with any securities transaction unless such broker or dealer has established procedures to assure that each customer:

(1) Is given or sent at the time of opening the account, a written statement or statements disclosing (i) the conditions under which an interest charge will be imposed; (ii) the annual rate or rates of interest that can be imposed; (iii) the method of computing interest; (iv) if rates of interest are subject to change without prior notice, the specific conditions under which they can be changed; (v) the method of determining the debit balance or balances on which interest is to be charged and whether credit is to be given for credit balances in cash accounts; (vi) what other charges resulting from the extension of credit, if any, will be made and under what conditions; and (vii) the nature of any interest or lien retained by the broker or dealer in the security or other property held as collateral and the conditions under which additional collateral can be required: *Provided, however,* That the requirements of this subparagraph will be met in any case where the account is opened by telephone if the information required to be disclosed is orally communicated to the customer at that time and the required written statement or statements are sent to the customer immediately thereafter: *And provided, further,* That in the case of customers to whom credit is already being extended on the effective date of this section, the written statement or statements required hereunder must be given or sent to said customers within 90 days after the effective date of this section; and

(2) Is given or sent a written statement or statements, at least quarterly, for each account in which credit was extended, disclosing (i) the balance at the beginning of the period; the date, amount and a brief description of each debit and credit entered during such period; the closing balance; and, if interest is charged for a period different from the period covered by the statement, the balance as of the last day of the interest period; (ii) the total interest charge for the period during which interest is charged (or, if interest is charged separately for separate accounts, the total interest charge for each such account), itemized to show the dates on which the interest period began and ended; the annual rate or rates of interest charged and the interest charge for each such different annual rate of interest; and either each different debit balance on which an interest calculation was based or the average debit balance for the interest period, except that if an average debit balance is used, a separate average debit balance must be disclosed for each interest rate applied; and (iii) all other charges resulting from the extension of credit in that account: *Provided, however,* That if the interest charge

disclosed on a statement is for a period different from the period covered by the statement, there must be printed on the statement appropriate language to the effect that it should be retained for use in conjunction with the next statement containing the remainder of the required information: *And provided further*, That in the case of ''equity funding programs'' registered under the Securities Act of 1933, the requirements of this paragraph will be met if the broker or dealer furnishes to the customer, within 1 month after each extension of credit, a written statement or statements containing the information required to be disclosed under this paragraph.

(b) It shall be unlawful for any broker or dealer to make any changes in the terms and conditions under which credit charges will be made (as described in the initial statement made under paragraph (a) of this section), unless the customer shall have been given not less than thirty (30) days written notice of such changes, except that no such prior notice shall be necessary where such changes are required by law: *Provided, however*, That if any change for which prior notice would otherwise be required under this paragraph results in a lower interest charge to the customer than would have been imposed before the change, notice of such change may be given within a reasonable time after the effective date of the change.

(15 U.S.C. 78j)
[34 FR 19718, Dec. 16, 1969]

§ 240.10b–17 Untimely announcements of record dates.

(a) It shall constitute a ''manipulative or deceptive device or contrivance'' as used in section 10(b) of the Act for any issuer of a class of securities publicly traded by the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to fail to give notice in accordance with paragraph (b) of this section of the following actions relating to such class of securities:

(1) A dividend or other distribution in cash or in kind, except an ordinary interest payment on a debt security, but including a dividend or distribution of any security of the same or another issuer;

(2) A stock split or reverse split; or

(3) A rights or other subscription offering.

(b) Notice shall be deemed to have been given in accordance with this section only if:

(1) Given to the National Association of Securities Dealers, Inc., no later than 10 days prior to the record date involved or, in case of a rights subscription or other offering if such 10 days advance notice is not practical, on or before the record date and in no event later than the effective date of the registration statement to which the offering relates, and such notice includes:

(i) Title of the security to which the declaration relates;

(ii) Date of declaration;

(iii) Date of record for determining holders entitled to receive the dividend or other distribution or to participate in the stock or reverse split;

(iv) Date of payment or distribution or, in the case of a stock or reverse split or rights or other subscription offering, the date of delivery;

(v) For a dividend or other distribution including a stock or reverse split or rights or other subscription offering:

(*a*) In cash, the amount of cash to be paid or distributed per share, except if exact per share cash distributions cannot be given because of existing conversion rights which may be exercised during the notice period and which may affect the per share cash distribution, then a reasonable approximation of the per share distribution may be provided so long as the actual per share distribution is subsequently provided on the record date,

(*b*) In the same security, the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of the dividend or distribution,

(*c*) In any other security of the same issuer, the amount to be paid or distributed and the rate of the dividend or distribution,

(*d*) In any security of another issuer, the name of the issuer and title of that security, the amount to be paid or distributed, and the rate of the dividend

or distribution and if that security is a right or a warrant, the subscription price,

(*e*) In any other property (including securities not covered under paragraphs (b)(1)(v) (*b*) through (*d*) of this section) the identity of the property and its value and basis for assigning that value;

(vi) Method of settlement of fractional interests;

(vii) Details of any condition which must be satisfied or Government approval which must be secured to enable payment of distribution; and in

(viii) The case of stock or reverse split in addition to the aforementioned information;

(*a*) The name and address of the transfer or exchange agent; or

(2) The Commission, upon written request or upon its own motion, exempts the issuer from compliance with paragraph (b)(1) of this section either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this section; or

(3) Given in accordance with procedures of the national securities exchange or exchanges upon which a security of such issuer is registered pursuant to section 12 of the Act which contain requirements substantially comparable to those set forth in paragraph (b)(1) of this section.

(c) The provisions of this rule shall not apply, however, to redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the Investment Company Act of 1940.

(Secs. 10(b), 23(a), 48 Stat. 891, as amended, 49 Stat. 1379, 15 U.S.C. 78j)

[36 FR 11514, June 15, 1971, as amended at 37 FR 4330, Mar. 2, 1972]

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

(a) *Definitions*. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions shall apply:

(1) The term *affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer;

(2) The term *affiliated purchaser* means:

(i) A person acting in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer or whose purchases are under common control with those of the issuer;

Provided, however, That the term ''affiliated purchaser'' shall not include a broker, dealer, or other person solely by reason of his making Rule 10b–18 bids or effecting Rule 10b–18 purchases on behalf of the issuer and for its account and shall not include an officer or director of the issuer solely by reason of his participation in the decision to authorize Rule 10b–18 bids or Rule 10b–18 purchases by or on behalf of the issuer;

(3) The term *Rule 10b–18 purchase* means a purchase of common stock of an issuer by or for the issuer or any affiliated purchaser of the issuer, but does not include any purchase of such stock

(i) Effected during the restricted period specified in § 242.102 of this chapter, during a distribution (as defined in § 242.100 of this chapter) of such common stock or a distribution for which such common stock is a reference security, by the issuer or any of its affiliated purchasers;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) If it is a fractional interest in a security, evidenced by a script certificate, order form, or similar document;

(iv) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(v) Which is subject to Rule 13e–1 under the Act [§ 240.13e–1];

(vi) Pursuant to a tender offer that is subject to Rule 13e–4 under the Act [§ 240.13e–4] or specifically excepted therefrom;

(vii) Pursuant to a tender offer that is subject to section 14(d) of the Act and the rules and regulations thereunder.

(4) The term *Rule 10b–18 bid* means (i) A bid for securities that, if accepted, or

(ii) A limit order to purchase securities that, if executed, would result in a Rule 10b–18 purchase;

(5) The term *plan* has the meaning contained in § 242.100 of this chapter;

(6) The term *agent independent of the issuer* has the meaning contained in § 242.100 of this chapter;

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed;

Provided, however, That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan, or any formula specified in the plan that determines the amount of shares to be purchased by the agent;

(7) The term *consolidated system* means the consolidated transaction reporting system contemplated by Rule 11Aa3–1 [§ 240.11Aa3–1];

(8) The term *reported security* means any security as to which last sale information is reported in the consolidated system;

(9) The term *exchange traded security* means any security, except a reported security, that is listed, or admitted to unlisted trading privileges, on a national securities exchange;

(10) The term *NASDAQ security* means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system (''NASDAQ'') operated by the National Association of Securities Dealers, Inc. (''NASD'');

(11) The term *trading volume* means:

(i) With respect to a reported security, the average daily trading volume for the security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 10b–18 purchase is to be effected or the Rule 10b–18 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 10b–18 purchase is to be effected or the Rule 10b–18 bid is to be made;

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 10b–18 purchase is to be effected or the Rule 10b–18 bid is to be made;

Provided, however, That such trading volume under paragraphs (a)(11) (i), (ii) and (iii) of this section shall not include any Rule 10b–18 purchase of a block by or for the issuer or any affiliated purchaser of the issuer;

(12) The term *purchase price* means the price paid per share

(i) For a reported security, or an exchange traded security on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(13) The term *round lot* means 100 shares or other customary unit of trading for a security;

(14) The term *block* means a quantity of stock that either

(i) Has a purchase price of $200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume

data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraphs (a)(14) (i), (ii) and (iii) of this section shall not include any amount that a broker or a dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

(b) *Conditions to be met.* In connection with a Rule 10b–18 purchase, or with a Rule 10b–18 bid that is made by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated section 9(a)(2) of the Act or Rule 10b–5 under the Act, solely by reason of the time or price at which its Rule 10b–18 bids or Rule 10b–18 purchases are made of the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer:

(1) (*One broker or dealer*) Effects all Rule 10b–18 purchases from or through only one broker on any single day, or, if a broker is not used, with only one dealer on a single day, and makes or causes to be made all Rule 10b–18 bids to or through only one broker on any single day, or, if a broker is not used, to only one dealer on a single day; *Provided, however,* That

(i) This paragraph (b)(1) shall not apply to Rule 10b–18 purchases which are not solicited by or on behalf of the issuer or affiliated purchaser; and

(ii) Where Rule 10b–18 purchases or Rule 10–b18 bids are made by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, this paragraph (b)(1) shall apply to all such bids and purchases in the aggregate; and

(2) (*Time of purchases*) Effects all Rule 10b–18 purchases from or through a broker or dealer

(i) In a reported security, (A) such that the purchase would not constitute the opening transaction in the security reported in the consolidated system; and (B) if the principal market of such security is an exchange, at a time other than during the one-half hour before the scheduled close of trading on the principal market; and (C) if the purchase is to be made on an exchange, at a time other than during the one-half hour before the scheduled close of trading on the national securities exchange on which the purchase is to be made; and (D) if the purchase is to be made otherwise than on a national securities exchange, at a time other than during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(ii) In any exchange traded security, on any national securities exchange, (A) such that the Rule 10b–18 purchase would not constitute the opening transaction in the security on such exchange; and (B) at a time other than during the one-half hour before the scheduled close of trading on the exchange;

(iii) In any NASDAQ security, othewise than on a national securities exchange, if a current independent bid quotation for the security is reported in Level 2 of NASDAQ; and

(3) (*Price of purchase*) Effects all Rule 10b–18 purchases from or through a broker or dealer at a purchase price, or makes or causes to be made all Rule 10b–18 bids to or through a broker or dealer at a price.

(i) For a reported security, that is not higher than the published bid, as that term is defined in Rule 11Ac1–1(a)(9) under the Act, that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, that is not higher than the current independent bid quotation or the

last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange for a NASDAQ security, that is not higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry; and

(4) (*Volume of purchases*) Effects from or through a broker or dealer all Rule 10b–18 purchases other than block purchases

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 10b–18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any on that day, does not exceed the higher of (A) one round lot or (B) the number of round lots closet to 25 percent of the trading volume for the security;

(ii) Of any other security, in an amount that (A) when added to the amounts of all other Rule 10b–18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer on that day, does not exceed one round lot or (B) when added to the amounts of all other Rule 10b–18 purchases other than block purchases from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer during that day and the preceding five business days, does not exceed 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(c) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated section 9(a)(2) or 10(b) of the Act or Rule 10b–5 under the Act if the Rule 10b–18 bids or Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraphs (b) (1) through (4) of this section.

[47 FR 53339, Nov. 26, 1982, as amended at 62 FR 543, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997]

§ 240.10b–21 [Reserved]

REPORTS UNDER SECTION 10A

§ 240.10A–1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j–1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j–1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j–1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8–K, §249.308 of this chapter, and Form N–SAR, §274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of item 304 of Regulation S–B or item 304 of Regulation S–K, §§228.304 or 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be submitted to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j–1(b)(3) or 78j–(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) submitted to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office), then the independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall submit that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is submitted to that Office.

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S–K, §§229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and under items 304(a)(2)(D) and 304(a)(3) of Regulation S–B, §§228.304(a)(2)(D) and 228.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be nonpublic and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are nonpublic and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and §200.80(b)(7) of this chapter. Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

Instruction to Paragraph (c)

Issuers and independent accountants may apply for additional bases for confidential treatment for a notice, report, or part thereof, in accordance with

§ 200.83 of this chapter. That section indicates, in part, that any person who, pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, may request that the Commission afford it confidential treatment by reason of personal privacy or business confidentiality, or for any other reason permitted by Federal law.

[62 FR 12749, Mar. 18, 1997]

ADOPTION OF FLOOR TRADING REGULATION (RULE 11a–1)

§ 240.11a–1 Regulation of floor trading.

(a) No member of a national securities exchange, while on the floor of such exchange, shall initiate, directly or indirectly, any transaction in any security admitted to trading on such exchange, for any account in which such member has an interest, or for any such account with respect to which such member has discretion as to the time of execution, the choice of security to be bought or sold, the total amount of any security to be bought or sold, or whether any such transaction shall be one of purchase or sale.

(b) The provisions of paragraph (a) of this section shall not apply to:

(1) Any transaction by a registered specialist in a security in which he is so registered on such exchange;

(2) Any transaction for the account of an odd-lot dealer in a security in which he is so registered on such exchange;

(3) Any stabilizing transaction effected in compliance with § 242.104 of this chapter to facilitate a distribution of such security in which such member is participating;

(4) Any bona fide arbitrage transaction;

(5) Any transaction made with the prior approval of a floor official of such exchange to permit such member to contribute to the maintenance of a fair and orderly market in such security, or any purchase or sale to reverse any such transaction;

(6) Any transaction to offset a transaction made in error; or

(7) Any transaction effected in conformity with a plan designed to eliminate floor trading activities which are not beneficial to the market and which plan has been adopted by an exchange and declared effective by the Commission. For the purpose of this rule, a plan filed with the Commission by a national securities exchange shall not become effective unless the Commission, having due regard for the maintenance of fair and orderly markets, for the public interest, and for the protection of investors, declares the plan to be effective.

(c) For the purpose of this rule the term ''on the floor of such exchange'' shall include the trading floor; the rooms, lobbies, and other premises immediately adjacent thereto for use of members generally; other rooms, lobbies and premises made available primarily for use by members generally; and the telephone and other facilities in any such place.

(d) Any national securities exchange may apply for an exemption from the provisions of this rule in compliance with the provisions of section 11(c) of the Act.

(Sec. 11, 48 Stat. 891; 15 U.S.C. 78k)

[29 FR 7381, June 6, 1964, as amended at 62 FR 544, Jan. 3, 1997]

EDITORIAL NOTE 1: The Commission finding that the floor trading plan of the New York Stock Exchange filed on May 25, 1964 is designed to eliminate floor trading activities not beneficial to the market hereby declares such plan effective August 3, 1964 subject to suspension or termination on sixty days written notice from the Commission, 29 FR 7381, June 6, 1964.

EDITORIAL NOTE 2: The text of the Commission's action declaring effective the amendments to the Floor Trading Plan of the American Stock Exchange is as follows, 33 FR 1073, Jan. 27, 1968:

The Securities and Exchange Commission acting pursuant to the Securities Exchange Act of 1934, particularly sections 11(a) and 23(a) thereof, and Rule 11a–1 (17 CFR 240.11a–1) under the Act, deeming it necessary for the exercise of the functions vested in it, and having due regard for the maintenance of fair and orderly markets, for the public interest, and for the protection of investors, hereby declares the Floor Trading Plan of the American Stock Exchange, as amended by amendments filed on May 11, 1967, effective January 31, 1968. If at any time it appears to the Commission to be necessary or appropriate in the public interest, for the protection of investors, or for the maintenance of fair and orderly markets, or that

floor trading activities which are not beneficial to the market have not been eliminated by the Floor Trading Plan of the American Stock Exchange, the Commission may suspend or terminate the effectiveness of the plan by sending at least 60 days written notice to the American Stock Exchange. The American Stock Exchange shall have the opportunity to submit any written data, facts, arguments, or modifications in its plan within such 60-day period in such form as the Commission deems appropriate under the circumstances. The Commission has been informed that all persons subject to the Floor Trading Plan of the American Stock Exchange, as amended, have had actual notice thereof, and the Commission finds that notice and procedure pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. section 553) are impracticable and unnecessary and that such Plan, as amended, may be, and is hereby, declared effective on January 31, 1968.

§ 240.11a1–1(T) Transactions yielding priority, parity, and precedence.

(a) A transaction effected on a national securities exchange for the account of a member which meets the requirements of section 11(a)(1)(G)(i) of the Act shall be deemed, in accordance with the requirements of section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange if such transaction is effected in compliance with each of the following requirements:

(1) A member shall disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any such member through whom that bid or offer is communicated shall disclose to others participating in effecting the order that it is for the account of a member.

(2) Immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange shall clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member.

(3) Notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member shall grant priority to any bid or offer at the same price for the account of a person who is not, or is not associated with, a member, irrespective of the size of any such bid or offer or the time when entered.

(b) A member shall be deemed to meet the requirements of section 11(a)(1)(G)(i) of the Act if during its preceding fiscal year more than 50 percent of its gross revenues was derived from one or more of the sources specified in that section. In addition to any revenue which independently meets the requirements of section 11(a)(1)(G)(i), revenue derived from any transaction specified in paragraph (A), (B), or (D) of section 11(a)(1) of the Act or specified in 17 CFR 240.11a1–4(T) shall be deemed to be revenue derived from one or more of the sources specified in section 11(a)(1)(G)(i). A member may rely on a list of members which are stated to meet the requirements of section 11(a)(1)(G)(i) if such list is prepared, and updated at least annually, by the exchange. In preparing any such list, an exchange may rely on a report which sets forth a statement of gross revenues of a member if covered by a report of independent accountants for such member to the effect that such report has been prepared in accordance with generally accepted accounting principles.

(Secs. 2, 3, 6, 11, 11A, and 23, 89 Stat. 97, 104, 110, 111, 156 (15 U.S.C. 78b, 78c, 78f, 78k, 78k–1, 78w); secs. 2, 3, 11, 23, 48 Stat. 881, 882, 885, 891, 901, as amended)

[43 FR 11553, Mar. 17, 1978, as amended at 43 FR 18562, May 1, 1978; 44 FR 6093, Jan. 31, 1979]

§ 240.11a1–2 Transactions for certain accounts of associated persons of members.

A transaction effected by a member of a national securities exchange for the account of an associated person thereof shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets if the transaction is effected:

(a) For the account of and for the benefit of an associated person, if, assuming such transaction were for the account of a member, or

(b) For the account of an associated person but for the benefit of an account carried by such associated person, if, assuming such account were carried on the same basis by a member.

The member would have been permitted, under section 11(a) of the Act and the other rules thereunder, to effect the transaction: *Provided*, *however*, That a transaction may not be effected by a member for the account of and for the benefit of an associated person under section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder unless the associated person derived, during its preceding fiscal year, more than 50 percent of its gross revenues from one or more of the sources specified in section 11(a)(1)(G)(i) of the Act.

(Secs. 2, 3, 4, 6, 7, 11, 18, 89 Stat. 97, 104, 110, 111, 121, 155 (15 U.S.C. 78b, 78c, 78f, 78k, 78k–1, 78*o*, 78w); secs. 2, 3, 10, 23, 48 Stat. 881, 882, 891, 901, as amended (15 U.S.C. 78j))
[43 FR 11553, Mar. 17, 1978; 43 FR 14451, Apr. 6, 1978]

§ 240.11a1–3(T) Bona fide hedge transactions in certain securities.

A bona fide hedge transaction effected on a national securities exchange by a member for its own account or an account of an associated person thereof and involving a long or short position in a security entitling the holder to acquire or sell an equity security, and a long or short position in one or more other securities entitling the holder to acquire or sell such equity security, shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

(Secs. 2, 3, 6, 11, 11A, and 23, 89 Stat. 97, 104, 110, 111, 156 (15 U.S.C. 78b, 78c, 78f, 78k, 78k–1, 78w); secs. 2, 3, 11, 23, 48 Stat. 881, 882, 885, 891, 901, as amended)
[44 FR 6093, Jan. 31, 1979]

§ 240.11a1–4(T) Bond transactions on national securities exchanges.

A transaction in a bond, note, debenture, or other form of indebtedness effected on a national securities exchange by a member for its own account or the account of an associated person thereof shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

(Secs. 2, 3, 6, 10, 11, 11A, 15 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78c, 78f, 78j, 78k, 78k–1, 78*o*, and 78w))
[43 FR 18562, May 1, 1978]

§ 240.11a1–5 Transactions by registered competitive market makers and registered equity market makers.

Any transaction by a New York Stock Exchange registered competitive market maker or an American Stock Exchange registered equity market maker effected in compliance with their respective governing rules shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.
[46 FR 14889, Mar. 3, 1981]

§ 240.11a2–2(T) Transactions effected by exchange members through other members.

(a) A member of a national securities exchange (the ''initiating member'') may not effect a transaction on that exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion unless:

(1) The transaction is of a kind described in paragraphs A through H of section 11(a)(1) of the Act and is effected in accordance with applicable rules and regulations thereunder; or

(2) The transaction is effected in compliance with each of the following conditions:

(i) The transaction is executed on the floor, or through use of the facilities, of the exchange by a member (the ''executing member'') which is not an associated person of the initiating member;

(ii) The order for the transaction is transmitted from off the exchange floor;

(iii) Neither the initiating member nor an associated person of the initiating member participates in the execution of the transaction at any time after the order for the transaction has been so transmitted; and

(iv) In the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof retains any compensation in connection with effecting the transaction: *Provided, however,* That this condition shall not apply to the extent that the person or persons authorized to transact business for the account have expressly provided otherwise by written contract referring to section 11(a) of the Act and this section executed on or after March 15, 1978, by each of them and by such exchange member or associated person exercising investment discretion.

(b) For purposes of this section, a member ''effects'' a securities transaction when it performs any function in connection with the processing of that transaction, including, but not limited to, (1) transmission of an order for execution, (2) execution of the order, (3) clearance and settlement of the transaction, and (4) arranging for the performance of any such function.

(c) For purposes of this section, the term ''compensation in connection with effecting the transaction'' refers to compensation directly or indirectly received or calculated on a transaction-related basis for the performance of any function involved in effecting a securities transaction.

(d) A member, or an associated person of a member, authorized by written contract to retain compensation in connection with effecting transactions pursuant to paragraph (a)(2)(iv) of this section shall furnish at least annually to the person or persons authorized to transact business for the account a statement setting forth the total amount of all compensation retained by the member or any associated person thereof in connection with effecting transactions for that account during the period covered by the statement, which amount shall be exclusive of all amounts paid to others during that period for services rendered in effecting such transactions.

(e) A transaction effected in compliance with the requirements of this section shall be deemed to be of a kind which is consistent with the purposes of section 11(a)(1) of the Act, the protection of investors, and the maintenance of fair and orderly markets.

(f) The provisions of this section shall not apply to transactions by exchange members to which, by operation of section 11(a)(3) of the Act, section 11(a)(1) of the Act is not effective.

(Secs. 2, 3, 4, 6, 7, 11, 18, 89 Stat. 97, 104, 110, 111, 121, 155 (15 U.S.C. 78b, 78c, 78f, 78k, 78k–1, 78*o*, 78w); secs. 2, 3, 10, 23, 48 Stat. 881, 882, 891, 901, as amended (15 U.S.C. 78j))

[43 FR 11554, Mar. 17, 1978, as amended at 43 FR 18562, May 1, 1978]

ADOPTION OF REGULATION ON CONDUCT OF SPECIALISTS

§ 240.11b–1 Regulation of specialists.

(a)(1) The rules of a national securities exchange may permit a member of such exchange to register as a specialist and to act as a dealer.

(2) The rules of a national securities exchange permitting a member of such exchange to register as a specialist and to act as a dealer shall include:

(i) Adequate minimum capital requirements in view of the markets for securities on such exchange;

(ii) Requirements, as a condition of a specialist's registration, that a specialist engage in a course of dealings for his own account to assist in the maintenance, so far as practicable, of a fair and orderly market, and that a finding by the exchange of any substantial or continued failure by a specialist to engage in such a course of dealings will result in the suspension or cancellation of such specialist's registration in one or more of the securities in which such specialist is registered;

(iii) Provisions restricting his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market or necessary to permit him to act as an odd-lot dealer;

(iv) Provisions stating the responsibilities of a specialist acting as a broker in securities in which he is registered; and

(v) Procedures to provide for the effective and systematic surveillance of the activities of specialists.

(b) If after appropriate notice and opportunity for hearing the Commission finds that a member of a national securities exchange registered with such exchange as a specialist in specified securities has, for any account in which he, his member organization, or any participant therein has any beneficial interest, direct or indirect, effected transactions in such securities which were not part of a course of dealings reasonably necessary to permit such specialist to maintain a fair and orderly market, or to act as an odd-lot dealer, in the securities in which he is registered and were not effected in a manner consistent with the rules adopted by such exchange pursuant to paragraph (a)(2)(iii) of this section, the Commission may by order direct such exchange to cancel, or to suspend for such period as the Commission may determine, such specialist's registration in one or more of the securities in which such specialist is registered: *Provided, however,* If such exchange has itself suspended or cancelled such specialist's registration in one or more of the securities in which such specialist is registered, no further sanction shall be imposed pursuant to this paragraph (b) except in a case where the Commission finds substantial or continued misconduct by a specialist: *And provided, further,* That the provisions of this paragraph (b) shall not apply to a member of a national securities exchange exempted pursuant to the provisions of paragraph (d) of this section.

(c) For the purposes of this section, the term *rules* of an exchange shall mean its constitution, articles of incorporation, by-laws, or rules or instruments corresponding thereto, whatever the name, and its stated policies.

(d) Any national securities exchange may apply for an exemption from the provisions of this section in compliance with the provisions of section 11(c) of the Act.

(Sec. 11, 48 Stat. 891, 892; 15 U.S.C. 78k)

[29 FR 15863, Nov. 26, 1964, as amended at 46 FR 15135, Mar. 4, 1981]

EXEMPTION OF CERTAIN SECURITIES FROM SECTION 11(d)(1)

§ 240.11d1–1 Exemption of certain securities from section 11(d)(1).

A security shall be exempt from the provisions of section 11(d)(1) with respect to any transaction by a broker and dealer who, directly or indirectly extends or maintains or arranges for the extension or maintenance of credit on the security to or for a customer if:

(a) The broker and dealer has not sold the security to the customer or bought the security for the customer's account; or

(b) The security is acquired by the customer in exchange with the issuer thereof for an outstanding security of the same issuer on which credit was lawfully maintained for the customer at the time of the exchange; or

(c) The customer is a broker or dealer or bank; or

(d) The security is acquired by the customer through the exercise of a right evidenced by a warrant or certificate expiring within 90 days after issuance, provided such right was originally issued to the customer as a stockholder of the corporation issuing the security upon which credit is to be extended, or as a stockholder of a company distributing such security in order to effectuate the provisions of section 11 of the Public Utility Holding Company Act of 1935. The right shall be deemed to be issued to the customer as a stockholder if he actually owned the stock giving rise to the right when such right accrued, even though such stock was not registered in his name; and in determining such fact the broker and dealer may rely upon a signed statement of the customer which the broker and dealer accepts in good faith; or

(e) Such broker and dealer would otherwise be subject to the prohibition of section 11(d)(1) with respect to 50 percent or less of all the securities of the same class which are outstanding or currently being distributed, and such broker and dealer sold the security to the customer or bought the security for the customer's account on a day when he was not participating in the distribution of any new issue of such security. A brokerdealer shall be

deemed to be participating in a distribution of a new issue if (1) he owns, directly or indirectly, any undistributed security of such issue, or (2) he is engaged in any stabilizing activities to facilitate a distribution of such issue, or (3) he is a party to any syndicate agreement under which such stabilizing activities are being or may be undertaken, or (4) he is a party to an executory agreement to purchase or distribute such issue.

(Secs. 3, 11, 48 Stat. 882, 891; 15 U.S.C. 78c, 78k)
[13 FR 8184, Dec. 22, 1948]

§240.11d1–2 Exemption from section 11(d)(1) for certain investment company securities held by broker-dealers as collateral in margin accounts.

Any securities issued by a registered open-end investment company or unit investment trust as defined in the Investment Company Act of 1940 shall be exempted from the provisions of section 11(d)(1) with respect to any transaction by a person who is a broker and a dealer who, directly or indirectly, extends or maintains or arranges for the extension or maintenance of credit on such security, provided such security has been owned by the person to whom credit would be provided for more than 30 days, or purchased by such person pursuant to a plan for the automatic reinvestment of the dividends of such company or trust.

(Secs. 2, 3, 11, and 23, Exchange Act, 15 U.S.C. 78b, 78c, 78k and 78w)
[49 FR 50174, Dec. 27, 1984]

REGISTRATION OF SECURITIES INFORMATION PROCESSORS

§240.11Aa2–1 Designation of national market system securities.

The term *national market system security* shall mean any reported security as defined in Rule 11Aa3–1.

[52 FR 24153, June 29, 1987]

§240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* For purposes of this section:

(1) The term *transaction report* shall mean a report containing the price and volume associated with a transaction involving the purchase or sale of one or more round lots of a security (''transaction'').

(2) The term *transaction reporting plan* shall mean any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.

(3) The term *effective transaction reporting plan* shall mean any transaction reporting plan approved by the Commission pursuant to this section.

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term *listed equity security* shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange (''exchange'').

(6) The term *NASDAQ security* shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system (''NASDAQ'').

(7) The term *transaction reporting association* shall mean any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under paragraph (b) of this section.

(8) The term *interrogation device* shall mean any securities information retrieval system capable of displaying transaction reports or last sale data, upon inquiry, on a current basis on a terminal or other device.

(9) The term *moving ticker* shall mean any continuous real-time moving display of transaction reports or last sale data (other than a market minder) provided on an interrogation or other display device.

(10) The term *market minder* shall mean any service provided by a vendor

on an interrogation device or other display which (i) permits real-time monitoring, on a dynamic basis, of transaction reports or last sale data with respect to a particular security, and (ii) displays the most recent transaction report or last sale data with respect to that security until such report or data has been superseded or supplemented by the display of a new transaction report or last sale data reflecting the next reported transaction in that security.

(11) The term *vendor* shall mean any securities information processor engaged in the business of disseminating transaction reports or last sale data with respect to transactions in reported securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

(12) The term *last sale data* shall mean any price or volume data associated with a transaction.

(b)(1) Every exchange shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ security executed through its facilities, and every association shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ securities executed by its members otherwise than on an exchange.

(2) Any transaction reporting plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission, and considered for approval, in accordance with the procedures set forth in paragraphs (b) and (c) of § 240.11Aa3–2 governing national market system plans. Any such plan, or amendment thereto, shall specify, at a minimum:

(i) The listed equity and NASDAQ securities or classes of such securities for which transaction reports shall be required by the plan;

(ii) Reporting requirements with repect to transactions in listed equity securities and NASDAQ securities, for any broker or dealer subject to the plan;

(iii) The manner of collecting, processing, sequencing, making available and disseminating transaction reports and last sale data reported pursuant to such plan;

(iv) The manner such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from exchanges and associations reported pursuant to any other effective transaction reporting plan;

(v) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports;

(vi) Any rules or procedures which may be adopted to ensure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner;

(vii) Specific terms of access to transaction reports made available or disseminated pursuant to the plan; and

(viii) That transaction reports or last sale data made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.

(3) No transaction reporting plan filed pursuant to this section, or any amendment to an effective transaction reporting plan, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 240.11Aa3–2 (Rule 11Aa3–2 under the Act) governing national market system plans.

(c) *Prohibitions and reporting requirements.* (1) No broker or dealer may execute any transaction in, or induce or attempt to induce the purchase or sale of, any reported security,

(i) On or through the facilities of an exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed on or through such exchange facilities; or

(ii) Otherwise than on an exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on an exchange by such broker or dealer.

(2) No exchange or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed through the

facilities of such exchange except pursuant to an effective transaction reporting plan filed by such exchange (either individually or jointly with other persons).

(3) No association or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed by a member of such association otherwise than on an exchange except pursuant to an effective transaction reporting plan filed by such association (either individually or jointly with other persons).

(4) Every broker or dealer who is a member of an exchange or association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).

(d) *Retransmission of transaction reports or last sale data.* On and after July 5, 1980, notwithstanding any provision of any effective transaction reporting plan, no exchange or association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan: *Provided, however,* That an exchange or association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (e) of this section are collected.

(e) *Charges.* Nothing in this section shall preclude any exchange or association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.

(f) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of paragraph (e) of §240.11Aa3–2.

(g) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, association, broker, dealer or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))

[45 FR 12388, Feb. 26, 1980, as amended at 46 FR 14006, Feb. 25, 1981; 46 FR 15872, Mar. 10, 1981; 48 FR 53690, Nov. 29, 1983; 50 FR 38518, Sept. 23, 1985; 52 FR 24153, June 29, 1987; 61 FR 48328, Sept. 12, 1996]

§240.11Aa3–2 Filing and amendment of national market system plans.

(a) *Definitions.* For purposes of this section, (1) The term *national market system plan* shall mean any joint self-regulatory organization plan in connection with

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof, or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and their members with any section of this subpart promulgated pursuant to section 11A of the Act.

(2) The term *effective national market system plan* shall mean any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to this section.

(3) The term *self-regulatory organization* shall mean any national securities exchange (''exchange'') or national securities association (''association'').

(4) The term *joint self-regulatory organization plan* shall mean a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.

(5) The term *sponsors*, when used in connection with a national market system plan, shall mean any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan.

(6) The term *participants*, when used in connection with a national market system plan, shall mean any self-regulatory organization which has agreed to act in accordance with the terms of the plan but which is not a signatory of such plan.

(7) The term *plan processor* shall mean any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.

(8) The term *vendor* shall have the meaning provided in § 240.11Aa3–1 (Rule 11Aa3–1 under the Act).

(b) *Filing of national market system plans and amendments thereto.* (1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan (''proposed amendment'') by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (b)(4) and (5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (c) of this section.

(3) Self-regulatory organizations are authorized to act jointly in (i) planning, developing, and operating any national market subsystem or facility contemplated by a national market system plan, (ii) preparing and filing a national market system plan or any amendment thereto, or (iii) implementing or administering an effective national market system plan.

(4) Every national market system plan filed pursuant to this section, or any amendment thereto, shall be accompanied by (i) copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors and (ii), to the extent applicable,

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or particpants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.

(5) Every national market system plan, or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable,

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

(ii) The method by which any fees or charges collected on behalf of all of the

sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this subpart shall, in addition to compliance with this section, also comply with the requirements of such other section.

(c) *Effectiveness of national market system plans.* (1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (c)(3) of this section.

(2) Within 120 days of the date of publication of notice of filing of a national market system plan or an amendment to an effective national market system plan, or within such longer period as the Commission may designate up to 180 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the sponsors consent, the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Approval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as:

(i) Establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the sponsors and/or participants);

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (b)(1) of

this section and reviewed in accordance with paragraph (c)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (c)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with:

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this subpart promulguated pursuant to section 11A of the Act, approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either temporarily or on a permanent basis) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; *Provided, however,* That all terms and conditions associated with any such approval (including time limitations) shall continue to be applicable; and, *Provided, further,* That any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(d) *Compliance with terms of national market system plans.* Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.

(e) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest,

the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or if it finds that such action or failure to act imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(f) *Exemptions*. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 9, 10, 15, 17, and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897, and 901, as amended by secs. 2, 3, 4, 11, 14, and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137, and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q, and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–l); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))

[46 FR 15870, Mar. 10, 1981, as amended at 48 FR 53690, Nov. 29, 1983]

§ 240.11Ab2–1 Registration of securities information processors: Form of application and amendments.

(a) An application for the registration of a securities information processor shall be filed on Form SIP in accordance with the instructions contained therein.

(b) If any information reported in items 1–13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any securities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b).

(d) Every amendment filed pursuant to this section shall constitute a ''report'' within the meaning of sections 17(a), 18(a) and 32(a) of the Act.

[40 FR 45424, Oct. 2, 1975]

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions*. For the purposes of this section:

(1) The term *aggregate quotation size* shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any exchange bids or offers for a covered security at the same price.

(2) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(3) The terms *best bid* and *best offer* shall mean the highest priced bid and the lowest priced offer.

(4) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest.

(5) The term *consolidated system* shall mean the consolidated transaction reporting system.

(6) The term *covered security* shall mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an

automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(7) The term *effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3–1(a)(3).

(8) The term *electronic communications network,* for the purposes of § 240.11Ac1–1(c)(5), shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term electronic communications network shall not include:

(i) Any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or

(ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

(9) The term *exchange market maker* shall mean any member of a national securities exchange (''exchange'') who is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *exchange-traded security* shall mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; *provided, however,* That securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

(11) The term *make available,* when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide circuit connections at the premises of the exchange or association supplying such data, or at a common location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

(12) The term *odd-lot* shall mean an order for the purchase or sale of a covered security in an amount less than a round lot.

(13) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.

(14) The term *plan processor* shall have the meaning provided in § 240.11Aa3–2(a)(7).

(15) The term *published aggregate quotation size* shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(16) The terms *published bid* and *published offer* shall mean the bid or offer of a responsible broker or dealer for a covered security communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(17) The term *published quotation size* shall mean the quotation size of a responsible broker or dealer communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(18) The term *quotation size,* when used with respect to a responsible broker's or dealer's bid or offer for a covered security, shall mean:

(i) The number of shares (or units of trading) of that covered security which such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or

(ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that covered security.

(19) The term *quotation vendor* shall mean any securities information processor engaged in the business of disseminating to brokers, dealers or investors on a real-time basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(21) The term *responsible broker or dealer* shall mean:

(i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; *provided, however,* That, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a ''responsible broker or dealer'' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and further provided, That for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the ''responsible broker or dealer'' for that bid or offer; and

(ii) When used with respect to bids and offers communicated by a member of an association to another broker or dealer or to a customer otherwise than on an exchange, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(22) The term *revised bid or offer* shall mean a market maker's bid or offer which supersedes its published bid or published offer.

(23) The term *revised quotation size* shall mean a market maker's quotation size which supersedes its published quotation size.

(24) The term *specified persons,* when used in connection with any notification required to be provided pursuant to paragraph (b)(3) of this section and any election (or withdrawal thereof) permitted under paragraph (b)(5) of this section, shall mean:

(i) Each quotation vendor;

(ii) Each plan processor; and

(iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities underlying options admitted to trading on any exchange).

(25) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

(b) *Dissemination requirements for exchanges and associations.* (1) Every exchange and association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors, as follows:

(i) Each exchange shall at all times such exchange is open for trading, collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.

(ii) Each association shall, at all times that last sale information with respect to reported securities is reported pursuant to an effective transaction reporting plan, collect, process and make available to quotation vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended.

(2) Each exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of the responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules approved by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligations under paragraphs (b) (1) and (2) of this section for that security: *provided*, *however*, That such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to quotation vendors data for that security in accordance with paragraph (b)(1) of this section.

(ii) During any period an exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (b)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to quotation vendors the data for that security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange.

Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (b)(1) of this section.

(5)(i) Any exchange may make an election for purposes of paragraph (a)(25)(i)(B) of this section for any covered security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any covered security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of an association acting in the capacity of an OTC market maker may make an election for purposes of paragraph (a)(25)(ii)(B) of this section for any covered security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other covered security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association and all specified persons, and shall be effective at the opening of trading on the business day following notification.

(iii) The election of an exchange or member of an association for any covered security pursuant to this paragraph (b)(5) shall cease to be in effect if such exchange or member ceases to make available or communicate bids, offers, and quotation sizes in such security.

(c) *Obligations of responsible brokers and dealers.* (1) Each responsible broker or dealer shall promptly communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (c)(3) of this section, each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

(3)(i) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation if:

(A) Prior to the presentation of an order for the purchase or sale of a subject security, a responsible broker or dealer has communicated to its exchange or association, pursuant to paragraph (c)(1) of this section, a revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is presented, a responsible broker or dealer is in the process of effecting a transaction in such subject security, and immediately after the completion of such transaction, it communicates to its exchange or association a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to

its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; *provided*, *however*, That such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (b)(4) of this section:

(i) No exchange or OTC market maker may make available, disseminate or otherwise communicate to any quotation vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any covered security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No quotation vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any exchange or OTC market maker for any covered security which is not a subject security with respect to such exchange or OTC market maker.

(5)(i) Entry of any priced order for a covered security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to paragraph (c) of this section for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and

(B) A communication of a bid or offer to a quotation vendor for display on a display device for purposes of paragraph (c)(4) of this section.

(ii) An exchange market maker or OTC market maker that has entered a priced order for a covered security into an electronic communications network that widely disseminates such order shall be deemed to be in compliance with paragraph (c)(5)(i)(A) of this section if the electronic communications network:

(A) Provides to an exchange or association (or an exclusive processor acting on behalf of one or more exchanges or associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the electronic communications network by exchange market makers and OTC market makers for the covered security, and such prices and sizes are included in the quotation data made available by the exchange, association, or exclusive processor to quotation vendors pursuant to this section; and

(B) Provides, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the electronic communications network entered therein by an exchange market maker or OTC market maker that is:

(*1*) Equivalent to the ability of any broker or dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the exchange or association to which the electronic communications network supplies such bids and offers; and

(*2*) At the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by exchange market makers or OTC market makers at such price, or the size of the execution sought by the broker or dealer, for the covered security.

(d) *Exemptions*. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

[61 FR 48328, Sept. 12, 1996]

§240.11Ac1–2 Display of transaction reports, last sale data and quotation information.

(a) *Definitions*. For purposes of this section, (1) The terms *transaction report*, *effective transaction reporting plan*, *moving ticker*, *last sale data*, *market minder* and *interrogation device* shall have the meaning provided in §240.11Aa3–1 (Rules 11Aa3–1 under the Act).

(2) The term *vendor* shall mean any securities information processor engaged in the business of disseminating transaction reports, last sale data or quotation information with respect to subject securities to brokers, dealers or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device.

(3) The term *NASDAQ* shall mean the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(4) The term *subject security* shall mean,

(i) Any reported security; and

(ii) Any other equity security as to which transaction reports, last sale data or quotation information is disseminated through NASDAQ.

(5) The terms *quotations* and *quotation information* shall mean bids, offers and, where applicable, quotation sizes and aggregate quotation sizes.

(6) The terms *bid* and *offer* shall,

(i) In the case of a reported security, have the meaning provided in §240.11Ac1–1 (Rule 11Ac1–1 under the Act); and

(ii) In the case of any subject security other than a reported security, mean the most recent bid price or offer price of an over-the-counter market maker disseminated through Level 2 or 3 of NASDAQ.

(7) The terms *quotation size*, *aggregate quotation size*, *third market maker* and *make available* shall have the meaning provided in §240.11Ac1–1 (Rule 11Ac1–1 under the Act).

(8) The term *consolidated display* shall mean, with respect to a particular reported security,

(i) Any display (other than a moving ticker or market minder) of transaction reports for such security from all reporting market centers;

(ii) Any display (other than a moving ticker or market minder) of last sale data for such security, or information derived therefrom, based on transaction reports from all reporting market centers; or

(iii) Any display of quotation information for that security based on quotations from all reporting market centers.

(9) The term *consolidated price*, when used with respect to a particular reported security, shall mean the price of the most recent transaction report for that security reported pursuant to any effective transaction reporting plan.

(10) The term *consolidated volume*, when used with respect to a particular reported security, shall mean the volume of the most recent transaction report for that security reported pursuant to any effective transaction reporting plan.

(11) The term *cumulative consolidated volume*, when used with respect to a particular reported security, shall mean the cumulative volume of all transaction reports for that security reported pursuant to any effective transaction reporting plan during a particular trading day.

(12) The term *individual market center display* shall mean, with respect to a particular reported security,

(i) Any display (other than a moving ticker or market minder) of transaction reports for such security from a particular market center;

(ii) Any display (other than a moving ticker or market minder) of last sale data for such security, or information

derived therefrom, based on transaction reports from a particular reporting market center; or

(iii) Any display of quotation information for that security based on quotations from a particular reporting market center.

(13) The term *over-the-counter market maker* shall mean, with respect to any subject security other than a reported security, any broker or dealer which holds itself out as being willing to buy and sell such security on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

(14) The term *reporting market center* shall mean, (i) with respect to a reported security,

(A) Any national securities exchange (''exchange'') on which, or through whose facilities, transactions in such security are executed and which collects, processes and makes available transaction reports with respect to transactions in such security on a current basis pursuant to § 240.11Aa3–1 (Rule 11Aa3–1 under the Act); and

(B) Any person acting in the capacity of a third market maker with respect to such security which reports transactions in such security to a national securities association on a current basis pursuant to § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) and disseminates quotations in such security pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act); and

(ii) With respect to a subject security other than a reported security, any person acting in the capacity of an over-the-counter market maker who is authorized to disseminate quotations in such security, through NASDAQ, and who makes such quotations available through that system on a regular and continuous basis.

(15) The terms *best bid* and *best offer* shall mean,

(i) With respect to quotations for a reported security, the highest bid or lowest offer for that security made available by any reporting market center pursuant to § 240.11Ac1–1 (Rule 11Ac1–1 under the Act) (excluding any bid or offer made available by an exchange during any period such exchange is relieved of its obligations under paragraphs (b) (1) and (2) of § 240.11Ac1–1 by virtue of paragraph (b)(3)(i) thereof)); *Provided, however,* That in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or best offer (as the case may be) shall be computed by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), then by time (giving the highest ranking to the bid or offer received first in time); and

(ii) With respect to quotations for a subject security other than a reported security, the highest bid or lowest offer (as the case may be) for such security disseminated by an over-the-counter market maker in Level 2 or 3 of NASDAQ.

(16) The term *quotation montage* shall mean, with respect to a particular subject security, a display on an interrogation device which disseminates simultaneously quotations in that security from all reporting market centers.

(17) The term *representative bid or offer* shall mean any number representing a bid price or an offer price (as the case may be) for a particular subject security which is (i) the mean, median, mode or weighted average of two or more bids or offers of reporting market centers in such security, (ii) calculated with reference to or derived from any such mean, median, mode or weighted average, or (iii) calculated by adding to or subtracting from the bid or offer of any reporting market center in such security any number representing a commission, commission equivalent, mark-up or differential.

(18) The term *market information,* when used with respect to an individual market center display or a consolidated display for a particular reported security, shall mean (i) any transaction reports or last sale data, or information derived therefrom, contained in any such display, (ii) any quotation information contained in any such display, and (iii) any other category of information contained in any such display which relates to the particular reported security involved, including, but not limited to, annual or periodic dividend, ex-dividend date, time of most recent trade and news dissemination.

(19) The term *market linkage system* shall mean any communications and data processing facility which permits orders for the purchase and sale of a subject security to be transmitted from one reporting market center to another such reporting market center.

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(b) *Display requirements for transaction reports and last sale data.* (1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, transaction reports, last sale data or market information in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of transaction reports, last sale data or market information with respect to reported securities:

(i) If transaction reports or last sale data with respect to a particular reported security are provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of transaction reports or last sale data for such security which shall include, at a minimum, (A) the consolidated price for such security, (B) the consolidated volume or cumulative consolidated volume for such security, and (C) an identifier indicating the reporting market center associated with such consolidated price and consolidated volume (the ''consolidated last sale display'').

(ii) The consolidated last sale display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center display of transaction reports or last sale data provided on that device for such security; *Provided, however,* That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated last sale display and any such individual market center displays made available for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated last sale display is the most prominent.

(iii) Subject to the provisions of paragraph (b)(2)(ii) of this section, a vendor may provide on an interrogation device an individual market center display of transaction reports or last sale data for a particular reported security for any reporting market center in such security.

(iv) No moving ticker may include an identifier indicating the reporting market center associated with a particular transaction report with respect to a reported security unless such moving ticker includes identifiers for all transaction reports for such security (or an identifiable subset of all such transaction reports) from all reporting market centers in that security in a nondiscriminatory manner.

(v) No moving ticker or consolidated last sale display may exclude any transaction report or last sale data based upon the market center in which a transaction has been executed.

(vi) No vendor may provide any category of market information in an individual market center display for a particular subject security unless that category of market information is also provided, on a consolidated basis, as part of the consolidated last sale display for that security; *Provided, however,* That a vendor may delete from such consolidated last sale display up to three categories of information if such deletion is necessary to accommodate the display of any market identifiers required by this section.

(vii) Transaction reports and last sale data from all reporting market centers which are third market makers may be identified in a consolidated last sale display or a moving ticker by a single identifier without identification of the individual third market maker associated with such transaction report or last sale data.

(c) *Display requirements for quotation information.* (1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic

communications network, moving ticker or interrogation device, quotation information with respect to subject securities in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of quotation information with respect to subject securities:

(i) If quotation information with respect to a particular subject security is provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of quotation information for such security (the ''consolidated quotation display'') which shall include, at a minimum,

(A) The best bid and best offer for such security and, in the case of a reported security, (*1*) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer and (*2*) the quotation size or aggregate quotation size associated with such best bid and the quotation size or aggregate quotation size associated with such best offer, or

(B) A quotation montage for that security.

(ii) The consolidated quotation display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center quotation display provided on that device by such vendors for such security: *Provided, however,* That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated quotation display and any individual market center display of quotation information provided for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated quotation display is the most prominent.

(iii) Subject to the provisions of paragraph (c)(2)(ii) of this section, a vendor may provide on an interrogation device

(A) An individual market center display of quotation information for a particular subject security for any reporting market center in such security; or

(B) Either separately or as the consolidated quotation display, a quotation montage for that security.

(iv) No consolidated quotation display or separate quotation montage provided on an interrogation device may exclude any quotation information based upon the market center making available such information: *Provided, however,* That for purposes of providing the consolidated quotation display or a separate quotation montage for any reported security, quotation information from all reporting market centers which are third market makers may be consolidated to derive a best bid and offer for all such market centers if such interrogation device is capable of displaying, either separately or as part of the consolidated quotation display or separate quotation montage, (A) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer, and (B) the quotation size associated with both such best bid and best offer.

(v) Each individual market center display of quotation information or separate quotation montage for a particular reported security shall include the quotation size or aggregate quotation size associated with each bid or offer disseminated as part of such display or montage.

(vi) No vendor may provide on any interrogation device a representative bid or offer with respect to any subject security.

(d) *Joint display of transaction reports and quotation information.* Subject to the provisions of paragraphs (b)(2)(ii) and (c)(2)(ii) of this section regarding the means of access to consolidated last sale displays and consolidated quotation displays, a vendor may combine the consolidated last sale display and the consolidated quotation display for a particular subject security.

(e) *Applicability to brokers and dealers.* Subject to the provisions of paragraph (f) of this section, no broker or dealer may operate or maintain any display of transaction reports, last sale data,

quotation information or market information which would not be permitted to be provided by a vendor under paragraph (b) or (c) of this section.

(f) *Exchange or market linkage system displays*. The provisions of this section shall not apply to: (1) The dissemination or display of transactions reports, last sale data, quotation information or market information on the trading floor or through the facilities of an exchange, (2) any display of transaction reports, last sale data, quotation information or market information operated or maintained by a self-regulatory organization for monitoring or surveillance purposes, or (3) any display of transaction reports, last sale data or quotation information in connection with the operation of a market linkage system implemented in accordance with a plan approved by the Commission pursuant to section 11A(a)(3)(B) of the Act.

(g) *Exemptions*. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any securities information processor, self-regulatory organization, broker, dealer or specified subject security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(h) *Effective date*. The effective date of this section shall be April 5, 1980, except for paragraph (c)(2)(vi), which shall become effective on July 5, 1980, and paragraphs (b)(2)(ii), (vi) and (c)(2)(i), (ii), (iv), (v) which shall become effective on October 1, 1981.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78*o*, 78g and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–l); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))

[45 FR 12405, Feb. 26, 1980, as amended at 46 FR 43962, Sept. 2, 1981; 48 FR 53691, Nov. 29, 1983]

§ 240.11Ac1–3 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any subject security as defined in § 240.11Ac1–2 or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q–2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow as defined in § 240.10b–10(e)(9), from any broker or dealer, national securities exchange, registered securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow as defined in § 240.10b–10(e)(9) absent specific instructions from customers, including a description of the extent to which orders can be executed prices superior to the best bid or best offer as defined in § 240.11Ac1–2.

(b) *Exemptions*. The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the pubic

interest and the protection of investors.

[59 FR 55012, Nov. 2, 1994]

§ 240.11Ac1–4 Display of customer limit orders.

(a) *Definitions.* For purposes of this section:

(1) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(2) The terms *best bid* and *best offer* shall have the meaning provided in § 240.11Ac1–1(a)(3).

(3) The terms *bid* and *offer* shall have the meaning provided in § 240.11Ac1–1(a)(4).

(4) The term *block size* shall mean any order:

(i) Of at least 10,000 shares; or

(ii) For a quantity of stock having a market value of at least $200,000.

(5) The term *covered security* shall mean any ''reported security'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(6) The term *customer limit order* shall mean an order to buy or sell a covered security at a specified price that is not for the account of either a broker or dealer; *provided, however,* That the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(7) The term *electronic communications network* shall have the meaning provided in § 240.11Ac1–1(a)(8).

(8) The term *exchange-traded security* shall have the meaning provided in § 240.11Ac1–1(a)(10).

(9) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(10) The term *reported security* shall have the meaning provided in § 240.11Ac1–1(a)(20).

(b) *Specialists and OTC market makers.* For all covered securities:

(1) Each member of an exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

(ii) The full size of each customer limit order held by the specialist that:

(A) Is priced equal to the bid or offer of such specialist for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

(ii) The full size of each customer limit order held by the OTC market maker that:

(A) Is priced equal to the bid or offer of such OTC market maker for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(c) *Exceptions.* The requirements in paragraph (b) of this section shall not apply to any customer limit order:

(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to an exchange or association-sponsored system, or an electronic communications network that complies with the requirements of § 240.11Ac1–1(c)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an ''all or none'' order.

(d) *Exemptions*. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

[61 FR 48331, Sept. 12, 1996]

SECURITIES EXEMPTED FROM REGISTRATION

§ 240.12a–4 Exemption of certain warrants from section 12(a).

(a) When used in this section, the following terms shall have the meaning indicated unless the context otherwise requires:

(1) The term *warrant* means any warrant or certificate evidencing a right to subscribe to or otherwise acquire another security, issued or unissued.

(2) The term *beneficiary security* means a security to the holders of which a warrant or right to subscribe to or otherwise acquire another security is granted.

(3) The term *subject security* means a security which is the subject of a warrant or right to subscribe to or otherwise acquire such security.

(4) The term *in the process of admission to dealing*, in respect of a specified security means that (i) an application has been filed pursuant to section 12 (b) and (c) of the Act for the registration of such security on a national securities exchange; or (ii) the Commission has granted an application made pursuant to section 12(f) of the Act to continue or extend unlisted trading privileges to such security on a national securities exchange; or (iii) written notice has been filed with the Commission by a national securities exchange to the effect that such security has been approved for admission to dealing as a security exempted from the operation of section 12(a) of the Act.

(b) Any issued or unissued warrant granted to the holders of a security admitted to dealing on a national securities exchange, shall be exempt from the operation of section 12(a) of the Act to the extent necessary to render lawful the effecting of transactions therein on any national securities exchange (i) on which the beneficiary security is admitted to dealing or (ii) on which the subject security is admitted to dealing or is in the process of admission to dealing, subject to the following terms and conditions:

(1) Such warrant by its terms expires within 90 days after the issuance thereof;

(2) A registration statement under the Securities Act of 1933 is in effect as to such warrant and as to each subject security, or the applicable terms of any exemption from such registration have been met in respect to such warrant and each subject security; and

(3) Within five days after the exchange has taken official action to admit such warrant to dealing, it shall notify the Commission of such action.

(c) Notwithstanding paragraph (b) of this section, no exemption pursuant to this section shall be available for transactions in any such warrant on any exchange on which the beneficiary security is admitted to dealing unless:

(1) Each subject security is admitted to dealing or is in process of admission to dealing on a national securities exchange; or

(2) There is available from a registration statement and periodic reports or other data filed by the issuer of the subject security, pursuant to any act administered by the Commission, information substantially equivalent to that available with respect to a security listed and registered on a national securities exchange.

(d) Notwithstanding the foregoing, an unissued warrant shall not be exempt pursuant to this section unless:

(1) Formal or official announcement has been made by the issuer specifying (i) the terms upon which such warrant and each subject security is to be issued, (ii) the date, if any, as of which the security holders entitled to receive such warrant will be determined, (iii) the approximate date of the issuance of such warrant, and (iv) the approximate date of the issuance of each subject security; and,

(2) The members of the exchange are subject to rules which provide that the performance of the contract to purchase and sell an unissued warrant shall be conditioned upon the issuance of such warrant.

(e) The Commission may by order deny or revoke the exemption of a warrant under this section, if, after appropriate notice and opportunity for hearing to the issuer of such warrant and to the exchange or exchanges on which such warrant is admitted to dealing as an exempted security, it finds that:

(1) Any of the terms or conditions of this section have not been met with respect to such exemption, or

(2) At any time during the period of such exemption transactions have been effected on any such exchanges in such warrant which (i) create or induce a false, misleading or artificial appearance of activity, (ii) unduly or improperly influence the market price, or (iii) make a price which does not reflect the true state of the market; or

(3) Any other facts exist which make such denial or revocation necessary or appropriate in the public interest or for the protection of investors.

(f) If it appears necessary or appropriate in the public interest or for the protection of investors, the Commission may summarily suspend the exemption of such warrant pending the determination by the Commission whether such exemption shall be denied or revoked.

(g) Section 240.10b–1 shall be applicable to any warrant exempted by this section.

(Secs. 3, 12, 48 Stat. 882, as amended, 892; 15 U.S.C. 78c, 78*l*)

[15 FR 3450, June 2, 1950, as amended at 18 FR 128, Jan. 7, 1953]

§ 240.12a–5 Temporary exemption of substituted or additional securities.

(a)(1) Subject to the conditions of paragraph (a)(2) of this section, whenever the holders of a security admitted to trading on a national securities exchange (hereinafter called the original security) obtain the right, by operation of law or otherwise, to acquire all or any part of a class of another or substitute security of the same or another issuer, or an additional amount of the original security, then:

(i) All or any part of the class of such other or substituted security shall be temporarily exempted from the operation of section 12(a) to the extent necessary to render lawful transactions therein on an issued or ''when-issued'' basis on any national securities exchange on which the original, the other or the substituted security is lawfully admitted to trading; and

(ii) The additional amount of the original security shall be temporarily exempted from the operation of section 12(a) to the extent necessary to render lawful transactions therein on a ''when-issued'' basis on any national securities exchange on which the original security is lawfully admitted to trading.

(2) The exemptions provided by paragraph (a)(1) of this section shall be available only if the following conditions are met:

(i) A registration statement is in effect under the Securities Act of 1933 to the extent required as to the security which is the subject of such exemption, or the terms of any applicable exemption from registration under such act have been complied with, if required;

(ii) Any stockholder approval necessary to the issuance of the security which is the subject of the exemption, has been obtained; and

(iii) All other necessary official action, other than the filing or recording of charter amendments or other documents with the appropriate State authorities, has been taken to authorize and assure the issuance of the security which is the subject of such exemption.

(b) The exemption provided by this section shall terminate on the earliest of the following dates:

(1) When registration of the exempt security on the exchange become effective;

(2) When the exempt security is granted unlisted trading privileges on the exchange;

(3) The close of business on the tenth day after (i) withdrawal of an application for registration of the exempt security on the exchange; (ii) withdrawal by the exchange of its certification of approval of the exempt security for listing and registration; (iii) withdrawal of an application for admission of the exempt security to unlisted trading privileges on the exchange; or (iv) the sending to the exchange of notice of the entry of an order by the Commission denying any application for admission of the exempt security to unlisted trading privileges on the exchange;

(4) The close of business on the one hundred and twentieth day after the date on which the exempt security was admitted by action of the exchange to trading thereon as a security exempted from the operation of section 12 (a) by this section, unless prior thereto an application for registration of the exempt security or for admission of the exempt security to unlisted trading privileges on the exchange has been filed.

(c) Notwithstanding paragraph (b) of this section, the Commission, having due regard for the public interest and the protection of investors, may at any time extend the period of exemption of any security by this rule or may sooner terminate the exemption upon notice to the exchange and to the issuer of the extension or termination thereof.

(d) The Exchange shall file with the Commission a notification on Form 26[1] promptly after taking action to admit any security to trading under this section: *Provided, however,* That no notification need be filed under this section concerning the admission or proposed admission to trading of additional amounts of a class of security admitted to trading on such exchange.

(e) Section 240.10b–1 shall be applicable to all securities exempted from the operation of section 12(a) of the act by this section.

[1] Copy filed with the Federal Register Division.

(Secs. 3, 12, 48 Stat. 882, 892; 15 U.S.C. 78c (12), 78*l*)

[13 FR 8185, Dec. 22, 1948, as amended at 19 FR 669, Feb. 5, 1954; 20 FR 2081, Apr. 2, 1955; 53 FR 41206, Oct. 20, 1988]

§ 240.12a–6 Exemption of securities underlying certain options from section 12(a).

(a) When used in this rule, the following terms shall have the meanings indicated unless the context otherwise requires:

(1) The term *option* shall include any put, call, spread, straddle, or other option or privilege of buying a security from or selling a security to another without being bound to do so, but such term shall not include any such option where the writer is: The issuer of the security which may be purchased or sold upon exercise of the option, or is a person that directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such issuer;

(2) The term *underlying security* means a security which relates to or is the subject of an option.

(b) Any underlying security shall be exempt from the operation of section 12(a) of the Act if all of the following terms and conditions are met:

(1) The related option is duly listed and registered on a national securities exchange;

(2) The only transactions on such exchange with respect to such underlying securities consist of the delivery of and payment for such underlying securities pursuant to the terms of such options relating to the exercise thereof; and

(3) Such underlying security is (i) duly listed and registered on another national securities exchange at the time the option is issued; or (ii) duly quoted on the National Association of Securities Dealers Automated Quotation System (''NASDAQ'') at the time the option is issued.

(Secs. 3(a)(12); 48 Stat. 882, 84 Stat. 718, 1435, 1499 (15 U.S.C. 78(c)))

[38 FR 11449, May 8, 1973, as amended at 50 FR 20203, May 15, 1985]

§ 240.12a–7 Exemption of stock contained in standardized market baskets from section 12(a) of the Act.

(a) Any component stock of a standardized market basket shall be exempt from the registration requirement of section 12(a) of the Act, solely for the purpose of inclusion in a standardized market basket, provided that all of the following terms and conditions are met:

(1) The standardized market basket has been duly approved by the Commission for listing on a national securities exchange pursuant to the requirements of section 19(b) of the Act; and

(2) The stock is a National Market System security as defined in rule 11Aa2–1 under the Act (17 CFR 240.11Aa2–1) and is either:

(i) Listed and registered for trading on a national securities exchange by the issuer or

(ii) Quoted on the National Association of Securities Dealers Automated Quotation System;

(b) When used in this rule, the term standardized market basket means a group of at least 100 stocks purchased or sold in a single execution and at a single trading location with physical delivery and transfer of ownership of each component stock resulting from such execution.

[56 FR 28322, June 20, 1991]

§ 240.12a–8 Exemption of depositary shares.

Depositary shares (as that term is defined in § 240.12b–2) registered on Form F–6 (§ 239.36 of this chapter), but not the underlying deposited securities, shall be exempt from the operation of section 12(a) of the Act (15 U.S.C. 78*l*(a)).

[62 FR 39766, July 24, 1997]

REGULATION 12B: REGISTRATION AND REPORTING

SOURCE: Sections 240.12b–1 to 240.12b–36 appear at 13 FR 9321, Dec. 31, 1948, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

GENERAL

§ 240.12b–1 Scope of regulation.

The rules contained in this regulation shall govern all registration statements pursuant to sections 12(b) and 12(g) of the Act and all reports filed pursuant to sections 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[47 FR 11464, Mar. 16, 1982]

§ 240.12b–2 Definitions.

Unless the context otherwise requires, the following terms, when used in the rules contained in this regulation or in Regulation 13A or 15D or in the forms for statements and reports filed pursuant to sections 12, 13 or 15(d) of the act, shall have the respective meanings indicated in this rule:

Affiliate. An ''affiliate'' of, or a person ''affiliated'' with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Amount. The term ''amount,'' when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

Associate. The term ''associate'' used to indicate a relationship with any person, means (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities, (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such

person serves as trustee or in a similar fiduciary capacity, and (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

Certified. The term ''certified,'' when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

Charter. The term ''charter'' includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

Common equity. The term ''common equity'' means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

Control. The term ''control'' (including the terms ''controlling,'' ''controlled by'' and ''under common control with'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

Depositary share. The term ''depositary share'' means a security, evidenced by an American Depositary Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depositary.

Employee. The term ''employee'' does not include a director, trustee, or officer.

Fiscal year. The term ''fiscal year'' means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

Majority-owned subsidiary. The term ''majority-owned subsidiary'' means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary's parent and/or one or more of the parent's other majority-owned subsidiaries.

Managing underwriter. The term ''managing underwriter'' includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

Material. The term ''material,'' when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

Parent. A ''parent'' of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

Predecessor. The term ''predecessor'' means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

Previously filed or reported. The terms ''previously filed'' and ''previously reported'' mean previously filed with, or reported in, a statement under section 12, a report under section 13 or 15(d), a definitive proxy statement or information statement under section 14 of the act, or a registration statement under the Securities Act of 1933: *Provided*, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

Principal underwriter. The term ''principal underwriter'' means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

Promoter. (1) The term ''promoter'' includes:

(i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or

(ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of ''promoter'' in paragraph (1) of this definition may be referred to as ''founders'' or ''organizers'' or by another term provided that such term is reasonably descriptive of those persons' activities with respect to the issuer.

Prospectus. Unless otherwise specified or the context otherwise requires, the term ''prospectus'' means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

Registrant. The term ''registrant'' means an issuer of securities with respect to which a registration statement or report is to be filed.

Registration statement. The term ''registration statement'' or ''statement'', when used with reference to registration pursuant to section 12 of the act, includes both an application for registration of securities on a national securities exchange pursuant to section 12(b) of the act and a registration statement filed pursuant to section 12(g) of the act.

Share. The term ''share'' means a share of stock in a corporation or unit of interest in an unincorporated person.

Significant subsidiary. The term ''significant subsidiary'' means a subsidiary, including its subsidiaries, which meets any of the following conditions:

(1) The registrant's and its other subsidiaries' investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or

(2) The registrant's and its other subsidiaries' proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or

(3) The registrant's and its other subsidiaries' equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

Computational note: For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.

2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

Small Business Issuer. The term ''small business issuer'' means an entity that meets the following criteria:

(1) Has revenues of less than $25,000,000;

(2) Is a U.S. or Canadian issuer;

(3) Is not an investment company; and

(4) If a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer's outstanding voting and non-voting common equity held by non-affiliates) of $25,000,000 or more.

NOTE: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

Subsidiary. A ''subsidiary'' of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also ''majority-owned subsidiary,'' ''significant subsidiary,'' and ''totally-held subsidiary.'')

Succession. The term ''succession'' means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms ''succeed'' and ''successor'' have meanings correlative to the foregoing.

Totally held subsidiary. The term ''totally held subsidiary'' means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

Voting securities. The term ''voting securities'' means securities the holders of which are presently entitled to vote for the election of directors.

Wholly-owned subsidiary. The term ''wholly-owned subsidiary'' means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent's other wholly-owned subsidiaries.

[13 FR 9321, Dec. 31, 1948, as amended at 19 FR 6730, Oct. 30, 1954; 20 FR 8285, Nov. 4, 1955; 30 FR 2022, Feb. 13, 1965; 47 FR 11464, Mar. 16, 1982; 47 FR 29841, July 9, 1982; 47 FR 54780, Dec. 6, 1982; 48 FR 12350, Mar. 24, 1983; 50 FR 25216, June 18, 1985; 57 FR 36494, Aug. 13, 1992; 62 FR 26389, May 14, 1997]

§ 240.12b–3 Title of securities.

Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as ''maturing serially from 1950 to 1960''; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

§ 240.12b–4 Supplemental information.

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall

be returned to the registrant upon request, provided that:

(a) Such request is made at the time such information is furnished to the staff;

(b) The return of such information is consistent with the protection of investors; and

(c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

[47 FR 11465, Mar. 16, 1982]

§ 240.12b–5 Determination of affiliates of banks.

In determining whether a person is an ''affiliate'' or ''parent'' of a bank or whether a bank is a ''subsidiary'' or ''majority-owner subsidiary'' of a person within the meaning of those terms as defined in § 240.12b–2, voting securities of the bank held by a corporation all of the stock of which is directly owned by the United States Government shall not be taken into consideration.

§ 240.12b–6 When securities are deemed to be registered.

A class of securities with respect to which a registration statement has been filed pursuant to section 12 of the act shall be deemed to be registered for the purposes of sections 13, 14, 15(d) and 16 of the act and the rules and regulations thereunder only when such statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14 and 16 of the act until such statement has become effective as provided in section 12.

(Secs. 3, 14, 16, 48 Stat. 882, 895, 896, sec. 3(d), 78 Stat. 568; 15 U.S.C. 78c, 78n, 78p, 78*l*)
[30 FR 482, Jan. 14, 1965]

§ 240.12b–7 [Reserved]

FORMAL REQUIREMENTS

§ 240.12b–10 Requirements as to proper form.

Every statement or report shall be on the form prescribed therefor by the Commission, as in effect on the date of filing. Any statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)
[30 FR 2022, Feb. 13, 1965]

§ 240.12b–11 Number of copies; signatures; binding.

(a) Except as provided in a particular form, three complete copies of each statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission. At least one complete copy of each statement shall be filed with each exchange on which the securities covered thereby are to be registered. At least one complete copy of each report under section 13 of the Act shall be filed with each exchange on which the registrant has securities registered.

(b) At least one copy of each statement or report filed with the Commission and one copy thereof filed with each exchange shall be signed in the manner prescribed by the appropriate form.

(c) Each copy of a statement or report filed with the Commission or with an exchange shall be bound in one or more parts. Copies filed with the Commission shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.

(d) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder, including paragraph (b) of this section, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of

any or all documents retained pursuant to this section.

[47 FR 11465, Mar. 16, 1982, as amended at 60 FR 26622, May 17, 1995; 61 FR 30403, June 14, 1996]

§ 240.12b–12 Requirements as to paper, printing and language.

(a) Statements and reports shall be filed on good quality, unglazed white paper, no larger than 8½ x 11 inches in size, insofar as practicable. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size.

(b) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record and microfilming. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(c) The body of all printed statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(d) Statements and reports shall be in the English language. If any exhibit or other paper or document filed with a statement or report is in a foreign language, it shall be accompanied by a summary, version or translation in the English language.

(e) Where a statement or report is distributed to investors through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size and type size and font, by presenting all required information in a format readily communicated to investors.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901 (15 U.S.C. 77d, 78p, 77s, 78x))

[47 FR 11466, Mar. 16, 1982, as amended at 47 FR 58238, Dec. 30, 1982; 61 FR 24656, May 15, 1996]

§ 240.12b–13 Preparation of statement or report.

The statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

§ 240.12b–14 Riders, inserts.

Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

§ 240.12b–15 Amendments.

All amendments shall be filed under cover of the form amended, marked with the letter ''A'' to designate the document as an amendment, *e.g.*, ''10–K/A,'' and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section shall set forth the

complete text of each item as amended. Amendments shall be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments shall be signed on behalf of the registrant by a duly authorized representative of the registrant. The requirements of the form being amended shall govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. *See* Rule 309 of Regulation S–T (§ 232.309 of this chapter).

[58 FR 14682, Mar. 18, 1993, as amended at 59 FR 67764, Dec. 30, 1994]

GENERAL REQUIREMENTS AS TO CONTENTS

§ 240.12b–20 Additional information.

In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)
[30 FR 2023, Feb. 13, 1965]

§ 240.12b–21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions.

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

§ 240.12b–22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

§ 240.12b–23 Incorporation by reference.

(a) Except for information filed as an exhibit which is covered by Rule 12b–32 (17 CFR 240.12b–32), information may be incorporated by reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

(1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;

(2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and

(3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:

(i) A proxy or information statement incorporated by reference in response to Part III of Form 10–K and Form 10–KSB (§ 249.310 and § 249.310b); and

(ii) A form of prospectus filed pursuant to § 230.424(b) incorporated by reference in response to Item 1 of Form 8–A (§ 249.208a) need not be filed as an exhibit.

(b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of § 228.10(f) and § 229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

[47 FR 11466, Mar. 16, 1982, as amended at 57 FR 48977, Oct. 29, 1992; 60 FR 32825, June 23, 1995]

§ 240.12b–24 [Reserved]

§ 240.12b–25 Notification of inability to timely file all or any required portion of a Form 10–K, 10–KSB, 20–F, 11–K, N–SAR, Form 10–Q or Form 10–QSB.

(a) If all or any required portion of an annual or transition report on Form 10–K, 10–KSB, 20–F or 11–K or a quarterly or transition report on Form 10–Q or 10–QSB required to be filed pursuant to sections 13 or 15(d) of the Act and rules thereunder or if all or any portion of a semi-annual, annual or transition report on Form N–SAR required to be filed pursuant to section 30 of the Investment Company Act of 1940 and the rules thereunder is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b–25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.

(b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:

(1) The registrant files the Form 12b–25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;

(2) The registrant represents in the Form 12b–25 that:

(i) The reason(s) causing the inability to file timely could not be eliminated by the registrant without unreasonable effort or expense; and

(ii) Either the subject annual report, semi-annual report or transition report on Form 10–K, 10–KSB, 20–F, 11–K or N–SAR, or portion thereof, will be filed no later than the fifteenth calendar day following the prescribed due date or the subject quarterly report or transition report on Form 10–Q or 10–QSB, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

(3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.

(c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 12b–25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.

(d) Notwithstanding paragraph (b) of this section, a registrant will not be eligible to use any registration statement form under the Securities Act of 1933 the use of which is predicated on timely filed reports until the subject report is actually filed pursuant to paragraph (b)(3) of this section.

(e) If a Form 12b–25 filed pursuant to paragraph (a) of this sectin relates only

to a portion of a subject report, the registrant shall:

(1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and

(2) Include, on the upper right corner of the amendment to the report which includes the previously omitted information, the following statement:

The following items were the subject of a Form 12b–25 and are included herein: (*List Item Numbers*)

(f) The provisions of this section shall not apply to financial statements to be filed by amendment to a form 10–K as provided for by paragraph (a) of § 210.3–09 or schedules to be filed by amendment in accordance with General Instruction A to form 10–K.

(g) *Electronic filings*. The provisions of this section shall not apply to reports required to be filed in electronic format if the sole reason the report is not filed within the time period prescribed is that the filer is unable to file the report in electronic format. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with either Rule 201 or 202 of Regulation S–T (§ 232.201 and § 232.202 of this chapter), or apply for an adjustment of filing date pursuant to Rule 13(b) of Regulation S–T (§ 232.13(c) of this chapter).

[45 FR 23652, Apr. 8, 1980, as amended at 50 FR 1449, Jan. 11, 1985; 50 FR 2957, Jan. 23, 1985; 54 FR 10316, Mar. 13, 1989; 58 FR 14683, Mar. 18, 1993; 58 FR 21349, Apr. 21, 1993; 59 FR 67764, Dec. 30, 1994]

EXHIBITS

§ 240.12b–30 Additional exhibits.

The registrant may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

§ 240.12b–31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

§ 240.12b–32 Incorporation of exhibits by reference.

(a) Any document or part thereof filed with the Commission pursuant to any act administered by the Commission may, subject to § 228.10(f) and § 229.10(d) of this chapter be incorporated by reference as an exhibit to any statement or report filed with the Commission by the same or any other person. Any document or part thereof filed with an exchange pursuant to the act may be incorporated by reference as an exhibit to any statement or report filed with the exchange by the same or any other person.

(b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[13 FR 9321, Dec. 31, 1948, as amended at 30 FR 2023, Feb. 13, 1965; 60 FR 32825, June 23, 1995]

§ 240.12b–33 Annual reports to other Federal agencies.

Notwithstanding any rule or other requirement to the contrary, whenever copies of an annual report by a registrant to any other Federal agency are required or permitted to be filed as an exhibit to an application or report filed by such registrant with the Commission or with a securities exchange, only one copy of such annual report need be filed with the Commission and one copy thereof with each such exchange, provided appropriate reference to such

copy is made in each copy of the application or report filed with the Commission or with such exchange.

[18 FR 1441, Mar. 13, 1953]

SPECIAL PROVISIONS

§ 240.12b–35 [Reserved]

§ 240.12b–36 Use of financial statements filed under other acts.

Where copies of certified financial statements filed under other acts administered by the Commission are filed with a statement or report, the accountant's certificate shall be manually signed or manually signed copies of the certificate shall be filed with the financial statements. Where such financial statements are incorporated by reference in a statement or report, the written consent of the accountant to such incorporation by reference shall be filed with the statement or report. Such consent shall be dated and signed manually.

(Secs. 4, 16, 19, 24, 48 Stat. 77, 896, 85, as amended, 901; 15 U.S.C. 77d, 78p, 77s, 78x)

[30 FR 2023, Feb. 13, 1965]

CERTIFICATION BY EXCHANGES AND EFFECTIVENESS OF REGISTRATION

SOURCE: Sections 240.12d1–1 to 240.12d–6 appear at 19 FR 670, Feb. 5, 1954, unless otherwise noted.

§ 240.12d1–1 Registration effective as to class or series.

(a) An application filed pursuant to section 12 (b) and (c) of the act for registration of a security on a national securities exchange shall be deemed to apply for registration of the entire class of such security. Registration shall become effective, as provided in section 12(d) of the act, (1) as to the shares or amounts of such class then issued, and (2), without further application for registration, upon issuance as to additional shares or amounts of such class then or thereafter authorized.

(b) This section shall apply to classes of securities of which a specified number of shares or amounts was registered or registered upon notice of issuance, and to applications for registration filed, prior to the close of business on January 28, 1954, as well as to classes registered, or applications filed, thereafter.

(c) This section shall not affect the right of a national securities exchange to require the issuer of a registered security to file documents with or pay fees to the exchange in connection with the modification of such security or the issuance of additional shares or amounts.

(d) If a class of security is issuable in two or more series with different terms, each such series shall be deemed a separate class for the purposes of this section.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

§ 240.12d1–2 Effectiveness of registration.

(a) A request for acceleration of the effective date of registration pursuant to section 12(d) of the act and § 240.12d1–1 shall be made in writing by either the registrant, the exchange, or both and shall briefly describe the reasons therefor.

(b) A registration statement on Form 8–A (17 CFR 249.208a) for the registration of a class of securities under Section 12(b) of the Act (15 U.S.C. 78*l*(b)) shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act of 1933 (''Securities Act''), upon the later of receipt by the Commission of certification from the national securities exchange or the filing of the Form 8–A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8–A with the Commission, receipt by the Commission of certification from the national securities exchange listed on the Form 8–A or effectiveness of the Securities Act registration statement relating to the class of securities.

(c) A registration statement on Form 8–A (17 CFR 249.208a) for the registration of a class of securities under Section 12(g) of the Act (15 U.S.C. 78*l*(g)) shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act, upon the filing of the Form 8–A with the Commission; or

(2) If class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8–A with the Commission or the effectiveness of the Securities Act registration statement relating to the class of securities.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

[19 FR 670, Feb. 5, 1954, as amended at 59 FR 55347, Nov. 7, 1994; 62 FR 39766, July 24, 1997]

§ 240.12d1–3 Requirements as to certification.

(a) Certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the act and § 240.12d1–1 shall be made by the governing committee or other corresponding authority of the exchange.

(b) The certification shall specify (1) the approval of the exchange for listing and registration; (2) the title of the security so approved; (3) the date of filing with the exchange of the application for registration and of any amendments thereto; and (4) any conditions imposed on such certification. The exchange shall promptly notify the Commission of the partial or complete satisfaction of any such conditions.

(c) The certification may be made by telegram but in such case shall be confirmed in writing. All certifications in writing and all amendments thereto shall be filed with the Commission in duplicate and at least one copy shall be manually signed by the appropriate exchange authority.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

§ 240.12d1–4 Date of receipt of certification by Commission.

The date of receipt by the Commission of the certification approving a security for listing and registration shall be the date on which the certification is actually received by the Commission or the date on which the application for registration to which the certification relates is actually received by the Commission, whichever date is later.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

§ 240.12d1–5 Operation of certification on subsequent amendments.

If an amendment to the application for registration of a security is filed with the exchange and with the Commission after the receipt by the Commission of the certification of the exchange approving the security for listing and registration, the certification, unless withdrawn, shall be deemed made with reference to the application as amended.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

§ 240.12d1–6 Withdrawal of certification.

An exchange may, by notice to the Commission, withdraw its certification prior to the time that the registration to which it relates first becomes effective pursuant to § 240.12d1–1.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

SUSPENSION OF TRADING, WITHDRAWAL, AND STRIKING FROM LISTING AND REGISTRATION

§ 240.12d2–1 Suspension of trading.

(a) A national securities exchange may suspend from trading a security listed and registered thereon in accordance with its rules. Such exchange shall promptly notify the Commission of any such suspension, the effective date thereof, and the reasons therefor.

(b) Any such suspension may be continued until such time as it shall appear to the Commission that such suspension is designed to evade the provisions of section 12(d) and the rules and regulations thereunder relating to the withdrawal and striking of a security from listing and registration. During the continuance of such suspension the exchange shall notify the Commission promptly of any change in the reasons for the suspension. Upon the restoration to trading of any security suspended under this rule, the exchange shall notify the Commission promptly of the effective date thereof.

(c) Suspension of trading shall not terminate the registration of any security.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)
[28 FR 1506, Feb. 16, 1963]

§ 240.12d2–2 Removal from listing and registration.

(a) A national securities exchange shall file with the Commission an application on Form 25 to strike a security from listing and registration thereon within a reasonable time after the exchange is reliably informed that any of the following conditions exist with respect to such a security:

(1) The entire class of the security has been called for redemption, maturity or retirement; appropriate notice thereof has been given; funds sufficient for the payment of all such securities have been deposited with an agency authorized to make such payments; and such funds have been made available to security holders.

(2) The entire class of the security has been redeemed or paid at maturity or retirement.

(3) The instruments representing the securities comprising the entire class have come to evidence, by operation of law or otherwise, other securities in substitution therefor and represent no other right, except, if such be the fact, the right to receive an immediate cash payment (the right of dissenters to receive the appraised or fair value of their holdings shall not prevent the application of this provision).

(4) All rights pertaining to the entire class of the security have been extinguished: *Provided, however,* That where such an event occurs as the result of an order of a court or other governmental authority, the order shall be final, all applicable appeal periods shall have expired, and no appeals shall be pending.

EFFECTIVE DATE: Such an application shall be deemed to be granted and shall become effective at the opening of business on such date as the exchange shall specify in said application, but not less than 10 days following the date on which said application is filed with the Commission; *Provided, however,* That in the event removal is being effected under paragraph (a)(3) of this section and the exchange has admitted or intends to admit a successor security to trading under the temporary exemption provided for by § 240.12a–5, such date shall not be earlier than the date on which the successor security is removed from its exempt status.

(b)(1) A national securities exchange may strike a security from listing and registration thereon if (i) trading in such security has been terminated pursuant to a rule of such exchange requiring such termination whenever the security is admitted to trading on another exchange; and (ii) listing and registration of such security has become effective on such other exchange.

(2) A national securities exchange which has striken a security from listing and registration under the provisions of this paragraph shall send written notice of such action to the Commission within 3 days from the date thereof.

(c) In cases not provided for in paragraph (a) or (b) of this section, a national securities exchange may file an application to strike a security from listing and registration, in accordance with its rules, on a date specified in the application, which date shall be not less than 10 days after it is filed with the Commission. The Commission will enter an order granting such application on the date specified in the application unless the Commission, by written notice to the exchange, postpones the effective date for a period of not more than 60 days thereafter: *Provided, however,* That the Commission, by written notice to the exchange on or before the effective date, may order a hearing to determine whether the application to strike the security from listing and registration has been made in accordance with the rules of the exchange, or what terms should be imposed by the Commission for the protection of investors.

(d) The issuer of a security listed and registered on a national securities exchange may file an application to withdraw such security from listing and registration on such exchange in accordance with the rules of such exchange. Notice of the filing of such an application shall be published by the Commission in the FEDERAL REGISTER, and such notice shall provide that any interested person may, on or before a date specified, submit to the Commission in writing, all facts bearing upon whether the application to withdraw the security from listing and registration has been made in accordance with the rules of the exchange and what

terms should be imposed by the Commission for the protection of investors. An order disposing of the matter will be issued by the Commission on the basis of the application and any other information furnished to the Commission unless prior thereto the Commission orders a hearing on the matter.

(e) An application by an issuer or by a national securities exchange to withdraw or strike a security from listing and registration pursuant to the provisions of paragraph (c) or (d) of this section shall comply with the following requirements:

(1) The application shall be filed in triplicate, the original of which shall be dated and signed by an authorized official of the exchange, or of the issuer, as the case may be.

(2) If the applicant is the exchange it shall promptly deliver a copy of the application to the issuer and if the applicant is the issuer it shall promptly deliver a copy of the application to the exchange.

(3) The application shall set forth a description of the security involved together with a statement of all material facts relating to the reasons for filing such application for withdrawal or striking from listing and registration.

(4) The application shall set forth the steps taken by the applicant to comply with the rules of the exchange governing the delisting of securities.

(f) If within 30 days after the publication of any rule or regulation which substantially alters or adds to the obligations, or detracts from the rights, of an issuer of a security registered pursuant to application under section 12 (b) or (c), or of its officers, directors, or security holders, or of persons soliciting or giving any proxy or consent or authorization with respect to such security, the issuer shall file with the Commission a request that such registration shall expire and shall accompany such request with a written explanation of the reasons why the publication of such rule or regulation leads the issuer to make such request, such registration shall expire immediately upon receipt of such request or immediately before such rule or regulation becomes effective, whichever date is later. The absence of an express reservation, in an application for registration, of the rights herein granted shall not be deemed a waiver thereof.

(Sec. 12, 48 Stat. 892, as amended; 15 U.S.C. 78*l*)

[28 FR 1506, Feb. 16, 1963]

UNLISTED TRADING

§ 240.12f–1 Applications for permission to reinstate unlisted trading privileges.

(a) An application to reinstate unlisted trading privileges may be made to the Commission by any national securities exchange for the extension of unlisted trading privileges to any security for which such unlisted trading privileges have been suspended by the Commission, pursuant to section 12(f)(2)(A) of the Act (15 U.S.C. 78*l*(2)(A)). One copy of such application, executed by a duly authorized officer of the exchange, shall be filed and shall set forth:

(1) Name of issuer;

(2) Title of security;

(3) The name of each national securities exchange, if any, on which such security is listed or admitted to unlisted trading privileges; and

(4) Whether transaction information concerning such security is reported in the consolidated transaction reporting system contemplated by Rule 11Aa3–1 under the Act (§ 240.11Aa3–1);

(5) The date of the Commission's suspension of unlisted trading privileges in the security on the exchange;

(6) Any other information which is deemed pertinent to the question of whether the reinstatement of unlisted trading privileges in such security is consistent with the maintenance of fair and orderly markets and the protection of investors; and

(7) That a copy of the instant application has been mailed, or otherwise personally provided, to the issuer of the securities for which unlisted trading privileges are sought and to each exchange listed in item (3) of this section.

(Secs. 12 and 23, Pub. L. 78–291, 48 Stat 894 and 901, as amended by secs. 8 and 18, Pub. L. 94–29, 89 Stat. 117 and 155 (15 U.S.C. 78*l* and 78w))

[44 FR 75134, Dec. 19, 1979, as amended at 45 FR 12390, Feb. 26, 1980; 45 FR 36076, May 29, 1980; 60 FR 20896, Apr. 28, 1995]

§ 240.12f–2 Extending unlisted trading privileges to a security that is the subject of an initial public offering.

(a) *General Provision*. A national securities exchange may extend unlisted trading privileges to a subject security on or after such national securities exchange opens for trading on the day that follows the day on which the initial public offering of such subject security commences.

(b) The extension of unlisted trading privileges pursuant to this section shall be subject to all the provisions set forth in Section 12(f) of the Act (15 U.S.C. 78*l*(f)), as amended, and any rule or regulation promulgated thereunder, or which may be promulgated thereunder while the extension is in effect.

(c) *Definitions*. For the purposes of this section:

(1) The term *subject security* shall mean a security that is the subject of an initial public offering, as that term is defined in section 12(f)(1)(G)(i) of the Act (15 U.S.C. 78l(f)(1)(G)(i)), and

(2) An *initial public offering commences* at such time as is described in section 12(f)(1)(G)(ii) of the Act (15 U.S.C. 78l(f)(*1*)(G)(ii)).

[60 FR 20896, Apr. 28, 1995]

§ 240.12f–3 Termination or suspension of unlisted trading privileges.

(a) The issuer of any security for which unlisted trading privileges on any exchange have been continued or extended, or any broker or dealer who makes or creates a market for such security, or any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges, may make application to the Commission for the termination or suspension of such unlisted trading privileges. One duly executed copy of such application shall be filed, and it shall contain the following information:

(1) Name and address of applicant;

(2) A brief statement of the applicant's interest in the question of termination or suspension of such unlisted trading privileges;

(3) Title of security;

(4) Names of issuer;

(5) Amount of such security issued and outstanding (number of shares of stock or principal amount of bonds), stating source of information;

(6) Annual volume of public trading in such security (number of shares of stock or principal amount of bonds) on such exchange for each of the three calendar years immediately preceding the date of such application, and monthly volume of trading in such security for each of the twelve calendar months immediately preceding the date of such application;

(7) Price range on such exchange for each of the twelve calendar months immediately preceding the date of such application; and

(8) A brief statement of the information in the applicant's possession, and the source thereof, with respect to (i) the extent of public trading in such security on such exchange, and (ii) the character of trading in such security on such exchange; and

(9) A brief statement that a copy of the instant application has been mailed, or otherwise personally provided, to the exchange from which the suspension or termination of unlisted trading privileges is sought, and to any other exchange on which such security is listed or traded pursuant to unlisted trading privileges.

(b) Unlisted trading privileges in any security on any national securities exchange may be suspended or terminated by such exchange in accordance with its rules.

(Secs. 12(f) and 23, 15 U.S.C. 78*l* and 78w)

[20 FR 6702, Sept. 13, 1955, as amended at 44 FR 75135, Dec. 19, 1979; 45 FR 36076, May 29, 1980; 60 FR 20896, Apr. 28, 1995]

§ 240.12f–4 Exemption of securities admitted to unlisted trading privileges from sections 13, 14 and 16.

(a) Any security for which unlisted trading privileges on any national securities exchange have been continued or extended pursuant to section 12(f) of the Act shall be exempt from section 13 of the Act unless (1) such security or another security of the same issuer is listed and registered on a national securities exchange or registered pursuant to section 12(g) of the Act, or (2) such issuer would be required to file information, documents and reports pursuant to section 15(d) of the Act but for the fact that securities of the issuer

are deemed to be ''registered on a national securities exchange'' within the meaning of section 12(f)(6) of the Act.

(b) Any security for which unlisted trading privileges on any national securities exchange have been continued or extended pursuant to section 12(f) of the Act shall be exempt from section 14 of the Act unless such security is also listed and registered on a national securities exchange or registered pursuant to section 12(g) of the Act.

(c)(1) Any equity security for which unlisted trading privileges on any national securities exchange have been continued or extended pursuant to section 12(f) of the Act shall be exempt from section 16 of the act unless such security or another equity security of the same issuer is listed and registered on a national securities exchange or registered pursuant to section 12(g) of the Act.

(2) Any equity security for which unlisted trading privileges on any national securities exchange have been continued or extended pursuant to section 12(f) of the Act and which is not listed and registered on any other such exchange or registered pursuant to section 12(g) of the Act shall be exempt from section 16 of the Act insofar as that section would otherwise apply to any person who is directly or indirectly the beneficial owner of more than 10 percent of such security, unless another equity security of the issuer of such unlisted security is so listed or registered and such beneficial owner is a director or officer of such issuer or directly or indirectly the beneficial owner of more than 10 percent of any such listed security.

(d) Any reference in this section to a security registered pursuant to section 12(g) of the Act shall include, and any reference to a security not so registered shall exclude, any security as to which a registration statement pursuant to such section is at the time required to be effective.

(Sec. 3, 78 Stat. 565, 15 U.S.C. 78*l*)
[30 FR 482, Jan. 14, 1965]

§ 240.12f–5 Exchange rules for securities to which unlisted trading privileges are extended.

A national securities exchange shall not extend unlisted trading privileges to any security unless the national securities exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading privileges.

[60 FR 20896, Apr. 28, 1995]

§ 240.12f–6 [Reserved]

EXTENSIONS AND TEMPORARY EXEMPTIONS; DEFINITIONS

§ 240.12g–1 Exemption from section 12(g).

An issuer shall be exempt from the requirement to register any class of equity securities pursuant to section 12(g)(1) if on the last day of its most recent fiscal year the issuer had total assets not exceeding $10 million and, with respect to a foreign private issuer, such securities were not quoted in an automated inter-dealer quotation system.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–574; secs. 1, 2, 82 Stat. 454; sec. 28(c), 84 Stat. 1435; secs. 1, 2, 84 Stat. 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1494, 1498, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78*o*(d), 78w(a))

[48 FR 46739, Oct. 14, 1983, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

§ 240.12g–2 Securities deemed to be registered pursuant to section 12(g)(1) upon termination of exemption pursuant to section 12(g)(2) (A) or (B).

Any class of securities which would have been required to be registered pursuant to section 12(g)(1) of the Act except for the fact that it was exempt from such registration by section 12(g)(2)(A) because it was listed and registered on a national securities exchange, or by section 12(g)(2)(B) because it was issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, shall upon the termination of the listing and registration of such

class or the termination of the registration of such company and without the filing of an additional registration statement be deemed to be registered pursuant to said section 12(g)(1) if at the time of such termination (a) the issuer of such class of securities has elected to be regulated as a business development company pursuant to sections 55 through 65 of the Investment Company Act of 1940 and such election has not been withdrawn, or (b) securities of the class are not exempt from such registration pursuant to section 12 or rules thereunder delete ''or'' and all securities of such class are held of record by 300 or more persons.

[47 FR 17052, Apr. 21, 1982]

§ 240.12g–3 Registration of securities of successor issuers under section 12(b) or 12(g).

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) are issued to the holders of any class of securities of another issuer that is registered pursuant to either section 12 (b) or (g) of the Act (15 U.S.C. 78*l* (b) or (g)), the class of securities so issued shall be deemed to be registered under the same paragraph of section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3–2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78*l*) but for this section.

(b) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) are issued to the holders of any class of securities of another issuer that is required to file a registration statement pursuant to either section 12(b) or (g) of the Act (15 U.S.C. 78*l*(b) or (g)) but has not yet done so, the duty to file such statement shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall file a registration statement pursuant to the same paragraph of section 12 of the Act with respect to such class within the period of time the predecessor issuer would have been required to file such a statement unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3–2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following the succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78*l*) but for this section.

(c) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of an issuer that are not already registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) are issued to the holders of classes of securities of two or more other issuers that are each registered pursuant to section 12 of the Act, the class of securities so issued shall be deemed to be registered under section 12 of the Act unless upon consummation of the succession:

(1) Such class is exempt from such registration other than by § 240.12g3–2;

(2) All securities of such class are held of record by less than 300 persons; or

(3) The securities issued in connection with the succession were registered on Form F–8 or Form F–80 (§ 239.38 or § 239.41 of this chapter) and following succession the successor would not be required to register such class of securities under section 12 of the Act (15 U.S.C. 78*l*) but for this section.

(d) If the classes of securities issued by two or more predecessor issuers (as

described in paragraph (c) of this section) are registered under the same paragraph of section 12 of the Act (15 U.S.C. 78*l*), the class of securities issued by the successor issuer shall be deemed registered under the same paragraph of section 12 of the Act. If the classes of securities issued by the predecessor issuers are not registered under the same paragraph of section 12 of the Act, the class of securities issued by the successor issuer shall be deemed registered under section 12(g) of the Act (15 U.S.C. 78*l*(g)).

(e) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraph (a), (b), (c) or (d) of this section shall file reports on the same forms and such class of securities shall be subject to the provisions of sections 14 and 16 of the Act (15 U.S.C. 78n and 78p) to the same extent as the predecessor issuers, except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 249.220f of this chapter) or to use the exemption in § 240.3a12–3.

(2) A foreign private issuer shall be eligible to file on Form 20–F (§ 249.220f of this chapter) and to use the exemption in § 240.3a12–3.

(f) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraphs (a), (b), (c) or (d) of this section shall indicate in the Form 8–K (§ 249.308 of this chapter) report filed with the Commission in connection with the succession, pursuant to the requirements of Form 8–K, the paragraph of section 12 of the Act under which the class of securities issued by the successor issuer is deemed registered by operation of paragraphs (a), (b), (c) or (d) of this section. If a successor issuer that is deemed registered under section 12(g) of the Act (15 U.S.C. 78*l*(g)) by paragraph (d) of this section intends to list a class of securities on a national securities exchange, it must file a registration statement pursuant to section 12(b) of the Act (15 U.S.C. 78*l*(b)) with respect to that class of securities.

(g) An issuer that is deemed to have a class of securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) according to paragraph (a), (b), (c) or (d) of this section shall file an annual report for each fiscal year beginning on or after the date as of which the succession occurred. Annual reports shall be filed within the period specified in the appropriate form. Each such issuer shall file an annual report for each of its predecessors that had securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) covering the last full fiscal year of the predecessor before the registrant's succession, unless such report has been filed by the predecessor. Such annual report shall contain information that would be required if filed by the predecessor.

[62 FR 39767, July 24, 1997]

§ 240.12g3–2 Exemptions for American depositary receipts and certain foreign securities.

(a) Securities of any class issued by any foreign private issuer shall be exempt from section 12(g) of the Act if the class has fewer than 300 holders resident in the United States. This exemption shall continue until the next fiscal year end at which the issuer has a class of equity securities held by 300 or more persons resident in the United States. For the purpose of determining whether a security is exempt pursuant to this paragraph, securities held of record by persons resident in the United States shall be determined as provided in Rule 12g5–1 (§ 240.12g5–1 of this chapter) except that securities held of record by a broker, dealer, bank or nominee for any of them for the accounts of customers resident in the United States shall be counted as held in the United States by the number of separate accounts for which the securities are held. The issuer may rely in good faith on information as to the number of such separate accounts supplied by all owners of the class of its securities which are brokers, dealers, or banks or a nominee for any of them.

(b)(1) Securities of any foreign private issuer shall be exempt from section 12(g) of the Act if the issuer, or a government official or agency of the country of the issuer's domicile or in which it is incorporated or organized:

(i) Shall furnish to the Commission whatever information in each of the following categories the issuer since

the beginning of its last fiscal year (A) has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized, (B) has filed or is required to file with a stock exchange on which its securities are traded and which was made public by such exchange, or (C) has distributed or is required to distribute to its security holders;

(ii) Shall furnish to the Commission a list identifying the information referred to in paragraph (b)(1)(i) of this section and stating when and by whom it is required to be made public, filed with any such exchange, or distributed to security holders;

(iii) Shall furnish to the Commission, during each subsequent fiscal year, whatever information is made public as described in paragraphs (b)(1)(i) (A), (B) or (C) of this section promptly after such information is made or required to be made public as described therein;

(iv) Shall, promptly after the end of any fiscal year in which any changes occur in the kind of information required to be published as referred to in the list furnished under paragraph (b)(1)(ii) of this section or any subsequent list, furnish to the Commission a revised list reflecting such changes; and

(v) Shall furnish to the Commission in connection with the initial submission the following information to the extent known or which can be obtained without unreasonable effort or expense: the number of holders of each class of equity securities resident in the United States, the amount and percentage of each class of outstanding equity securities held by residents in the United States, the circumstances in which such securities were acquired, and the date and circumstances of the most recent public distribution of securities by the issuer or an affiliate thereof.

(2) The information required to be furnished under paragraphs (b)(1)(i) and (ii) of this section shall be furnished on or before the date on which a registration statement under section 12(g) of the Act would otherwise be required to be filed. Any issuer furnishing information under paragraph (b)(1)(i) of this section shall notify the Commission that it is furnished under that paragraph.

(3) The information required to be furnished under this paragraph (b) is information material to an investment decision such as: the financial condition or results of operations; changes in business; acquisitions or dispositions of assets; issuance, redemption or acquisitions of their securities; changes in management or control; the granting of options or the payment of other remuneration to directors or officers; and transactions with directors, officers or principal security holders.

(4) Only one complete copy of any information or document need be furnished under paragraph (b)(1) of this section. Such information and documents need not be under cover of any prescribed form and shall not be deemed to be ''filed'' with the Commission or otherwise subject to the liabilities of section 18 of the Act. Press releases and all other communications or materials distributed directly to securityholders of each class of securities to which the exemption relates shall be in English. English versions or adequate summaries in English may be furnished in lieu of original English translations. No other documents need be furnished unless the issuer has prepared or caused to be prepared, English translations, versions, or summaries of them. If no English translations, versions, or summaries have been prepared, a brief description in English of any such documents shall be furnished. Information or documents in a language other than English are not required to be furnished. If practicable, the Commission file number shall appear on the information furnished or in an accompanying letter. Any information or document previously sent to the Commission under cover of Form 40–F or Form 6–K need not be furnished under paragraph (b)(1) of this section.

(5) The furnishing of any information or document under paragraph (b) of this rule shall not constitute an admission for any purpose that the issuer is subject to the Act.

(c) Depositary Shares registered on Form F–6 (§ 239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph (c).

(d) The exemption provided by paragraph (b) of this rule shall not be available for the following securities:

(1) Securities of a foreign private issuer that has or has had during the prior eighteen months any securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act (other than arising solely by virtue of the use of Form F–7, F–8, F–9, F–10 or F–80) ;

(2) Securities of a foreign private issuer issued in a transaction (other than a transaction registered on Form F–8, F–9, F–10 or F–80) to acquire by merger, consolidation, exchange of securities or acquisition of assets, another issuer that had securities registered under section 12 of the Act or a reporting obligation (suspended or active) under section 15(d) of the Act; and

(3) Securities quoted in an ''automated inter-dealer quotation system'' or securities represented by American Depositary Receipts so quoted unless all the following conditions are met:

(i) Such securities were so quoted on October 5, 1983 and have been continuously traded since;

(ii) The issuer is in compliance with the exemption in paragraph (b) of this section on October 5, 1983 and has continuously maintained the exemption since; and

(iii) After January 2, 1986, the issuer is organized under the laws of any country except Canada or a political subdivision thereof.

[48 FR 46739, Oct. 14, 1983, as amended at 49 FR 12689, Mar. 30, 1984; 56 FR 30068, July 1, 1991]

§ 240.12g–4 Certifications of termination of registration under section 12(g).

(a) Termination of registration of a class of securities shall take effect 90 days, or such shorter period as the Commission may determine, after the issuer certifies to the Commission on Form 15 that:

(1) Such class of securities is held of record by:

(i) Less than 300 persons; or

(ii) By less than 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years; or

(2) Such class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), is held of record by:

(i) Less than 300 persons resident in the United States or

(ii) Less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years.

For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)).

(b) The issuer's duty to file any reports required under section 13(a) shall be suspended immediately upon filing a certification on Form 15; *Provided, however,* That if the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of such withdrawal or denial, file with the Commission all reports which would have been required had the certification on Form 15 not been filed. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the certification shall be filed by the successor issuer.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78w(a))

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

§ 240.12g5–1 Definition of securities "held of record".

(a) For the purpose of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be ''held of record'' by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer, subject to the following:

(1) In any case where the records of security holders have not been maintained in accordance with accepted practice, any additional person who would be identified as such an owner on

such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Securities held by two or more persons as coowners shall be included as held by one person.

(5) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the issuer can establish that, if such securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of persons.

(6) Securities registered in substantially similar names where the issuer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(b) Notwithstanding paragraph (a) of this section:

(1) Securities held, to the knowledge of the issuer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities: *Provided, however,* That the issuer may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or evidences of interest.

(2) Whole or fractional securities issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution for the sole purpose of qualifying a borrower for membership in the issuer, and which are to be redeemed or repurchased by the issuer when the borrower's loan is terminated, shall not be included as held of record by any person.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78*l*)
[30 FR 484, Jan. 14, 1965]

§ 240.12g5–2 Definition of total assets.

For the purpose of section 12(g)(1) of the Act, the term *total assets* shall mean the total assets as shown on the issuer's balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is larger, as required to be filed on the form prescribed for registration under this section and prepared in accordance with the pertinent provisions of Regulation S–X (17 CFR part 210). Where the security is a certificate of deposit, voting trust certificate, or certificate or other evidence of interest in a similar trust or agreement, the ''total assets'' of the issuer of the security held under the trust or agreement shall be deemed to be the ''total assets'' of the issuer of such certificate or evidence of interest.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78*l*)
[30 FR 484, Jan. 14, 1965]

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

Issuers shall be exempt from the provisions of section 12(g) of the Act with respect to the following securities:

(a) Any interest or participation in an employee stock bonus, stock purchase, profit sharing, pension, retirement, incentive, thrift, savings or similar plan which is not transferable by the holder except in the event of death or mental incompetency, or any security issued solely to fund such plans;

(b) Any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian. For purposes of this paragraph (b), the

term ''common trust fund'' shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affilated group in the capacity of trustee, executor, administrator, or guardian; *Provided,* That:

(1) The common trust fund is operated in compliance with the same state and Federal regulatory requirements as would apply if the bank maintaining such fund as any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributiong bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group; and

(c) Any class of equity security which would not be outstanding 60 days after a registration statement would be required to be filed with respect thereto.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566, 15 U.S.C. 78c 78*l*)

[30 FR 6114, Apr. 30, 1965, as amended at 43 FR 2392, Jan. 17, 1978. Redesignated at 47 FR 17052, Apr. 21, 1982]

§ 240.12h–2 [Reserved]

§ 240.12h–3 Suspension of duty to file reports under section 15(d).

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b–25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securites held of record by:

(i) Less than 300 persons; or

(ii) By less then 500 persons, where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years;

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b–4 (§ 240.3b–4), held of record by:

(i) Less than 300 persons resident in the United States or

(ii) Less than 500 persons resident in the United States where the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's three most recent fiscal years.

For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3–2(a) (§ 240.12g3–2(a)); and

(3) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraphs (b)(1)(ii) and (2)(ii), the two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i) and (ii) in either paragraph (b)(1) or (2) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this rule is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) by filing an annual report on Form 10–K and Form 10–KSB for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78w(a))

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

§ 240.12h–4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F–7, Form F–8 or Form F–80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3–2(b).

[56 FR 30068, July 1, 1991]

REGULATION 13A: REPORTS OF ISSUERS OF SECURITIES REGISTERED PURSUANT TO SECTION 12

ANNUAL REPORTS

§ 240.13a–1 Requirements of annual reports.

Every issuer having securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*) shall file an annual report on the appropriate form authorized or prescribed therefor for each fiscal year after the last full fiscal year for which financial statements were filed in its registration statement. Annual reports shall be filed within the period specified in the appropriate form.

[62 FR 39767, July 24, 1997]

§ 240.13a–2 [Reserved]

§ 240.13a–3 Reporting by Form 40–F registrant.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a–1 through 240.13a–17 of this chapter).

[56 FR 30068, July 1, 1991]

OTHER REPORTS

§ 240.13a–10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year; *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) The report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and

shall indicate clearly the period covered. The financial statements for the transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q and Form 10–QSB (§ 249.308a of this chapter) not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q and Form 10–QSB shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q and Form 10–QSB.

(d) Notwithstanding the foregoing in paragraphs (a), (b), and (c) of this section, if the transition period covers a period of one month or less, the issuer need not file a separate transition report if either:

(1) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is an annual report, and that report covers the transition period as well as the fiscal year; or

(2)(i) The issuer files with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period; and

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q and Form 10–QSB; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q and Form 10–QSB for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10–Q and Form 10–QSB pursuant to § 240.13a–13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q and Form 10–QSB within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q and Form 10–QSB within the time specified in General Instruction A.1. to that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q and Form 10–QSB for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end; and

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K and Form 10–KSB for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q and Form 10–QSB for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q and Form 10–QSB or annual report on Form 10–K and Form 10–KSB for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q and Form 10–QSB or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer with securities registered under Section 12 of this Act that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10–Q and Form 10–QSB not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to

change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of six or fewer months, in lieu of the report required by paragraph (g)(3) of this section, a report for the transition period may be filed on Form 20–F responding to Items 3, 9, 15, 16, and 17 or 18 within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period.

(5) Notwithstanding the foregoing in paragraphs (g)(2), (g)(3), and (g)(4) of this section, if the transition period covers a period of one month or less, a foreign private issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(h) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(i) No filing fee shall be required for a transition report filed pursuant to this section.

NOTE.—In addition to the report or reports to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B. 1. to that form.

[54 FR 10316, Mar. 13, 1989, as amended at 56 FR 30068, July 1, 1991]

§ 240.13a–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.13a–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

(b) This section shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to Rule 13a–16 (17 CFR 240.13a–16), issuers of American Depositary Receipts for securities of any foreign issuer, or investment companies required to file reports pursuant to Rule 30b–1–1 (17 CFR 270.30b1–1) under the Investment Company Act of 1940.

(Secs. 12, 13, 15, 48 Stat. 892, 894, 895; sec. 5, 78 Stat. 569, 574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 (15 U.S.C. 78n(a)), secs. 20(a), 38(a), 54 Stat. 822, 841 (15 U.S.C. 80a–20(a), 80a–37(a)))

[42 FR 4428, Jan. 25, 1977, as amended at 50 FR 27939, July 9, 1985]

§ 240.13a–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to section 12 of the Act and is required to file annual reports pursuant to section 13 of the Act, and has filed or intends to file such reports on Form 10–K and Form 10–KSB (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter), shall file a quarterly report on Form 10–Q and Form 10–QSB (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported

upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which such report would have been required to be filed if the issuer has been required to file reports on Form 10–Q and Form 10–QSB as of its last fiscal quarter, whichever is later.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file reports pursuant to § 270.30b1–1;

(2) Foreign private issuers required to file reports pursuant to § 240.13a–16.

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by:

(1) Mutual life insurance companies; or

(2) Mining companies not in the production stage but engaged primarily in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q and Form 10–QSB, shall not be deemed to be ''filed'' for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(Sec. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; secs. 1, 2, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 78*l*, 78m, 78*o*(d), 78w(a); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 88 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), ''1, 2, 3–5, 84 Sat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 81 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a))

[42 FR 24064, May 12, 1977, as amended at 48 FR 19877, May 3, 1983; 50 FR 27939, July 9, 1985; 54 FR 10317, Mar. 13, 1989; 57 FR 10615, Mar. 27, 1992; 61 FR 30403, June 14, 1996]

§ 240.13a–16 Reports of foreign private issuers on Form 6–K (17 CFR 249.306).

(a) Every foreign private issuer which is subject to Rule 13a–1 (17 CFR 240.13a–1) shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1–1 (17 CFR 270.30b1–1);

(2) Issuers of American depositary receipts for securities of any foreign issuer; or

(3) Issuers filing periodic reports on Forms 10–K and Form 10–KSB, 10–Q and Form 10–QSB and 8–K.

(b) Such reports shall be transmitted promptly after the information required by Form 6–K is made public by the issuer, by the country of its domicile or under the laws of which it was incorporated or organized, or by a foreign securities exchange with which the issuer has filed the information.

(c) Reports furnished pursuant to this rule shall not be deemed to be ''filed'' for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section.

[32 FR 7849, May 30, 1967, as amended at 44 FR 70137, Dec. 6, 1979; 47 FR 54781, Dec. 6, 1982; 50 FR 27939, July 9, 1985; 57 FR 10615, Mar. 27, 1991]

§ 240.13a–17 [Reserved]

REGULATION 13b–2: MAINTENANCE OF RECORDS AND PREPARATION OF REQUIRED REPORTS

§ 240.13b2–1 Falsification of accounting records.

No person shall directly or indirectly, falsify or cause to by falsified, any book, record or account subject to section 13(b)(2)(A) of the Securities Exchange Act.

(15 U.S.C. 78m(b)(2); 15 U.S.C. 78m(a), 78m(b)(1), 78o(d), 78j(b), 78n(a), 78t(b), 78t(c)) [44 FR 10970, Feb. 23, 1979]

§ 240.13b2–2 Issuer's representations in connection with the preparation of required reports and documents.

No director or officer of an issuer shall, directly or indirectly,

(a) Make or cause to be made a materially false or misleading statement, or

(b) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in the light of the circumstances under which such statements were made, not misleading to an accountant in connection with (1) any audit or examination of the financial statements of the issuer required to be made pursuant to this subpart or (2) the preparation or filing of any document or report required to be filed with the Commission pursuant to this subpart or otherwise.

(15 U.S.C. 78m(b)(2); 15 U.S.C. 78m(a), 78m(b)(1), 78o(d), 78j(b), 78n(a), 78t(b), 78t(c)) [44 FR 10970, Feb. 23, 1979]

REGULATION 13D

SOURCE: Sections 240.13d–1 through 240.13f–1 appear at 43 FR 18495, Apr. 28, 1978, unless otherwise noted.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.13d–1 Filing of Schedules 13D and 13G.

(a) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is specified in paragraph (i) of this section, is directly or indirectly the beneficial owner of more than five percent of the class shall, within 10 days after the acquisition, file with the Commission, a statement containing the information required by Schedule 13D (§ 240.13d–101).

(b)(1) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§ 240.13d–101) may, in lieu thereof, file with the Commission, a short-form statement on Schedule 13G (§ 240.13d–102), *Provided*, That:

(i) Such person has acquired such securities in the ordinary course of his business and not with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b) (§ 240.13d–3(b)); and

(ii) Such person is:

(A) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(B) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(C) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(D) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(E) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(F) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (''ERISA'') that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the

employees of a state or local government or instrumentality, or an endowment fund;

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in §240.13d–1(b)(1)(ii)(A) through (I), does not exceed one percent of the securities of the subject class;

(H) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(I) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3); and

(J) A group, provided that all the members are persons specified in §240.13d–1(b)(1)(ii)(A) through (I); and

(iii) Such person has promptly notified any other person (or group within the meaning of section 13(d)(3) of the Act) on whose behalf it holds, on a discretionary basis, securities exceeding five percent of the class, of any acquisition or transaction on behalf of such other person which might be reportable by that person under section 13(d) of the Act. This paragraph only requires notice to the account owner of information which the filing person reasonably should be expected to know and which would advise the account owner of an obligation he may have to file a statement pursuant to section 13(d) of the Act or an amendment thereto.

(2) The Schedule 13G filed pursuant to paragraph (b)(1) of this section shall be filed within 45 days after the end of the calendar year in which the person became obligated under paragraph (b)(1) of this section to report the person's beneficial ownership as of the last day of the calendar year, *Provided*, That it shall not be necessary to file a Schedule 13G unless the percentage of the class of equity security specified in paragraph (i) of this section beneficially owned as of the end of the calendar year is more than five percent; *However*, if the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities prior to the end of the calendar year, the initial Schedule 13G shall be filed within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership exceeds 10 percent of the class of equity securities, computed as of the last day of the month.

(c) A person who would otherwise be obligated under paragraph (a) of this section to file a statement on Schedule 13D (§240.13d–101) may, in lieu thereof, file with the Commission, within 10 days after an acquisition described in paragraph (a) of this section, a short-form statement on Schedule 13G (§240.13d–102). *Provided*, That the person:

(1) Has not acquired the securities with any purpose, or with the effect of, changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to §240.13d–3(b);

(2) Is not a person reporting pursuant to paragraph (b)(1) of this section; and

(3) Is not directly or indirectly the beneficial owner of 20 percent or more of the class.

(d) Any person who, as of the end of any calendar year, is or becomes directly or indirectly the beneficial owner of more than five percent of any equity security of a class specified in paragraph (i) of this section and who is not required to file a statement under paragraph (a) of this section by virtue of the exemption provided by Section 13(d)(6)(A) or (B) of the Act (15 U.S.C. 78m(d)(6)(A) or 78m(d)(6)(B)), or because the beneficial ownership was acquired prior to December 22, 1970, or because the person otherwise (except for the exemption provided by Section 13(d)(6)(C) of the Act (15 U.S.C. 78m(d)(6)(C))) is not required to file a statement, shall file with the Commission, within 45 days after the end of the calendar year in which the person became obligated to report under this paragraph (d), a statement containing the information required by Schedule 13G (§240.13d–102).

(e)(1) Notwithstanding paragraphs (b) and (c) of this section and §240.13d–2(b), a person that has reported that it is the beneficial owner of more than five percent of a class of equity securities in a statement on Schedule 13G (§240.13d–102) pursuant to paragraph (b) or (c) of this section, or is required to

report the acquisition but has not yet filed the schedule, shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days if, and shall remain subject to those requirements for so long as, the person:

(i) Has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect, including any transaction subject to § 240.13d–3(b); and

(ii) Is at that time the beneficial owner of more than five percent of a class of equity securities described in § 240.13d–1(i).

(2) From the time the person has acquired or holds the securities with a purpose or effect of changing or influencing control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, that person shall not:

(i) Vote or direct the voting of the securities described therein; or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(f)(1) Notwithstanding paragraph (c) of this section and § 240.13d–2(b), persons reporting on Schedule 13G (§ 240.13d–102) pursuant to paragraph (c) of this section shall immediately become subject to §§ 240.13d–1(a) and 240.13d–2(a) and shall remain subject to those requirements for so long as, and shall file a statement on Schedule 13D (§ 240.13d–101) within 10 days of the date on which, the person's beneficial ownership equals or exceeds 20 percent of the class of equity securities.

(2) From the time of the acquisition of 20 percent or more of the class of equity securities until the expiration of the tenth day from the date of the filing of the Schedule 13D (§ 240.13d–101) pursuant to this section, the person shall not:

(i) Vote or direct the voting of the securities described therein, or

(ii) Acquire an additional beneficial ownership interest in any equity securities of the issuer of the securities, nor of any person controlling the issuer.

(g) Any person who has reported an acquisition of securities in a statement on Schedule 13G (§ 240.13d–102) pursuant to paragraph (b) of this section, or has become obligated to report on the Schedule 13G (§ 240.13d–102) but has not yet filed the Schedule, and thereafter ceases to be a person specified in paragraph (b)(1)(ii) of this section or determines that it no longer has acquired or holds the securities in the ordinary course of business shall immediately become subject to § 240.13d–1(a) or § 240.13d–1(c) (if the person satisfies the requirements specified in § 240.13d–1(c)), and §§ 240.13d–2 (a), (b) or (d), and shall file, within 10 days thereafter, a statement on Schedule 13D (§ 240.13d–101) or amendment to Schedule 13G, as applicable, if the person is a beneficial owner at that time of more than five percent of the class of equity securities.

(h) Any person who has filed a Schedule 13D (§ 240.13d–101) pursuant to paragraph (e), (f) or (g) of this section may again report its beneficial ownership on Schedule 13G (§ 240.13d–102) pursuant to paragraphs (b) or (c) of this section provided the person qualifies thereunder, as applicable, by filing a Schedule 13G (§ 240.13d–102) once the person determines that the provisions of paragraph (e), (f) or (g) of this section no longer apply.

(i) For the purpose of this regulation, the term ''equity security'' means any equity security of a class which is registered pursuant to section 12 of that Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940; *Provided*, Such term shall not include securities of a class of non-voting securities.

(j) For the purpose of sections 13(d) and 13(g), any person, in determining the amount of outstanding securities of a class of equity securities, may rely upon information set forth in the

issuer's most recent quarterly or annual report, and any current report subsequent thereto, filed with the Commission pursuant to this Act, unless he knows or has reason to believe that the information contained therein is inaccurate.

(k)(1) Whenever two or more persons are required to file a statement containing the information required by Schedule 13D or Schedule 13G with respect to the same securities, only one statement need be filed: *Provided,* That:

(i) Each person on whose behalf the statement is filed is individually eligible to use the Schedule on which the information is filed;

(ii) Each person on whose behalf the statement is filed is responsible for the timely filing of such statement and any amendments thereto, and for the completeness and accuracy of the information concerning such person contained therein; such person is not responsible for the completeness or accuracy of the information concerning the other persons making the filing, unless such person knows or has reason to believe that such information is inaccurate; and

(iii) Such statement identifies all such persons, contains the required information with regard to each such person, indicates that such statement is filed on behalf of all such persons, and includes, as an exhibit, their agreement in writing that such a statement is filed on behalf of each of them.

(2) A group's filing obligation may be satisfied either by a single joint filing or by each of the group's members making an individual filing. If the group's members elect to make their own filings, each such filing should identify all members of the group but the information provided concerning the other persons making the filing need only reflect information which the filing person knows or has reason to know.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6,) 13(g)(1), 13(g)(2), 13(g)(5), 23; 48 Stat. 882, 894, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; (15 U.S.C. 78c(b), 78m(d)(1), 78m(d)(2), 78m(d)(5), 78m(d)(6), 78m(g)(1), 78m(g)(2), 78m(g)(5), 78w))

[43 FR 18495, Apr. 28, 1978, as amended at 43 FR 29768, July 11, 1978; 43 FR 55755, Nov. 29, 1978; 44 FR 10703, Feb. 23, 1979; 63 FR 2865, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998]

§ 240.13d–2 Filing of amendments to Schedules 13D or 13G.

(a) If any material change occurs in the facts set forth in the Schedule 13D (§ 240.13d–101) required by § 240.13d–1(a), including, but not limited to, any material increase or decrease in the percentage of the class beneficially owned, the person or persons who were required to file the statement shall promptly file or cause to be filed with the Commission an amendment disclosing that change. An acquisition or disposition of beneficial ownership of securities in an amount equal to one percent or more of the class of securities shall be deemed ''material'' for purposes of this section; acquisitions or dispositions of less than those amounts may be material, depending upon the facts and circumstances.

(b) Notwithstanding paragraph (a) of this section, and provided that the person filing a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b) or § 240.13d–1(c) continues to meet the requirements set forth therein, any person who has filed a Schedule 13G (§ 240.13d–102) pursuant to § 240.13d–1(b), § 240.13d–1(c) or § 240.13d–1(d) shall amend the statement within forty-five days after the end of each calendar year if, as of the end of the calendar year, there are any changes in the information reported in the previous filing on that Schedule: *Provided, however*, That an amendment need not be filed with respect to a change in the percent of class outstanding previously reported if the change results solely from a change in the aggregate number of securities outstanding. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required unless the person thereafter becomes the beneficial owner of more than five percent of the class and is required to file pursuant to § 240.13d–1.

(c) Any person relying on § 240.13d–1(b) that has filed its initial Schedule

13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, exceeds 10 percent of the class of equity securities. Thereafter, that person shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) within 10 days after the end of the first month in which the person's direct or indirect beneficial ownership, computed as of the last day of the month, increases or decreases by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (c).

(d) Any person relying on § 240.13d–1(c) and has filed its initial Schedule 13G (§ 240.13d–102) pursuant to that paragraph shall, in addition to filing any amendments pursuant to § 240.13d–2(b), file an amendment on Schedule 13G (§ 240.13d–102) promptly upon acquiring, directly or indirectly, greater than 10 percent of a class of equity securities specified in § 240.13d–1(d), and thereafter promptly upon increasing or decreasing its beneficial ownership by more than five percent of the class of equity securities. Once an amendment has been filed reflecting beneficial ownership of five percent or less of the class of securities, no additional filings are required by this paragraph (d).

(e) The first electronic amendment to a paper format Schedule 13D (§ 240.13d–101 of this chapter) or Schedule 13G (§ 240.13d–102 of this chapter) shall restate the entire text of the Schedule 13D or 13G, but previously filed paper exhibits to such Schedules are not required to be restated electronically. *See* Rule 102 of Regulation S–T (§ 232.102 of this chapter) regarding amendments to exhibits previously filed in paper format. Notwithstanding the foregoing, if the sole purpose of filing the first electronic Schedule 13D or 13G amendment is to report a change in beneficial ownership that would terminate the filer's obligation to report, the amendment need not include a restatement of the entire text of the Schedule being amended.

NOTE TO § 240.13D–2: For persons filing a short-form statement pursuant to Rule 13d–1(b) or (c), see also Rules 13d–1(e), (f), and (g).

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w); sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 18, 89 Stat. 155; secs. 102, 202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(g), 78w(a))

[43 FR 18495, Apr. 28, 1978, as amended at 45 FR 81558, Dec. 11, 1980; 47 FR 49964, Nov. 4, 1982; 58 FR 14683, Mar. 18, 1993; 59 FR 67764, Dec. 30, 1994; 62 FR 36459, July 8, 1997; 63 FR 2866, Jan. 16, 1998]

§ 240.13d–3 Determination of beneficial owner.

(a) For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or,

(2) Investment power which includes the power to dispose, or to direct the disposition of, such security.

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose of effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of section 13(d) or (g) of the Act shall be deemed for purposes of such sections to be the beneficial owner of such security.

(c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

(d) Notwithstanding the provisions of paragraphs (a) and (c) of this rule:

(1)(i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of paragraph (b) of this rule, if that person has the right to acquire beneficial ownership of such security, as defined in Rule 13d–3(a) (§240.13d–3(a)) within sixty days, including but not limited to any right to acquire: (A) Through the exercise of any option, warrant or right; (B) through the conversion of a security; (C) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or (D) pursuant to the automatic termination of a trust, discretionary account or similar arrangement; provided, however, any person who acquires a security or power specified in paragraphs (d)(1)(i)(A), (B) or (C), of this section, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class by any other person.

(ii) Paragraph (d)(1)(i) of this section remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in §240.13d–1(i), and may therefore give rise to a separate obligation to file.

(2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.

(3) A person who in the ordinary course of his business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgeĕ1 has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided, that:

(i) The pledgeĕ1 agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b);

(ii) The pledgee is a person specified in Rule 13d–1(b)(ii), including persons meeting the conditions set forth in paragraph (G) thereof; and

(iii) The pledgee agreement, prior to default, does not grant to the pledgee;

(A) The power to vote or to direct the vote of the pledged securities; or

(B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under section 15 of the act.

(4) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the Securities Act of 1933 shall not be deemed to be the beneficial owner of such securities until the expiration of forty days after the date of such acquisition.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat.

97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w)

[43 FR 18495, Apr. 28, 1978, as amended at 43 FR 29768, July 11, 1978; 63 FR 2867, Jan. 16, 1998]

§ 240.13d–4 Disclaimer of beneficial ownership.

Any person may expressly declare in any statement filed that the filing of such statement shall not be construed as an admission that such person is, for the purposes of sections 13(d) or 13(g) of the Act, the beneficial owner of any securities covered by the statement.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w)

§ 240.13d–5 Acquisition of securities.

(a) A person who becomes a beneficial owner of securities shall be deemed to have acquired such securities for purposes of section 13(d)(1) of the Act, whether such acquisition was through purchase or otherwise. However, executors or administrators of a decedent's estate generally will be presumed not to have acquired beneficial ownership of the securities in the decedent's estate until such time as such executors or administrators are qualified under local law to perform their duties.

(b)(1) When two or more persons agree to act together for the purpose of acquiring, holding, voting or disposing of equity securities of an issuer, the group formed thereby shall be deemed to have acquired beneficial ownership, for purposes of sections 13(d) and (g) of the Act, as of the date of such agreement, of all equity securities of that issuer beneficially owned by any such persons.

(2) Notwithstanding the previous paragraph, a group shall be deemed not to have acquired any equity securities beneficially owned by the other members of the group solely by virtue of their concerted actions relating to the purchase of equity securities directly from an issuer in a transaction not involving a public offering: *Provided*, That:

(i) All the members of the group are persons specified in Rule 13d–1(b)(1)(ii);

(ii) The purchase is in the ordinary course of each member's business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect, including any transaction subject to Rule 13d–3(b);

(iii) There is no agreement among, or between any members of the group to act together with respect to the issuer or its securities except for the purpose of facilitating the specific purchase involved; and

(iv) The only actions among or between any members of the group with respect to the issuer or its securities subsequent to the closing date of the non-public offering are those which are necessary to conclude ministerial matters directly related to the completion of the offer or sale of the securities.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w))

§ 240.13d–6 Exemption of certain acquisitions.

The acquisition of securities of an issuer by a person who, prior to such acquisition, was a beneficial owner of more than five percent of the outstanding securities of the same class as those acquired shall be exempt from section 13(d) of the Act: *Provided*, That:

(a) The acquisition is made pursuant to preemptive subscription rights in an offering made to all holders of securities of the class to which the preemptive subscription rights pertain;

(b) Such person does not acquire additional securities except through the exercise of his pro rata share of the preemptive subscription rights; and

(c) The acquisition is duly reported, if required, pursuant to section 16(a) of the Act and the rules and regulations thereunder.

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 14(d)(1), 23; 48 Stat. 882, 894, 895, 901; sec. 203(a), 49 Stat. 704, sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455;

secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78m(d)(1), 89m(d)(2), 78m(d)(5), 78m(d)(6), 78n(d)(1), 78w))

§ 240.13d–7 Dissemination.

One copy of the Schedule filed pursuant to §§ 240.13d–1 and 240.13d–2 shall be sent to the issuer of the security at its principal executive office by registered or certified mail. A copy of Schedules filed pursuant to §§ 240.13d–1(a) and 240.13d–2(a) shall also be sent to each national securities exchange where the security is traded.

[63 FR 2867, Jan. 16, 1998]

§ 240.13d–101 Schedule 13D—Information to be included in statements filed pursuant to § 240.13d–1(a) and amendments thereto filed pursuant to § 240.13d–2(a).

Securities and Exchange Commission, Washington, D.C. 20549

Schedule 13D

Under the Securities Exchange Act of 1934

(Amendment No. ——)*

(Name of Issuer)

(Title of Class of Securities)

(CUSIP Number)

(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications)

(Date of Event Which Requires Filing of This Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §§ 240.13d–1(e), 240.13d–1(f) or 240.13d–1(g), check the following box. □

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d–7 for other parties to whom copies are to be sent.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter disclosures provided in a prior cover page.

The information required on the remainder of this cover page shall not be deemed to be ''filed'' for the purpose of section 18 of the Securities Exchange Act of 1934 (''Act'') or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. ————

(1) Names of reporting persons.. Identification Nos. of above persons (entities only)..	
(2) Check the appropriate box if a member of a group	(a)
(see instructions)	(b)
(3) SEC use only.	
(4) Source of funds (see instructions).	
(5) Check if disclosure of legal proceedings is required pursuant to Items 2(d) or 2(e).	
(6) Citizenship or place of organization.	
Number of shares beneficially owned by each reporting person with: (7) Sole voting power.	
(8) Shared voting power.	
(9) Sole dispositive power.	
(10) Shared dispositive power.	
(11) Aggregate amount beneficially owned by each reporting person.	
(12) Check if the aggregate amount in Row (11) excludes certain shares (see instructions).	

(13) Percent of class represented by amount in Row (11).	
(14) Type of reporting person (see instructions).	

Page—of—Pages

Instructions for Cover Page

(1) *Names and I.R.S. Identifiaction Numbers of Reporting Persons*— Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons that are entities are also requested to furnish their I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see ''SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13–D'' below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of the group and the membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) (unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)).

(3) The 3rd row is for SEC internal use; please leave blank.

(4) Classify the source of funds or other consideration used or to be used in making the purchases as required to be disclosed pursuant to Item 3 of Schedule 13D and insert the appropriate symbol (or symbols if more than one is necessary) in row (4):

Category of Source	Symbol
Subject Company (Company whose securities are being acquired).	SC
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either Items 2(d) or 2(e) of Schedule 13D, row 5 should be checked.

(6) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, Furnish place of organization. (See Item 2 of Schedule 13D).

(7)–(11) [Reserved]

(13) *Aggregate Amount Beneficially Owned by Each Reporting Person, Etc.*—Rows (7) through (11), inclusive, and (13) are to be completed in accordance with the provisions of Item 5 of Schedule 13D. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(12) Check if the aggregate amount reported as beneficially owned in row (11) does not include shares which the reporting person discloses in the report but as to which beneficial ownership is disclaimed pursuant to Rule 13d–4 [17 CFR 240.13d–4] under the Securities Exchange Act of 1934.

(14) *Type of Reporting Person*—Please classify each ''reporting person'' according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund	EP
Parent Holding Company/Control Person	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G, or 14D–1) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as ''filed'' for purposes of section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b–12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13D

Under sections 13(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

Instructions. A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

C. If the statement is filed by a general or limited partnership, syndicate, or other group, the information called for by Items 2–6, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation or other person ultimately in control of such corporation.

Item 1. Security and Issuer. State the title of the class of equity securities to which this statement relates and the name and address of the principal executive offices of the issuer of such securities.

Item 2. Identity and Background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (d) and (e) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (f) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is conducted;

(d) Whether or not, during the last five years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, any penalty imposed, or other disposition of the case;

(e) Whether or not, during the last five years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violation with respect to such laws; and, if so, identify and describe such proceedings and summarize the terms of such judgment, decree or final order; and

(f) Citizenship.

Item 3. Source and Amount of Funds or Other Consideration. State the source and the amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price is or will be represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, trading or voting the securities, a description of the transaction and the names of the parties thereto. Where material, such information should also be provided with respect to prior acquisitions not previously reported pursuant to this regulation. If the source of all or any part of the funds is a loan made in the ordinary course of business by a bank, as defined in section 3(a)(6) of the Act, the name of the bank shall not be made available to the public if the person at the time of filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission. If the securities were acquired other than by purchase, describe the method of acquisition.

Item 4. Purpose of Transaction. State the purpose or purposes of the acquisition of securities of the issuer. Describe any plans or proposals which the reporting persons may have which relate to or would result in:

(a) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;

(d) Any change in the present board of directors or management of the issuer, including any plans or proposals to change the number or term of directors or to fill any existing vacancies on the board;

(e) Any material change in the present capitalization or dividend policy of the issuer;

(f) Any other material change in the issuer's business or corporate structure, including but not limited to, if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote is required by section 13 of the Investment Company Act of 1940;

(g) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;

(h) Causing a class of securities of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act; or

(j) Any action similar to any of those enumerated above.

Item 5. Interest in Securities of the Issuer. (a) State the aggregate number and percentage of the class of securities identified pursuant to Item 1 (which may be based on the number of securities outstanding as contained in the most recently available filing with the Commission by the issuer unless the filing person has reason to believe such information is not current) beneficially owned (identifying those shares which there is a right to acquire) by each person named in Item 2. The above mentioned information should also be furnished with respect to persons who, together with any of the persons named in Item 2, comprise a group within the meaning of section 13(d)(3) of the Act;

(b) For each person named in response to paragraph (a), indicate the number of shares as to which there is sole power to vote or to direct the vote, sole power to dispose or to direct the disposition, or shared power to dispose or to direct the disposition. Provide the applicable information required by Item 2 with respect to each person with whom the power to vote or to direct the vote or to dispose or direct the disposition is shared;

(c) Describe any transactions in the class of securities reported on that were effected during the past sixty days or since the most recent filing of Schedule 13D (§ 240.13d–101), whichever is less, by the persons named in response to paragraph (a).

Instruction. The description of a transaction required by Item 5(c) shall include, but not necessarily be limited to: (1) The identity of the person covered by Item 5(c) who effected the transaction; (2) the date of transaction; (3) the amount of securities involved; (4) the price per share or unit; and (5) where and how the transaction was effected.

(d) If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than five percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of an employee benefit plan, pension fund or endowment fund is not required.

(e) If applicable, state the date on which the reporting person ceased to be the beneficial owner of more than five percent of the class of securities.

Instruction. For computations regarding securities which represent a right to acquire an underlying security, see Rule 13d–3(d)(1) and the note thereto.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities

of the Issuer. Describe any contracts, arrangements, understandings or relationships (legal or otherwise) among the persons named in Item 2 and between such persons and any person with respect to any securities of the issuer, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies, naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into. Include such information for any of the securities that are pledged or otherwise subject to a contingency the occurrence of which would give another person voting power or investment power over such securities except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 7. Material to be Filed as Exhibits. The following shall be filed as exhibits: Copies of written agreements relating to the filing of joint acquisition statements as required by Rule 13d–1(k) and copies of all written agreements, contracts, arrangements, understanding, plans or proposals relating to: (1) The borrowing of funds to finance the acquisition as disclosed in Item 3; (2) the acquisition of issuer control, liquidation, sale of assets, merger, or change in business or corporate structure, or any other matter as disclosed in Item 4; and (3) the transfer or voting of the securities, finder's fees, joint ventures, options, puts, calls, guarantees of loans, guarantees against loss or of profit, or the giving or withholding of any proxy as disclosed in Item 6.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date _____

Signature _____

Name/Title _____

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the filing person), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement: *Provided, however*, That a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

ATTENTION—Intentional misstatements or omissions of fact constitute Federal criminal violations (See 18 U.S.C. 1001).

(Secs. 13(d), 13(g), 14(d), 23, 48 Stat. 894, 895, 901; sec. 8, 49 Stat. 1379; sec. 203(a), 49 Stat. 704; sec. 10, 78 Stat. 88a; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; sec. 18, 89 Stat. 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; 15 U.S.C. 78m(d), 78m(g), 78n(d), 78w)

[44 FR 2145, Jan. 9, 1979; 44 FR 11751, Mar. 2, 1979; 44 FR 70340, Dec. 6, 1979; 47 FR 11466, Mar. 16, 1982; 61 FR 49959, Sept. 24, 1996; 62 FR 35340, July 1, 1997; 63 FR 2867, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998]

§ 240.13d–102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d–1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d–2.

Securities and Exchange Commission, Washington, D.C. 20549

Schedule 13G

Under the Securities Exchange Act of 1934

(Amendment No. ——)*

_____

(Name of Issuer)

_____

(Title of Class of Securities)

_____

(CUSIP Number)

_____

(Date of Event Which Requires Filing of this Statement)

Check the appropriate box to designate the rule pursuant to which this Schedule is filed:

[ ] Rule 13d–1(b)
[ ] Rule 13d–1(c)
[ ] Rule 13d–1(d)

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be ''filed'' for the purpose of Section 18 of the Securities Exchange Act of 1934 (''Act'') or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. ————

(1) Names of reporting persons.. I.R.S. Identification Nos. of above persons (entities only)..	

(2) Check the appropriate box if a member of a group	(a)
(see instructions)	(b)
(3) SEC use only.	
(4) Citizenship or place of organization.	
Number of shares beneficially owned by each reporting person with: (5) Sole voting power.	
(6) Shared voting power.	
(7) Sole dispositive power.	
(8) Shared dispositive power.	
(9) Aggregate amount beneficially owned by each reporting person.	
(10) Check if the aggregate amount in Row (9) excludes certain shares (see instructions).	
(11) Percent of class represented by amount in Row (9).	
(12) Type of reporting person (see instructions).	

Page—of—Pages

Instructions for Cover Page

(1) *Names and I.R.S. Identification Numbers of Reporting Persons*— Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons that are entities are also requested to furnish their I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see ''SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G'', below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and that membership is expressly affirmed, please check row 2(a). If the reporting person disclaims membership in a group or describes a relationship with other person but does not affirm the existence of a group, please check row 2(b) [unless it is a joint filing pursuant to Rule 13d–1(k)(1) in which case it may not be necessary to check row 2(b)].

(3) The third row is for SEC internal use; please leave blank.

(4) *Citizenship or Place of Organization*—Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish place of organization.

(5)–(9), (11) *Aggregated Amount Beneficially Owned By Each Reporting Person, etc.*—Rows (5) through (9) inclusive, and (11) are to be completed in accordance with the provisions of Item 4 of Schedule 13G. All percentages are to be rounded off to the nearest tenth (one place after decimal point).

(10) Check if the aggregate amount reported as beneficially owned in row (9) does not include shares as to which beneficial ownership is disclaimed pursuant to Rule 13d–4 [17 CFR 240.13d–4] under the Securities Exchange Act of 1934.

(12) *Type of Reporting Person*—Please classify each ''reporting person'' according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate symbol on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund	EP
Parent Holding Company/Control Person	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G, or 14D–1) by appropriate cross references to an item or items on the cover page(s). This approach may only be used where the cover page item or items provide all the disclosure required

by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as ''filed'' for purposes of section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b–12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 13G

Under Sections 13 (d), 13(g) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can use it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

Instructions. A. Statements filed pursuant to Rule 13d–1(b) containing the information required by this schedule shall be filed not later than February 14 following the calendar year covered by the statement or within the time specified in Rules 13d–1(b)(2) and 13d–2(c). Statements filed pursuant to Rule 13d–1(d) shall be filed within the time specified in Rules 13d–1(c), 13d–2(b) and 13d–2(d). Statements filed pursuant to Rule 13d–1(c) shall be filed not later than February 14 following the calendar year covered by the statement pursuant to Rules 13d–1(d) and 13d–2(b).

B. Information contained in a form which is required to be filed by rules under section 13(f) (15 U.S.C. 78m(f)) for the same calendar year as that covered by a statement on this schedule may be incorporated by reference in response to any of the items of this schedule. If such information is incorporated by reference in this schedule, copies of the relevant pages of such form shall be filed as an exhibit to this schedule.

C. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

Item 1(a) Name of issuer:————————.

Item 1(b) Address of issuer's principal executive offices: ————————.

2(a) Name of person filing:

_____

2(b) Address or principal business office or, if none, residence:

_____

2(c) Citizenship:

_____

2(d) Title of class of securities:

_____

2(e) CUSIP No.:

_____

Item 3. If this statement is filed pursuant to §§ 240.13d–1(b) or 240.13d–2(b) or (c), check whether the person filing is a:

(a) [ ] Broker or dealer registered under section 15 of the Act (15 U.S.C. 78o).

(b) [ ] Bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c).

(c) [ ] Insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c).

(d) [ ] Investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C 80a–8).

(e) [ ] An investment adviser in accordance with § 240.13d–1(b)(1)(ii)(E);

(f) [ ] An employee benefit plan or endowment fund in accordance with § 240.13d–1(b)(1)(ii)(F);

(g) [ ] A parent holding company or control person in accordance with § 240.13d–1(b)(1)(ii)(G);

(h) [ ] A savings associations as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(i) [ ] A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(j) [ ] Group, in accordance with § 240.13d–1(b)(1)(ii)(J).

Item 4. Ownership

Provide the following information regarding the aggregate number and percentage of the class of securities of the issuer identified in Item 1.

(a) Amount beneficially owned: _____.

(b) Percent of class: _____.

(c) Number of shares as to which the person has:

(i) Sole power to vote or to direct the vote _____.

(ii) Shared power to vote or to direct the vote _____.

(iii) Sole power to dispose or to direct the disposition of _____.

(iv) Shared power to dispose or to direct the disposition of _____.

Instruction. For computations regarding securities which represent a right to acquire an underlying security *see* § 240.13d–3(d)(1).

Item 5. Ownership of 5 Percent or Less of a Class. If this statement is being filed to report the fact that as of the date hereof the reporting person has ceased to be the beneficial owner of more than 5 percent of the class of securities, check the following [ ].

Instruction. Dissolution of a group requires a response to this item.

Item 6. Ownership of More than 5 Percent on Behalf of Another Person. If any other person is known to have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, such securities, a statement to that effect should be included in response to this item and, if such interest relates to more than 5 percent of the class, such person should be identified. A listing of the shareholders of an investment company registered under the Investment Company Act of 1940 or the beneficiaries of employee benefit plan, pension fund or endowment fund is not required.

Item 7. Identification and Classification of the Subsidiary Which Acquired the Security Being Reported on by the Parent Holding Company or Control Person. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(b)(1)(ii)(G), so indicate under Item 3(g) and attach an exhibit stating the identity and the Item 3 classification of the relevant subsidiary. If a parent holding company or control person has filed this schedule pursuant to Rule 13d–1(c) or Rule 13d–1(d), attach an exhibit stating the identification of the relevant subsidiary.

Item 8. Identification and Classification of Members of the Group

If a group has filed this schedule pursuant to § 240.13d–1(b)(1)(ii)(J), so indicate under Item 3(j) and attach an exhibit stating the identity and Item 3 classification of each member of the group. If a group has filed this schedule pursuant to Rule 13d–1(c) or Rule 13d–1(d), attach an exhibit stating the identity of each member of the group.

Item 9. Notice of Dissolution of Group. Notice of dissolution of a group may be furnished as an exhibit stating the date of the dissolution and that all further filings with respect to transactions in the security reported on will be filed, if required, by members of the group, in their individual capacity. See Item 5.

Item 10. Certifications

(a) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(b):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were acquired and are held in the ordinary course of business and were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d–1(c):

By signing below I certify that, to the best of my knowledge and belief, the securities referred to above were not acquired and are not held for the purpose of or with the effect of changing or influencing the control of the issuer of the securities and were not acquired and are not held in connection with or as a participant in any transaction having that purpose or effect.

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated:————.

————————.
Signature.

————————.
Name/Title.

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative other than an executive officer or general partner of the filing person, evidence of the representative's authority to sign on behalf of such person shall be filed with the statement, *Provided, however,* That a power of attorney for this purpose which is already on file with the Commission may be incorporated by reference. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 13d–7 for other parties for whom copies are to be sent.

ATTENTION: Intentional misstatements or omissions of fact constitute Federal criminal violations (see 18 U.S.C. 1001).

(Secs. 3(b), 13(d)(1), 13(d)(2), 13(d)(5), 13(d)(6), 13(g)(1), 13(g)(2), 13(g)(5), 23, 48 Stat. 882, 894, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 88a; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; secs. 202, 203, 91 Stat. 1494, 1498, 1499; (15 U.S.C. 78c(b), 78m(d)(1), 78m(d)(2), 78m(d)(5), 78m(d)(6), 78m(g)(1), 78m(g)(2), 78m(g)(5), 78w))

[43 FR 18499, Apr. 28, 1978, as amended at 43 FR 55756, Nov. 29, 1978; 44 FR 2148, Jan. 9, 1979; 44 FR 11751, Mar. 2, 1979; 61 FR 49959, Sept. 24, 1996; 62 FR 35340, July 1, 1997; 63 FR 2867, Jan. 16, 1998; 63 FR 15287, Mar. 31, 1998]

§ 240.13e–1 Purchase of securities by issuer thereof.

When a person other than the issuer makes a tender offer for, or request or invitation for tenders of, any class of equity securities of an issuer subject to section 13(e) of the Act, and such person has filed a statement with the Commission pursuant to § 240.14d–1 and the issuer has received notice thereof, such issuer shall not thereafter, during the period such tender offer, request or invitation continues, purchase any equity securities of which it is the issuer unless it has complied with both of the following conditions:

(a) The issuer has filed with the Commission eight copies of a statement containing the information specified below with respect to the proposed purchases:

(1) The title and amount of securities to be purchased, the names of the persons or classes of persons from whom, and the market in which, the securities are to be purchased, including the name of any exchange on which the purchase is to be made;

(2) The purpose for which the purchase is to be made and whether the securities are to be retired, held in the treasury of the issuer or otherwise disposed of, indicating such disposition; and

(3) The source and amount of funds or other consideration used or to be used in making the purchases, and if any part of the purchase price or proposed purchase price is represented by funds or other consideration borrowed or otherwise obtained for the purpose of acquiring, holding, or trading the securities, a description of the transaction and the names of the parties thereto; and

(b) The initial statement shall be accompanied by a fee payable to the Commission as required by § 240.0–11.

(c) The issuer has at any time within the past 6 months sent or given to its equity security holders the substance of the information contained in the statement required by paragraph (a) of this section: *Provided, however,* That any issuer making such purchases which commenced prior to July 30, 1968 shall, if such purchases continue after such date, comply with the provisions of this rule on or before August 12, 1968.

[33 FR 14110, Sept. 18, 1968, as amended at 34 FR 6101, Apr. 4, 1969; 51 FR 2476, Jan. 17, 1986]

§ 240.13e–2 [Reserved]

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

(a) *Definitions.* Unless indicated otherwise or the context otherwise requires, all terms used in this section and in Schedule 13E–3 [§ 240.13e–100] shall have the same meaning as in the Act or elsewhere in the General Rules and Regulations thereunder. In addition, the following definitions apply:

(1) An *affiliate* of an issuer is a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such issuer. For the purposes of this section only, a person who is not an affiliate of an issuer at the commencement of such person's tender offer for a class of equity securities of such issuer will not be deemed an affiliate of such issuer prior to the stated termination of such tender offer and any extensions thereof;

(2) The term *purchase* means any acquisition for value including, but not limited to, (i) any acquisition pursuant to the dissolution of an issuer subsequent to the sale or other disposition of substantially all the assets of such issuer to its affiliate, (ii) any acquisition pursuant to a merger, (iii) any acquisition of fractional interests in connection with a reverse stock split, and (iv) any acquisition subject to the control of an issuer or an affiliate of such issuer;

(3) A *Rule 13e–3 transaction* is any transaction or series of transactions involving one or more of the transactions described in paragraph (a)(3)(i) of this section which has either a reasonable likelihood or a purpose of producing, either directly or indirectly, any of the effects described in paragraph (a)(3)(ii) of this section;

(i) The transactions referred to in paragraph (a)(3) of this section are:

(A) A purchase of any equity security by the issuer of such security or by an affiliate of such issuer;

(B) A tender offer for or request or invitation for tenders of any equity security made by the issuer of such class of securities or by an affiliate of such issuer; or

(C) A solicitation subject to Regulation 14A [§§ 240.14a–1 to 240.14b–1] of any proxy, consent or authorization of, or a distribution subject to Regulation 14C [§§ 240.14c–1 to 14c–101] of information statements to, any equity security holder by the issuer of the class of securities or by an affiliate of such issuer, in connection with: a merger, consolidation, reclassification, recapitalization, reorganization or similar corporate transaction of an issuer or between an issuer (or its subsidiaries) and its affiliate; a sale of substantially all the assets of an issuer to its affiliate or group of affiliates; or a reverse stock split of any class of equity securities of the issuer involving the purchase of fractional interests.

(ii) The effects referred to in paragraph (a)(3) of this section are:

(A) Causing any class of equity securities of the issuer which is subject to section 12(g) or section 15(d) of the Act to be held of record by less than 300 persons; or

(B) Causing any class of equity securities of the issuer which is either listed on a national securities exchange or authorized to be quoted in an inter-dealer quotation system of a registered national securities association to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

(4) An *unaffiliated security holder* is any security holder of an equity security subject to a Rule 13e–3 transaction who is not an affiliate of the issuer of such security.

(b) *Application of section to an issuer (or an affiliate of such issuer) subject to section 12 of the Act.* (1) It shall be a fraudulent, deceptive or manipulative act or practice, in connection with a Rule 13e–3 transaction, for an issuer which has a class of equity securities registered pursuant to section 12 of the Act or which is a closed-end investment company registered under the Investment Company Act of 1940, or an affiliate of such issuer, directly or indirectly

(i) To employ any device, scheme or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with any Rule 13e–3 transaction, it shall be unlawful for an issuer which has a class of equity securities registered pursuant to section 12 of the Act, or an affiliate of such issuer, to engage, directly or indirectly, in a Rule 13e–3 transaction unless:

(i) Such issuer or affiliate complies with the requirements of paragraphs (d), (e) and (f) of this section; and

(ii) The Rule 13e–3 transaction is not in violation of paragraph (b)(1) of this section.

(c) *Application of section to an issuer (or an affiliate of such issuer) subject to section 15(d) of the Act.* (1) It shall be unlawful as a fraudulent, deceptive or manipulative act or practice for an issuer which is required to file periodic reports pursuant to Section 15(d) of the Act, or an affiliate of such issuer, to engage, directly or indirectly, in a Rule 13e–3 transaction unless such issuer or affiliate complies with the requirements of paragraphs (d), (e) and (f) of this section.

(2) An issuer or affiliate which is subject to paragraph (c)(1) of this section

and which is soliciting proxies or distributing information statements in connection with a transaction described in paragraph (a)(3)(i)(A) of this section may elect to use the timing procedures for conducting a solicitation subject to Regulation 14A (§§240.14a–1 to 240.14b–1) or a distribution subject to Regulation 14C (§§240.14c–1 to 240.14c–101) in complying with paragraphs (d), (e) and (f) of this section, provided that if an election is made, such solicitation or distribution is conducted in accordance with the requirements of the respective regulations, including the filing of preliminary copies of soliciting materials or an information statement at the time specified in Regulation 14A or 14C, respectively.

(d) *Material required to be filed.* The issuer or affiliate engaging in a Rule 13e–3 transaction shall, in accordance with the General Instructions to the Rule 13e–3 Transaction Statement on Schedule 13E–3 [§240.13e–100]:

(1) File with the Commission eight copies of such schedule, including all exhibits thereto;

(2) Report any material change in the information set forth in such schedule by promptly filing with the Commission eight copies of an amendment on such schedule; and

(3) Report the results of the Rule 13e–3 transaction by filing with the Commission promptly but no later than ten days (ten business days if Rule 13e–4 [§240.13e–4] is applicable) after the termination of such transaction eight copies of a final amendment to such schedule.

(e) *Disclosure of certain information.* (1) The issuer or affiliate engaging in the Rule 13e–3 transaction, in addition to any other information required to be disclosed pursuant to any other applicable rule or regulation under the federal securities laws, shall disclose to security holders of the class of equity securities which is the subject of the transaction, in the manner prescribed by paragraph (f) of this section, the information required by Items 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15 and 16 of Schedule 13e–3 [§240.13e–100], or a fair and adequate summary thereof, and Items 7, 8 and 9 and include in the document which contains such information the exhibit required by Item 17(e) of such Schedule. If the Rule 13e–3 transaction involves (i) a transaction subject to Regulation 14A [§§240.14a–1 to 240.14b–1] or 14C [§§240.14c–1 to 240.14c–101] of the Act, (ii) the registration of securities pursuant to the Securities Act of 1933 and the General Rules and Regulations promulgated thereunder, or (iii) a tender offer subject to Regulation 14D [§§240.14d–1 to 240.14d–101] or Rule 13e–4 [§240.13e–4], such information shall be included in the proxy statement, the information statement, the registration statement or the tender offer for or request or invitation for tenders of securities published, sent or given to security holders, respectively.

(2) If any material change occurs in the information previously disclosed to security holders of the class of equity securities which is the subject of the transaction, the issuer or affiliate shall promptly disclose such change to such security holders in the manner prescribed by paragraph (f)(1)(iii) of this section.

(3) Any document transmitted to such security holders which contains the information required by paragraph (e)(1) of this section shall:

(i) Set forth prominently the information required by Items 7, 8 and 9 of the Rule 13e–3 Transaction Statement on Schedule 13E–3 [§240.13e–100] in a Special Factors section to be included in the forepart of such document; and

(ii) Set forth on the outside front cover page, in capital letters printed in bold face roman type at least as large as ten point modern type and at least two points leaded, the statement in paragraph (e)(3)(ii)(A) of this section, if the Rule 13e–3 transaction does not involve a prospectus, or the statement in paragraph (e)(3)(ii)(B) of this section, if the Rule 13e–3 transaction involves a prospectus, and in the latter case such statement shall be used in lieu of that required by Item 501(c)(5) of Regulation S–K (§229.501 of this chapter).

(A) THIS TRANSACTION HAS NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE FAIRNESS OR MERITS OF SUCH

TRANSACTION NOR UPON THE ACCURACY OF ADEQUACY OF THE INFORMATION CONTAINED IN THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

(B) NEITHER THIS TRANSACTION NOR THESE SECURITIES HAVE BEEN APPROVED OR DISARPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION. THE COMMISSION HAS NOT PASSED UPON THE FAIRNESS OR MERITS OF THIS TRANSACTION NOR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

Instructions to paragraph (e)(3). 1. Negative responses to any item of Schedule 13E–3 [§ 240.13e–100] need not be included in the information disseminated to security holders unless otherwise indicated.

2. Although the financial information necessary to present a fair and adequate summary of Item 14 of Schedule 13E–3 [§ 240.13e–100] may vary depending on the facts and circumstances involved, the following historical and pro forma summary financial information normally will be sufficient for purposes of paragraph (e) of this section:

(a) The following summary financial information for (i) the two most recent fiscal years and (ii) the latest year-to-date interim period and corresponding interim period of the preceding year:

Income Statement:

Net sales and operating revenues and other revenues
Income before extraordinary items
Net Income
Balance Sheet (at end of period);
Working capital
Total assets
Total assets less deferred research and development charges and excess of cost of assets acquired over book value.
Shareholder's equity
Per Share:[1]
Income per common share before extraordinary items
Extraordinary items
Net income per common share (and common share equivalents, if applicable)
Net income per share on a fully diluted basis

(b) Ratio of earnings to fixed charges for the same periods required by 2(a) above;

(c) Book value per share as of the most recent fiscal year end and as of the date of the latest interim balance sheet; and

(d) If material, pro forma data for the summarized financial information described in 2(a), (b), and (c) above, disclosing the effect of the transaction, should be provided for the most recent fiscal year and latest year-to-date interim period.

If the information required by Item 14 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained.

3. If the information delivered to security holders is distributed through an electronic medium and the legend required by paragraph (e)(3)(ii) is included, issuers may satisfy the legibility requirement relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

(f) *Dissemination of disclosure.* (1) If the Rule 13e–3 transaction involves a purchase as described in paragraph (a)(3)(i)(A) of this section or a vote, consent, authorization, or distribution of information statements as described in paragraph (a)(3)(i)(C) of this section, the issuer or affiliate engaging in the Rule 13e–3 transaction shall:

(i) Provide the information required by paragraph (e) of this section: (A) In accordance with the provisions of any applicable Federal or State law, but in no event later than 20 days prior to: any such purchase; any such vote, consent or authorization; or with respect to the distribution of information statements, the meeting date, or if corporate action is to be taken by means of the written authorization or consent of security holders, the earliest date on which corporate action may be taken: *Provided, however,* That if the purchase subject to this section is pursuant to a tender offer excepted from Rule 13e-4 by paragraph (g)(5) of Rule 13e-4, the information required by paragraph (e) of this section shall be disseminated in accordance with paragraph (e) of Rule 13e-4 no later than 10 business days prior to any purchase pursuant to such tender offer, (B) to each person who is a record holder of a class of equity securities subject to the Rule 13e–3 transaction as of a date not more than 20 days prior to the date of dissemination of such information.

(ii) If the issuer or affiliate knows that securities of the class of securities

[1] Average number of shares of common stock outstanding during each period was———(as adjusted to give effect to stock dividends or stock splits).

subject to the Rule 13e–3 transaction are held of record by a broker, dealer, bank or voting trustee or their nominees, such issuer or affiliate shall (unless Rule 14a–13(a) [§240.14a–13(a)] or 14c–7 [§240.14c–7] is applicable) furnish the number of copies of the information required by paragraph (e) of this section that are requested by such persons (pursuant to inquiries by or on behalf of the issuer or affiliate), instruct such persons to forward such information to the beneficial owners of such securities in a timely manner and undertake to pay the reasonable expenses incurred by such persons in forwarding such information; and

(iii) Promptly disseminate disclosure of material changes to the information required by paragraph (d) of this section in a manner reasonably calculated to inform security holders.

(2) If the Rule 13e–3 transaction is a tender offer or a request or invitation for tenders of equity securities which is subject to Regulation 14D [§§240.14d–1 to 240.14d–101] or Rule 13e–4 [§240.13e–4], the tender offer containing the information required by paragraph (e) of this section, and any material change with respect thereto, shall be published, sent or given in accordance with Regulation 14D or Rule 13e–4, respectively, to security holders of the class of securities being sought by the issuer or affiliate.

(g) *Exceptions*. This section shall not apply to:

(1) Any Rule 13e–3 transaction by or on behalf of a person which occurs within one year of the date of termination of a tender offer in which such person was the bidder and became an affiliate of the issuer as a result of such tender offer: *Provided*, That the consideration offered to unaffiliated security holders in such Rule 13e–3 transaction is at least equal to the highest consideration offered during such tender offer and *Provided further*, That:

(i) If such tender offer was made for any or all securities of a class of the issuer;

(A) Such tender offer fully disclosed such person's intention to engage in a Rule 13e–3 transaction, the form and effect of such transaction and, to the extent known, the proposed terms thereof; and

(B) Such Rule 13e–3 transaction is substantially similar to that described in such tender offer; or

(ii) If such tender offer was made for less than all the securities of a class of the issuer:

(A) Such tender offer fully disclosed a plan of merger, a plan of liquidation or a similar binding agreement between such person and the issuer with respect to a Rule 13e–3 transaction; and

(B) Such Rule 13e–3 transaction occurs pursuant to the plan of merger, plan of liquidation or similar binding agreement disclosed in the bidder's tender offer.

(2) Any Rule 13e–3 transaction in which the security holders are offered or receive only an equity security *Provided*, That:

(i) Such equity security has substantially the same rights as the equity security which is the subject of the Rule 13e–3 transaction including, but not limited to, voting, dividends, redemption and liquidation rights except that this requirement shall be deemed to be satisfied if unaffiliated security holders are offered common stock;

(ii) Such equity security is registered pursuant to section 12 of the Act or reports are required to be filed by the issuer thereof pursuant to section 15(d) of the Act; and

(iii) If the security which is the subject of the Rule 13e–3 transaction was either listed on a national securities exchange or authorized to be quoted in an interdealer quotation system of a registered national securities association, such equity security is either listed on a national securities exchange or authorized to be quoted in an interdealer quotation system of a registered national securities association.

(3) Transactions by a holding company registered under the Public Utility Holding Company Act of 1935 in compliance with the provisions of that Act;

(4) Redemptions, calls or similar purchases of an equity security by an issuer pursuant to specific provisions set forth in the instrument(s) creating or governing that class of equity securities; or

(5) Any solicitation by an issuer with respect to a plan of reorganization under Chapter X of the Bankruptcy

Act, as amended, if made after the entry of an order approving such plan pursuant to section 174 of that Act and after, or concurrently with, the transmittal of information concerning such plan as required by section 175 of the Act.

(Sec. 17(a), 19(a), 48 Stat. 84, 85; secs. 3(b), 10(b), 13(e), 14(a), 14(d), 14(e), 23(a), 48 Stat. 882, 894, 895, 891, 901; sec. 209, 48 Stat. 908; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 68 Stat. 686; sec. 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 77g(a), 77s(a), 78c(b), 78j(b), 78m(e), 78n(a), 78n(c), 78n(e), 78w(a); secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85, secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 88 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 81 Stat. 1494, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78l, 78m, 78n, 78o(d), 78w(a); secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e) and 23(a) of the Act, 15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(e) and 78w(a))

[44 FR 46741, Aug. 8, 1979, as amended at 47 FR 11466, Mar. 16, 1982; 48 FR 19877, May 3, 1983; 48 FR 34253, July 28, 1983; 51 FR 42059, Nov. 20, 1986; 61 FR 24656, May 15, 1996]

§ 240.13e–4 Tender offers by issuers.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section and in Schedule 13E–4 [§ 240.13E–101] shall have the same meaning as in the Act or elsewhere in the General Rules and Regulations thereunder. In addition, the following definitions shall apply:

(1) The term *issuer* means any issuer which has a class of equity security registered pursuant to section 12 of the Act, or which is required to file periodic reports pursuant to section 15(d) of the Act, or which is a closed-end investment company registered under the Investment Company Act of 1940.

(2) The term *issuer tender offer* refers to a tender offer for, or a request or invitation for tenders of, any class of equity security, made by the issuer of such class of equity security or by an affiliate of such issuer.

(3) As used in this section and in Schedule 13E–4 [§ 240.13e–101], the term *business day* means any day, other than Saturday, Sunday, or a Federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern Time. In computing any time period under this Rule or Schedule 13E–4, the date of the event that begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter.

(4) The term *commencement* means the date an issuer tender offer is first published, sent or given to security holders.

(5) The term *termination* means the date after which securities may not be tendered pursuant to an issuer tender offer.

(6) The term *security holders* means holders of record and beneficial owners of securities of the class of equity security which is the subject of an issuer tender offer.

(7) The term *security position listing* means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b)(1) It shall be a fraudulent, deceptive or manipulative act or practice, in connection with an issuer tender offer, for an issuer or an affiliate of such issuer, in connection with an issuer tender offer:

(i) To employ any device, scheme or artifice to defraud any person;

(ii) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

(2) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with any issuer tender offer, it shall be unlawful for an issuer or an affiliate of such issuer to make an issuer tender offer unless:

(i) Such issuer or affiliate complies with the requirements of paragraphs (c), (d), (e) and (f) of this section; and

(ii) The issuer tender offer is not in violation of paragraph (b)(1) of this section.

(c) *Material required to be filed.* The issuer or affiliate making the issuer tender offer shall, in accordance with the General Instructions to the Issuer Tender Offer Statement on Schedule 13E–4 [§240.13E–101]:

(1) File with the Commission ten copies of such schedule, including all exhibits thereto, prior to or as soon as practicable on the date of commencement of the issuer tender offer;

(2) Report any material change in the information set forth in such schedule by promptly filing with the Commission ten copies of an amendment on such schedule;

(3) Report the results of the issuer tender offer by filing with the Commission no later than ten business days after the termination of the issuer tender offer ten copies of a final amendment to such schedule.

(d) *Disclosure of certain information.* (1) The issuer or affiliate making the issuer tender offer shall publish, send or give to security holders in the manner prescribed in paragraph (e)(1) of this section a statement containing the following information:

(i) The scheduled termination date of the issuer tender offer and whether it may be extended;

(ii) The specified dates prior to which, and after which, persons who tender securities pursuant to the issuer tender offer may withdraw their securities pursuant to paragraph (f)(2) of this section;

(iii) If the issuer tender offer is for less than all the securities of a class, the exact dates of the period during which securities will be accepted on a pro rata basis pursuant to paragraph (f)(3) of this section and the manner in which securities will be accepted for payment and in which securities may be withdrawn; and

(iv) The information required by Items 1 through 8 of Schedule 13E–4 [§240.13e-101] or a fair and adequate summary thereof.

Provided, however, That if the issuer tender offer involves the registration of securities pursuant to the Securities Act of 1933 and the General Rules and Regulations promulgated thereunder, any prospectus relating to such securities shall include all of the information, not otherwise required to be included therein, required by this paragraph.

(2) If any material change occurs in the information previously disclosed to security holders, the issuer or affiliate shall disclose promptly such change in the manner prescribed by paragraph (e)(2) of this section.

Instruction:

A. Negative responses to any item of Schedule 13E–4 need not be included in the statement published, sent or given to security holders.

B. Although the financial information necessary to present a fair and adequate summary of Item 7 of Schedule 13E–4 may vary depending on the facts and circumstances involved, the following historical and pro forma summary financial information normally will be sufficient for purposes of paragraph (d)(1)(iv) of this section:

(1) The following summary financial information for (i) the two most recent fiscal years and (ii) the latest year-to-date interim period and corresponding interim period of the preceding year:

Income Statement:

Net sales and operating revenues and other revenues
Income before extraordinary items
Net income

Balance Sheet (at end of period):

Working capital
Total assets
Total assets less deferred research and development charges and excess of cost of assets acquired over book value
Total indebtedness
Shareholders' equity

Per Share [1]
Income per common share before extraordinary items

[1] Average number of shares of common stock outstanding during each period was . . . . . (as adjusted to given effect to stock dividends or stock splits).

Extraordinary items
Net income per common share (and common share equivalents, if applicable)
Net income per share on a fully diluted basis

(2) Ratio of earnings to fixed charges for the same periods required by B(1) above;

(3) Book value per share as of the most recent fiscal year end and as of the date of the latest interim balance sheet; and

(4) If material, pro forma data for the summarized financial information described in B (1), (2) and (3) above, disclosing the effect of the tender offer, should be provided for the most recent fiscal year and latest year to date interim period. If the information required by Item 7 is summarized, appropriate instructions should be included stating how more complete financial information can be obtained. If the financial statements are prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, the summary financial information shall be accompanied by a reconciliation to generally accepted accounting principles of the United States.

(3) If an issuer or an affiliate publishes, sends or gives the issuer tender offer to security holders by means of a summary publication in the manner prescribed in paragraph (e)(1)(iii) of this section, the summary advertisement shall not contain a transmittal letter pursuant to which securities which are sought in the issuer tender offer may be tendered, and shall disclose only the following information:

(i) The identity of the issuer or affiliate making the issuer tender offer;

(ii) The amount and class of securities being sought and the price being offered;

(iii) The information required by paragraphs (d)(1) (i) through (iii) of this section;

(iv) A statement of the purpose of the issuer tender offer;

(v) Appropriate instructions for security holders regarding how to obtain promptly, at the expense of the issuer or affiliate making the issuer tender offer, the statement required by paragraph (d)(1) of this section; and

(vi) A statement that the information contained in the statement required by paragraph (d)(1) of this section is incorporated by reference.

(e) *Dissemination of tender offers.* (1) The issuer or affiliate making the issuer tender offer will be deemed to have published, sent or given the issuer tender offer to security holders if such issuer or affiliate complies fully with one or more of the following methods of dissemination. Depending on the facts and circumstances involved, and for purposes of paragraphs (e)(1)(i) and (iii) of this section, adequate publication of the issuer tender offer may require publication in a newspaper with a national circulation or may require only publication in newspaper with metropolitan or regional circulation or may require publication in a combination thereof.

(i) *Dissemination of cash issuer tender offers by long-form publication:* By making adequate publication in a newspaper or newspapers, on the date of commencement of the issuer tender offer, of the statement required by paragraph (d)(1) of this section.

(ii) *Dissemination of any issuer tender offer by use of shareholder and other lists:* (A) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section to each security holder whose name appears on the most recent shareholder list of the issuer;

(B) By contacting each participant named on the most recent security position listing of any clearing agency within the possession or access of the issuer or affiliate making the tender offer, and making inquiry of each such participant as to the approximate number of beneficial owners of the securities for which the issuer tender offer is made which are held by such participant;

(C) By furnishing to each such participant a sufficient number of copies of the statement required by paragraph (d)(1) of this section for transmittal to the beneficial owners; and

(D) By agreeing to reimburse promptly each such participant for reasonable expenses incurred by it in forwarding such statement to the beneficial owners.

(iii) *Dissemination of certain cash issuer tender offers by summary publication:* (A) If the issuer tender offer is not subject to Rule 13e–3 (§ 240.13e–3), by making adequate publication in a newspaper or newspapers, on the date of commencement of the issuer tender

offer, of a summary advertisement containing the information required by paragraph (d)(3) of this section; and

(B) By mailing or otherwise furnishing promptly the statement required by paragraph (d)(1) of this section and a transmittal letter to any security holder who requests either a copy of such statement or a transmittal letter.

(2) If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate shall disseminate promptly disclosure of such change in a manner reasonably calculated to inform security holder of such change.

(f) *Manner of making tender offer*. (1) The issuer tender offer, unless withdrawn, shall remain open until the expiration of:

(i) At least twenty business days from its commencement; and

(ii) At least ten business days from the date that notice of an increase or decrease in the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given is first published, sent or given to security holders.

Provided, however, That, for purposes of this paragraph, the acceptance for payment by the issuer or affiliate of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

(2) The issuer or affiliate making the issuer tender offer shall permit securities tendered pursuant to the issuer tender offer to be withdrawn:

(i) At any time during the period such issuer tender offer remains open; and

(ii) If not yet accepted for payment, after the expiration of forty business days from the commencement of the issuer tender offer.

(3) If the issuer or affiliate makes a tender offer for less than all of the outstanding equity securities of a class, and if a greater number of securities is tendered pursuant thereto than the issuer or affiliate is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities tendered by each security holder during the period such offer remains open; *Provided, however,* That this provision shall not prohibit the issuer or affiliate making the issuer tender offer from:

(i) Accepting all securities tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares of such security and who tender all their securities, before prorating securities tendered by others; or

(ii) Accepting by lot securities tendered by security holders who tender all securities held by them and who, when tendering their securities, elect to have either all or none or at least a minimum amount or none accepted, if the issuer or affiliate first accepts all securities tendered by security holders who do not so elect;

(4) In the event the issuer or affiliate making the issuer tender increases the consideration offered after the issuer tender offer has commenced, such issuer or affiliate shall pay such increased consideration to all security holders whose tendered securities are accepted for payment by such issuer or affiliate.

(5) The issuer or affiliate making the tender offer shall either pay the consideration offered, or return the tendered securities, promptly after the termination or withdrawal of the tender offer.

(6) Until the expiration of at least ten business days after the date of termination of the issuer tender offer, neither the issuer nor any affiliate shall make any purchases, otherwise than pursuant to the tender offer, of:

(i) Any security which is the subject of the issuer tender offer, or any security of the same class and series, or any right to purchase any such securities; and

(ii) In the case of an issuer tender offer which is an exchange offer, any security being offered pursuant to such exchange offer, or any security of the same class and series, or any right to purchase any such security.

(7) The time periods for the minimum offering periods pursuant to this section shall be computed on a concurrent as opposed to a consecutive basis.

(8) No issuer or affiliate shall make a tender offer unless:

(i) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(ii) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.

(9) Paragraph (f)(8)(i) of this section shall not:

(i) Affect dissemination under paragraph (e) of this section; or

(ii) Prohibit an issuer or affiliate from making a tender offer excluding all security holders in a state where the issuer or affiliate is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the issuer or affiliate to comply with such statute.

(10) Paragraph (f)(8)(ii) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, provided that:

(i) Security holders are afforded equal right to elect among each of the types of consideration offered; and

(ii) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(11) If the offer and sale of securities constituting consideration offered in an issuer tender offer is prohibited by the appropriate authority of a state after a good faith effort by the issuer or affiliate to register or qualify the offer and sale of such securities in such state:

(i) The issuer or affiliate may offer security holders in such state an alternative form of consideration; and

(ii) Paragraph (f)(10) of this section shall not operate to require the issuer or affiliate to offer or pay the alternative form of consideration to security holders in any other state.

(12) *Electronic filings*. If the issuer or affiliate is an electronic filer, the minimum offering periods set forth in paragraph (f)(1) of this section shall be tolled for any period during which it fails to file in electronic format, absent a hardship exemption (§§ 232.201 and 232.202 of this chapter), the Schedule 13E–4 Issuer Tender Offer Statement (§ 240.13e–101), the tender offer material specified in paragraph (a) of Item 9 of that Schedule, and any amendments thereto. If such documents were filed in paper pursuant to a hardship exemption (*see* § 232.201 and § 232.202 of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

(g) The requirements of section 13(e)(1) of the Act and Rule 13e–4 and Schedule 13E–4 thereunder shall be deemed satisfied with respect to any issuer tender offer, including any exchange offer, where the issuer is incorporated or organized under the laws of Canada or any Canadian province or territory, is a foreign private issuer, and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities that is the subject of the tender offer is held by U. S. holders, and the tender offer is subject to, and the issuer complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (unless the issuer has received an exemption(s) from, and the issuer tender offer does not comply with, requirements that otherwise would be prescribed by this section), *provided that:*

(1) Where the consideration for an issuer tender offer subject to this paragraph consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be acquired shall be filed with the Commission on Schedule 13E–4F (§ 240.13e–102) and disseminated to shareholders residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for an issuer tender offer subject to this paragraph includes securities to be issued pursuant to the offer, any registration statement and/or prospectus relating

thereto shall be filed with the Commission along with the Schedule 13E–4F referred to in paragraph (g)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the issuer residing in the United States in accordance with such Canadian laws, regulations and policies.

NOTE: Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by this section, the issuer tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

(h) This section shall not apply to:

(1) Calls or redemptions of any security in accordance with the terms and conditions of its governing instruments;

(2) Offers to purchase securities evidenced by a scrip certificate, order form or similar document which represents a fractional interest in a share of stock or similar security;

(3) Offers to purchase securities pursuant to a statutory procedure for the purchase of dissenting security holders' securities;

(4) Any tender offer which is subject to section 14(d) of the Act;

(5) Offers to purchase from security holders who own an aggregate of not more than a specified number of shares that is less than one hundred: *Provided, however*, That:

(i) The offer complies with paragraph (f)(8)(i) of this section with respect to security holders who own a number of shares equal to or less than the specified number of shares, except that an issuer can elect to exclude participants in a plan as that term is defined in § 242.100 of this chapter, or to exclude security holders who do not own their shares as of a specified date determined by the issuer; and

(ii) The offer complies with paragraph (f)(8)(ii) of this section or the consideration paid pursuant to the offer is determined on the basis of a uniformly applied formula based on the market price of the subject security;

(6) An issuer tender offer made solely to effect a rescission offer: *Provided, however*, That the offer is registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and the consideration is equal to the price paid by each security holder, plus legal interest if the issuer elects to or is required to pay legal interest;

(7) Offers by closed-end management investment companies to repurchase equity securities pursuant to § 270.23c–3 of this chapter; or

(8) Any other transaction or transactions, if the Commission, upon written request or upon its own motion, exempts such transaction or transactions, either unconditionally, or on specified terms and conditions, as not constituting a fraudulent, deceptive or manipulative act or practice comprehended within the purpose of this section.

[44 FR 49410, Aug. 22, 1979, as amended at 47 FR 11467, Mar. 16, 1982; 47 FR 54780, Dec. 6, 1982; 48 FR 34253, July 28, 1983; 51 FR 3034, Jan. 23, 1986; 51 FR 25882, July 17, 1986; 51 FR 32630, Sept. 15, 1986; 56 FR 30069, July 1, 1991; 58 FR 14683, Mar. 18, 1993; 58 FR 19343, Apr. 14, 1993; 61 FR 24656, May 15, 1996; 61 FR 68589, Dec. 30, 1996; 62 FR 544, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 62 FR 36459, July 8, 1997]

§ 240.13e–100 Schedule 13E–3, Transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 (§ 240.13e–3) thereunder.

Securities and Exchange Commission, Washington, DC 20549

Rule 13e–3 Transaction Statement

(Pursuant to Section 13(e) of the Securities Exchange Act of 1934)

[Amendment No.————]

_____

(Name of the Issuer)

_____

(Name of Person(s) Filing Statement)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities)

_____

(Name, address and telephone number of person authorized to receive notices and communications on behalf of persons(s) filing statement)

This statement is filed in connection with (check the appropriate box):

a. ☐ The filing of solicitation materials or an information statement subject to Regulation 14A (17 CFR 240.14a–1 to 240.14b–1), Regulation 14C (17 CFR 240.14c–1 to 240.14c–101) or

Rule 13e–3(c) (§ 240.13e–3(c)) under the Securities Exchange Act of 1934.

b. ☐ The filing of a registration statement under the Securities Act of 1933.

c. ☐ A tender offer.

d. ☐ None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: ☐

Instruction: Eight copies of this statement, including all exhibits, should be filed with the Commission.

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Form or Registration No.: _____

Filing Party: _____

Date Filed: _____

GENERAL INSTRUCTIONS

A. Depending on the type of Rule 13e–3 transaction, this statement shall be filed with the Commission:

1. Concurrently with the filing of preliminary or definitive soliciting materials or an information statement pursuant to Regulations 14A or 14C under the Act;

2. Concurrently with the filing of a registration statement under the Securities Act of 1933;

3. As soon as practicable on the date a tender offer is first published, sent or given to security holders; or

4. At least 30 days prior to any purchase of any securities of the class of securities subject to the Rule 13e–3 transaction, if the transaction does not involve a solicitation, an information statement, the registration of securities or a tender offer, as described in 1, 2 or 3 of this Instruction.

5. If the Rule 13e–3 transaction involves a series of transactions, the issuer of affiliate shall file this statement at the time indicated in 1–4 of this general instruction for the first transaction of such series and shall promptly amend this schedule with respect to each subsequent transaction in such series.

B. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

C. If the statement is filed by a general or limited partnership, syndicate or other group the information called for by Items 2, 3, 5, 6, 10, and 11 shall be given with respect to: (i) Each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner of member. If the statement is filed by a corporation or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation.

D. Information contained in exhibits to the statement or in a filing by the issuer, other than filings the incorporation of which is governed by Instruction F, may be incorporated by reference in answer or partial answer to any item or sub-item of the statement, unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference pursuant to this Instruction shall be clearly identified in the reference by page, paragraph, caption or otherwise. Any express statement that the specified matter is incorporated by reference pursuant to this Instruction shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

E. The information required by the items of this statement is intended to be in addition to any disclosure requirements of any other form or schedule which may be filed with the Commission in connection with the Rule 13e–3 transaction. To the extent that the disclosure requirements of this statement are inconsistent with the disclosure requirements of any such forms or schedules, the requirements of this statement are controlling.

F. If the Rule 13e–3 transaction involves a transaction subject to Regulation 14A (§§ 240.14a–1 to 240.14b–1) or 14C (§§ 240.14c–1 to 240.14c–101) of the Act, the registration of securities pursuant to the Securities Act of 1933 and the General Rules and Regulations promulgated thereunder, or a tender offer subject to Regulation 14D (§§ 240.14d–1 to

240.14d–101) or Rule 13e–4 (§ 240.13e–4), the information contained in the proxy or information statement, the registration statement, the Schedule 14D–1 (§ 240.14d–100), or the Schedule 13E–4, respectively, which is filed with the Commission shall be incorporated by reference in answer to the items of this statement or amendments thereto; this statement shall include an express statement to that effect and a cross reference sheet showing the location in the proxy or information statement, the registration statement, the Schedule 14D–1 or the Schedule 13E–4 of the information required to be included in response to the items of this statement. If any such item is inapplicable or the answer thereto is in the negative and is omitted from the proxy or the information statement, the registration statement, the Schedule 14D–1, or the Schedule 13E–4, a statement to that effect shall be made in the cross reference sheet.

G. If the rule 13e–3 transaction involves a proxy or an information statement subject to Regulation 14A (§§ 240.14a–1 to 240.14b–1) or Regulation 14C (§§ 240.14c–1 to 14c–101), this Schedule 13E–3 shall be available immediately upon filing such material with the Commission in preliminary form.

H. Amendments disclosing a material change in the information set forth in this statement may omit any information previously disclosed in this statement.

Item 1. Issuer and Class of Security Subject to the Transaction. (a) State the name of the issuer of the class of equity security which is the subject of the Rule 13e–3 transaction and the address of its principal executive offices.

(b) State the exact title, the amount of securities outstanding of the class of security which is the subject of the Rule 13e–3 transaction as of the most recent practicable date and the approximate number of holders of record of such class as of the most recent practicable date.

(c) Identify the principal market in which such securities are being traded and, if the principal market is an exchange, state the high and low sales prices for such securities as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations and, if there is currently no established trading market for such securities (excluding limited or sporadic quotations), furnish a statement to that effect.

(d) State the frequency and amount of any dividends paid during the past two years with respect to such class of securities and briefly describe any restriction on the issuer's present or future ability to pay such dividends.

Instruction: If the person filing this statement is an affiliate of the issuer, the information required by Item 1(d) should be furnished to the extent known by such affiliate after making reasonable inquiry.

(e) If the issuer and/or affiliate filing this statement has made an underwritten public offering of such securities for cash during the past three years which was registered under the Securities Act of 1933 or exempt from registration thereunder pursuant to Regulation A, state the date of such offering, the amount of securities offered, the offering price per share (which should be appropriately adjusted for stock splits, stock dividends, etc.) and the aggregate proceeds received by such issuer and/or such affiliate.

(f) With respect to any purchases of such securities made by the issuer or affiliate since the commencement of the issuer's second full fiscal year preceding the date of this schedule, state the amount of such securities purchased, the range of prices paid for such securities and the average purchase price for each quarterly period of the issuer during such period.

Instruction: The information required by Item 1(f) need not be given with respect to purchases of such securities by a person prior to the time such person became an affiliate.

Item 2. Identity and Background. If the person filing this statement is the issuer of the class of equity securities which is the subject of the Rule 13e–3 transaction, make a statement to that effect. If that statement is being filed by an affiliate of the issuer which is other than a natural person or if any person enumerated in Instruction C to this statement is a corporation, general partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal executive offices and provide the information required by (e) and (f) of this Item. If this statement is being filed by an affiliate of the issuer who is a natural person or if any person enumerated in Instruction C of this statement is a natural person, provide the information required by (a) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on;

(e) Whether or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case;

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining further violations of, or prohibiting activities subject to, federal or state securities laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order;

Instruction: While negative answers to Items 2(e) and 2(f) are required in this schedule, they need not be furnished to security holders.

(g) Citizenship(s).

Item 3. Past Contacts, Transactions or Negotiations. (a) If this schedule is filed by an affiliate of the issuer of the class of securities which is the subject of the Rule 13e–3 transaction:

(1) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this schedule, which has occurred since the commencement of the issuer's second full fiscal year preceding the date of this schedule between such affiliate (including subsidiaries of the affiliate and those persons enumerated in Instruction C of this schedule) and the issuer: *Provided, however,* That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the issuer's consolidated revenues (which may be based upon information contained in the most recently available filing with the Commission by the issuer unless such affiliate has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred or (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) Describe any contacts, negotiations or transactions which have been entered into or which have occurred since the commencement of the issuer's second full fiscal year preceeding the date of this schedule between such affiliate (including subsidiaries of the affiliate and those persons enumerated in Instruction C of this schedule) and the issuer concerning: a merger, consolidation or acquisition; a tender offer for or other acquisition of securities of any class of the issuer; an election of directors of the issuer; or a sale or other transfer of a material amount of assets of the issuer or any of its subsidiaries.

(b) Describe any contacts or negotiations concerning the matters referred to in Item 3(a)(2) which have been entered into or which have occurred since the commencement of the issuer's second full fiscal year preceding the date of this schedule (i) between any affiliates of the issuer of the class of securities which is the subject of the Rule 13e–3 transaction; or (ii) between such issuer or any of its affiliates and any person who is not affiliated with the issuer and who would have a direct interest in such matters. Identify the person who initiated such contacts or negotiations. 3

Item 4. Terms of the Transaction. (a) State the material terms of the Rule 13e–3 transaction.

(b) Describe any term or arrangement concerning the Rule 13e–3 transaction relating to any security holder of the issuer which is not identical to that relating to other security holders of the same class of securities of the issuer.

Item 5. Plans or Proposals of the Issuer or Affiliate. Describe any plan or proposal of the issuer or affiliate regarding activities or transactions which are to occur after the Rule 13e–3 transaction which relate to or would result in: (a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;

(c) Any change in the present board of directors or management of the issuer including, but not limited to, any plan or proposal to change the number or term of directors, to fill any existing vacancy on the board or to change any material term of the employment contract of any executive officer;

(d) Any material change in the present dividend rate or policy or indebtedness or capitalization of the issuer;

(e) Any other material change in the issuer's corporate structure or business;

(f) A class of equity securities of the issuer becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act; or

(g) The suspension of the issuer's obligation to file reports pursuant to section 15(d) of the Act.

Item 6. Source and Amounts of Funds or Other Consideration. (a) State the source and total amount of funds or other consideration to be used in the Rule 13e–3 transaction.

(b) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the Rule 13e–3 transaction including, but not limited to, filing fees, legal, accounting and appraisal fees, solicitation expenses and printing costs and state whether or not the issuer has paid or will be responsible for paying any or all of such expenses.

(c) If all or any part of such funds or other consideration is, or is expected to be, directly or indirectly borrowed for the purpose of the Rule 13e–3 transaction,

(1) Provide a summary of each such loan agreement containing the indentity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or, if no such plans or arrangements have been made, make a statement to that effect.

(d) If the source of all or any part of the funds to be used in the Rule 13e–3 transaction is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act and section 13(d) or 14(d) is applicable to such transaction, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

Item 7. Purpose(s), Alternatives, Reasons and Effects. (a) State the purpose(s) for the Rule 13e–3 transaction.

(b) If the issuer or affiliate considered alternative means to accomplish such purpose(s), briefly describe such alternative(s) and state the reason(s) for their rejection.

(c) State the reasons for the structure of the Rule 13e–3 transaction and for undertaking such transaction at this time.

(d) Describe the effects of the Rule 13e–3 transaction on the issuer, its affiliates and unaffiliated security holders, including the federal tax consequences.

Instructions: (1) Conclusory statements will not be considered sufficient disclosure in response to Item 7.

(2) The description required by Item 7(d) should include a reasonably detailed discussion of the benefits and detriments of the Rule 13e–3 transaction to the issuer, its affiliates and unaffiliated security holders. The benefits and detriments of the Rule 13e–3 transaction should be quantified to the extent practicable.

(3) If this statement is filed by an affiliate of the issuer, the description required by Item 7(d) should include but not be limited to, the effect of the Rule 13e–3 transaction on the affiliate's interest in the net book value and net earnings of the issuer in terms of both dollar amounts and percentages.

Item 8. Fairness of the Transaction. (a) State whether the issuer or affiliate filing this schedule reasonably believes that the Rule 13e–3 transaction is fair or unfair to unaffiliated security holders. If any director dissented to or abstained from voting on the Rule 13e–3 transaction, identify each such director, and indicate, if known, after making reasonable inquiry, the reasons for each dissent or abstention.

Instruction. A statement that the issuer or affiliate has no reasonable belief as to the fairness of the Rule 13e–3 transaction to unaffiliated security holders will not be considered sufficient disclosure in response to Item 8(a).

(b) Discuss in reasonable detail the material factors upon which the belief stated in Item 8(a) is based and, to the extent practicable, the weight assigned to each such factor. Such discussion should include an analysis of the extent, if any, to which such belief is based on the factors set forth in instruction (1) to paragraph (b) of this Item, paragraphs (c), (d), and (e) of this Item, and Item 9.

Instructions. (1) The factors which are important in determining the fairness of a transaction to unaffiliated security holders and the weight, if any, which should be given to them in a particular context will vary. Normally such factors will include, among others, those referred to in paragraphs (c), (d) and (e) of this Item and whether the consideration offered to unaffiliated security holders constitutes fair value in relation to:

(i) Current market prices,

(ii) Historical market prices,

(iii) Net book value,

(iv) Going concern value,

(v) Liquidation value,

(vi) The purchase price paid in previous purchases disclosed in Item 1(f) of Schedule 13e–3,

(vii) Any report, opinion, or appraisal described in Item 9 and

(viii) Firm offers of which the issuer or affiliate is aware made by any unaffiliated person, other than the person filing this statement, during the preceding eighteen months for:

(A) The merger or consolidation of the issuer into or with such person or of such person into or with the issuer,

(B) The sale or other transfer of all or any substantial part of the assets of the issuer or

(C) Securities of the issuer which would enable the holder thereof to exercise control of the issuer.

(2) Conclusory statements, such as ''The Rule 13e–3 transaction is fair to unaffiliated security holders in relation to net book value, going concern value and future prospects of the issuer'' will not be considered sufficient disclosure in response to Item 8(b).

(c) State whether the transaction is structured so that approval of at least a majority of unaffiliated security holders is required.

(d) State whether a majority of directors who are not employees of the issuer has retained an unaffiliated representative to act solely on behalf of unaffiliated security holders for the purposes of negotiating the terms of the Rule 13e–3 transaction and/or preparing a report concerning the fairness of such transaction.

(e) State whether the Rule 13e–3 transaction was approved by a majority of the directors of the issuer who are not employees of the issuer.

(f) If any offer of the type described in instruction (vii) to Item 8(b) has been received, describe such offer and state the reason(s) for its rejection.

Item 9. Reports, Opinions, Appraisals and Certain Negotiations. (a) State whether or not the issuer or affiliate has received any report, opinion (other than an opinion of counsel) or appraisal from an outside party which is materially related to the Rule 13e–3 transaction including, but not limited to, any such report, opinion or appraisal relating to the consideration or the fairness of the consideration to be offered to security holders of the class of securities which is the subject of the Rule 13e–3 transaction or the fairness of such transaction to the issuer or affiliate or to security holders who are not affiliates.

(b) With respect to any report, opinion or appraisal described in Item 9(a) or with respect to any negotiation or report described in Item 8(d) concerning the terms of the Rule 13e–3 transaction:

(1) Identify such outside party and/or unaffiliated representative;

(2) Briefly describe the qualifications of such outside party and/or unaffiliated representative;

(3) Describe the method of selection of such outside party and/or unaffiliated representative;

(4) Describe any material relationship between (i) the outside party, its affiliates, and/or unaffiliated representative, and (ii) the issuer or its affiliates, which existed during the past two years or is mutually understood to be contemplated and any compensation received or to be received as a result of such relationship;

(5) If such report, opinion or appraisal relates to the fairness of the consideration, state whether the issuer or affiliate determined the amount of consideration to be paid or whether the outside party recommended the amount of consideration to be paid.

(6) Furnish a summary concerning such negotiation report, opinion or appraisal which shall include, but not be limited to, the procedures followed; the findings and recommendations; the bases for and methods of arriving at such findings and recommendations; instructions received from the issuer or affiliate; and any limitation imposed by the issuer or affiliate on the scope of the investigation.

Instruction: The information called for by subitem 9(b)(1), (2) and (3) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(c) Furnish a statement to the effect that such report, opinion or appraisal shall be made available for inspection and copying at the principal executive offices of the issuer or affiliate during its regular business hours by any interested equity security holder of the issuer or his representative who has been so designated in writing. This statement may also provide that a copy of such report, opinion or appraisal will be transmitted by the issuer or affiliate to any interested equity security holder of the issuer or his representative who has been so designated in writing upon written request and at the expense of the requesting security holder.

Item 10. Interest in Securities of the Issuer. (a) With respect to the class of equity security to which the Rule 13e–3 transaction relates, state the aggregate amount and percentage of securities beneficially owned (identifying those securities for which there is a right to acquire) as of the most recent practicable date by the person filing this statement (unless such person is the issuer), by any pension, profit sharing or similar plan of the issuer or affiliate, by each person enumerated in Instruction C of this Schedule or by any associate or majority owned subsidiary of the issuer or affiliate giving the name and address of any such associate or subsidiary.

Instructions: 1. For the purpose of this Item, beneficial ownership shall be determined in accordance with Rule 13e–3 (17 CFR 240.13d–3) under the Exchange Act.

2. The information required by this paragraph should be given with respect to officers, directors and associates of the issuer to the extent known after making reasonable inquiry.

(b) Describe any transaction in the class of equity securities of the issuer which is the subject of a Rule 13e–3 transaction that was effected during the past 60 days by the issuer of such class or by the persons named in response to paragraph (a) of this Item.

Instructions: 1. The description of a transaction required by Item 10(b) shall include, but not necessarily be limited to: (i) the identity of the person covered by Item 10(b) who effected the transaction; (ii) the date of the transaction; (iii) the amount of securities involved; (iv) the price per security; and (v) where and how the transaction was effected.

2. If the information required by Item 10(b) is available to the person filing this statement at the time this statement is initially filed with the Commission, the information shall be included in the initial filing. However, if the information is not available to such person at the time of such initial filing, it shall be filed with the Commission promptly but in no event later than seven days (or 2 business days with respect to a tender subject to Regulation 14D (§§ 240.14d–1 to 240.14d–101) or 10 business days with respect to a tender offer subject to Rule 13e–4 (§ 240.13e–4)) after the date of such filing and, if material, disclosed to security holders of

the issuer pursuant to Rule 13e–3(e) (§ 240.13e–3(e)), and disseminated to them in a manner reasonably calculated to inform security holders.

Item 11. Contracts, Arrangements or Understandings with Respect to the Issuer's Securities. Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) in connection with the Rule 13e–3 transaction between the person filing this statement (including any person enumerated in Instruction C of this schedule) and any person with respect to any securities of the issuer (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such of such securities, joint ventures, loan or option arrangements, puts or calls, quaranties of loans, guaranties against loss or the giving or withholding proxies, consents or authorizations), naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 12. Present Intention and Recommendation of Certain Persons with Regard to the Transaction. (a) To the extent known by the person filing this statement after making reasonable inquiry, furnish a statement of present intention with regard to the Rule 13e–3 transaction indicating whether or not any executive officer, director or affiliate of the issuer or any person enumerated in Instruction C of this statement will tender or sell securities of the issuer owned or held by such person and/or how such securities, and securities with respect to which such person holds proxies, will be voted and the reasons therefor.

Instruction: If the information required by Item 12(a) is available to the person filing this statement at the time this statement is initially filed with the Commission, the information shall be included in the initial filing. However, if the information is not available to such person at the time of such initial filing, it shall be filed with the Commission promptly but in no event later than seven days (or two business days with respect to a tender offer subject to Regulation 14D (§ 240.14d–1 to 240.14d–101) or ten business days with respect to a tender offer subject to Rule 13e–4 (§§ 240.13e–4)) after the date of such filing and, if material, disclosed to security holders of the issuer pursuant to Rule 13e–3(e) (§ 240.13e–3(e)), and disseminated to them in a manner reasonably calculated to inform security holders.

(b) To the extent known by the person filing this statement after making reasonable inquiry, state whether any person named in paragraph (a) of this item has made a recommendation in support of or opposed to the Rule 13e–3 transaction and the reasons for such recommendation. If no recommendation has been made by such persons, furnish a statement to that effect.

Item 13. Other Provisions of the Transaction. (a) State whether or not appraisal rights are provided under applicable state law or under the issuer's articles of incorporation or will be voluntarily accorded by the issuer or affiliate to security holders in connection with the Rule 13e–3 transaction and, if so, summarize such appraisal rights. If appraisal rights will not be available under the applicable state law, to security holders who object to the transaction, briefly outline the rights which may be available to such security holders under such law.

(b) If any provision has been made by the issuer or affiliate in connection with the Rule 13e–3 transaction to allow unaffiliated security holders to obtain access to the corporate files of the issuer or affiliate or to obtain counsel or appraisal services at the expense of the issuer or affiliate, describe such provision.

(c) If the Rule 13e–3 transaction involves the exchange of debt securities of the issuer or affiliate for the equity securities held by security holders of the issuer who are not affiliates, describe whether or not the issuer or affiliate will take steps to provide or assure that such securities are or will be eligible for trading on any national securities exchange or an automated inter-dealer quotation system.

Item 14. Financial Information. (a) Furnish the following financial data concerning the issuer: (1) Audited financial statements for the two fiscal years required to be filed with the issuer's most recent annual report under sections 13 and 15(d) of the Act;

(2) Unaudited balance sheets and comparative year-to-date income statements and statements of cash flows and related earnings per share amounts required to be included in the issuer's most recent quarterly report filed pursuant to the Act;

(3) Ratio of earnings to fixed charges for the two most recent fiscal years and the interim periods provided under Item 14(a)(2); and

(4) Book value per share as of the most recent fiscal year end and as of the date of the latest interim balance sheet provided under Item 14(a)(2).

(b) If material, provide pro forma data disclosing the effect of the Rule 13e–3 transaction on: (1) The issuer's balance sheet as of the most recent fiscal year end and the latest interim balance sheet provided under Item 14(a)(2);

(2) The issuer's statement of income, earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under Item 14(a)(2); and

(3) The issuer's book value per share as of the most recent fiscal year end and as of the latest interim balance sheet date provided under Item 14(a)(2).

Item 15. Persons and Assets Employed, Retained or Utilized. (a) Identify and describe the purpose for which any officer, employee, class of employees or corporate asset of the issuer (excluding corporate assets which are proposed to be used as consideration for purchases of securities which are disclosed in Item 6 of this schedule) has been or is proposed to be employed, availed of or utilized by the issuer or affiliate in connection with the Rule 13e–3 transaction.

(b) Identify all persons and classes of persons (excluding officers, employees and class of employees who have been identified in Item 15(a) of this Schedule) employed, retained or to be compensated by the person filing this statement, or by any person on behalf of the person filing this statement, to make solicitations or recommendations in connection with the Rule 13e–3 transaction and provide a summary of the material terms of such employment, retainer or arrangement for compensation.

Item 16. Additional Information. Furnish such additional material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not materially misleading.

Item 17. Material to be Filed as Exhibits. Furnish a copy of:

(a) Any loan agreement referred to in Item 6 of this Schedule;

Instruction: The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 6 of this schedule.

(b) Any report, opinion or appraisal referred to in Items 8(d) or 9 of this schedule;

(c) Any document setting forth the terms of any contract, arrangements or understandings or relationships referred to in Item 11 of this schedule; and

(d) Any disclosure materials furnished to security holders in connection with the transaction pursuant to Rule 13e–3(d) (§ 240.13e–3(d)).

(e) A detailed statement describing the appraisal rights and the procedures for exercising such appraisal rights which are referred to in Item 13(a) of this schedule.

(f) If any oral solicitation of or recommendations to security holders referred to in Item 15(b) are to be made by or on behalf of the person filing this statement, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation or recommendation for their use, directly or indirectly, in connection with the Rule 13e–3 transaction.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date)_____

(Signature)_____

(Name and Title)_____

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the person filing this statement), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

(Sec. 17(a), 19(a), 48 Stat. 84, 85; secs. 3(b), 10(b), 13(e), 14(a), 14(d), 14(e), 23(a), 48 Stat. 882, 894, 895, 891, 901; sec. 209, 48 Stat. 908; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 68 Stat. 686; sec. 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 18, 89 Stat. 97, 155; 15 U.S.C. 77g(a), 77s(a), 78c(b), 78j(b), 78m(e), 78n(a), 78n(c), 78n(e), 78w(a))

[44 FR 46743, Aug. 8, 1979, as amended at 51 FR 2477, Jan. 17, 1986; 51 FR 42059, Nov. 20, 1986; 57 FR 45294, Oct. 1, 1992; 57 FR 48290, Oct. 22, 1992]

§ 240.13e–101 Schedule 13E–4. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Securities and Exchange Commission
Washington, DC

Issuer Tender Offer Statement

Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. _____)

Name of Issuer _____

Name of person(s) filing statement _____

Title of class of securities _____

CUSIP number of class of securities _____

Name, address and telephone number of person authorized to receive notices and communications on behalf of the person(s) filing statement _____

Date tender offer first published, sent or given to security holders _____

Instruction. Ten copies of this statement, including all exhibits, shall be filed with the Commission.

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0.11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

GENERAL INSTRUCTIONS

A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement or in a filing by the issuer may be incorporated by reference in answer or partial answer to any item or subitem of the statement unless it would render such answer incomplete, unclear or confusing. Matter incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

C. If the statement is filed by general or limited partnership, syndicate or other group, the information called for by Items 2–5, inclusive, shall be given with respect to (i) each partner of such general partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii) or (iv) of this Instruction is a corporation, the information called for by Items 2–5, inclusive, shall be given with respect to (a) each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation.

D. Upon termination of the tender offer, the person filing this statement shall promptly, but in no event later than ten business days after termination of the tender offer, file a final amendment to Schedule 13E–4 (§ 240.13E–100) disclosing all material changes in the information set forth in such statement and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. Amendments disclosing a material change in the information set forth in this statement may omit information previously disclosed in this statement.

Item 1. Security and Issuer. (a) State the name of the issuer and the address of its principal executive office;

(b) State the exact title and the amount of securities outstanding of the class of security being sought as of the most recent practicable date; the exact amount of such securities being sought and the consideration being offered therefor; whether any such securities are to be purchased from any officer, director or affiliate of the issuer, and the details of each such transaction; and

(c) Identify the principal market in which such securities are being traded and, if the principal market is an exchange, state the high and low sales prices for such securities as reported in the consolidated transaction reporting system or, if not so reported, on such principal exchange for each quarterly period during the past two years. If the principal market is not an exchange, state the range of high and low bid quotations for each quarterly period during the past two years, the source of such quotations, and if there is currently no established trading market for such securities (excluding limited or sporadic) furnish a statement to that effect.

(d) State the name and address of the person filing this statement, if other than the issuer, and the nature of the affiliation between such person and the issuer.

Item 2. Source and Amount of Funds or Other Consideration. (a) State the source and total amount of funds or other consideration for the purchase of the maximum amount of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration is, or is expected to be borrowed, directly or indirectly, for the purpose of the tender offer:

(1) Provide a summary of each such loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

Item 3. Purpose of the Tender Offer and Plans or Proposals of the Issuer or Affiliate. State the purpose or purposes of the tender offer, and whether the securities are to be retired, held in the treasury of the issuer, or otherwise disposed of, indicating such disposition, and any plans or proposals which relate to or would result in:

(a) The acquisition by any person of additional securities of the issuer, or the disposition of securities of the issuer;

(b) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the issuer or any of its subsidiaries;

(c) A sale or transfer of a material amount of assets of the issuer or any of its subsidiaries;

(d) Any change in the present board of directors or management of the issuer including, but not limited to, any plans or proposals to change the number or the term of directors, to fill any existing vacancy on the board or to change any material term of the employment contract of any executive officer;

(e) Any material change in the present dividend rate or policy, or indebtedness or capitalization of the issuer;

(f) Any other material change in the issuer's corporate structure or business, including if the issuer is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by section 13 of the Investment Company Act of 1940;

(g) Changes in the issuer's charter, bylaws or instruments corresponding thereto or other actions which may impede the acquisition of control of the issuer by any person;

(h) Causing a class of equity security of the issuer to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association;

(i) A class of equity security of the issuer becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act; or

(j) The suspension of the issuer's obligation to file reports pursuant to section 15(d) of the Act.

Item 4. Interest in Securities of the Issuer. Describe any transaction in the class of subject security that was effected during the past 40 business days by the issuer or the person filing this statement, by any person referred to in Instruction C of this schedule or by any associate or subsidiary of any such person, including any executive officer or director of any such subsidiary.

Instructions. 1. The description of a transaction required by this Item shall include, but not necessarily be limited to: (1) The identity of the person covered by this Item who effected the transaction; (2) the date of the transaction; (3) the amount of securities involved; (4) the price per security; and (5) where and how the transaction was effected.

2. If the information required by this Item is available to the person filing this statement at the time this statement is initially filed with the Commission, the information should be included in the initial filing. However, if the information is not available to such person at the time of such initial filing, it shall be filed with the Commission promptly but in no event later than ten business days after such date of the filing and, if material, should be disclosed to security holders of the issuer in a manner reasonably calculated to inform security holders.

Item 5. Contracts, Arrangements, Understandings or Relationships With Respect to the Issuer's Securities. Describe any contract, arrangement, understanding or relationship relating, directly or indirectly, to the tender offer (whether or not legally enforceable) between the person filing this statement (including any person enumerated in Instruction C of this schedule) and any person with respect to any securities of the issuer (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any such securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss, or the giving or withholding of proxies, consents or authorizations) naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 6. Persons Retained, Employed or to be Compensated. Identify all persons and classes of persons employed, retained or to be compensated by the person filing this statement, or by any person on behalf of the person filing this statement, to make solicitations or recommendations in connection with the tender offer, and provide a summary of the material terms of such employment, retainer or arrangement for compensation.

Item 7. Financial Information. (a) If material, furnish the following financial data of the issuer:

(1) Audited financial statements for the two fiscal years required to be filed with the issuer's most recent annual report under Sections 13 and 15(d) of the Act;

(2) Unaudited balance sheets and comparative year-to-date income statements and

statements of cash flows and related earnings per share amounts required to be included in the issuer's most recent quarterly report filed pursuant to the Act;

(3) Ratio of earnings to fixed charges for the two most recent fiscal years and the interim periods provided under Item 7(a)(2); and

(4) Book value per share as of the most recent fiscal year end and as of the date of the latest interim balance sheet provided under Item 7(a)(2).

(b) If material, provide pro forma data disclosing the effect of the tender offer on:

(1) The issuer's balance sheet as of the most recent fiscal year end and the latest interim balance sheet provided under Item 7(a)(2);

(2) The issuer's statement of income, earnings per share amounts, and ratio of earnings to fixed charges for the most recent fiscal year and the latest interim period provided under Item 7(a)(2); and

(3) The issuer's book value per share as of the most recent fiscal year end and as of the latest interim balance sheet date provided under Item 7(a)(2).

Item 8. Additional information. If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information including, but not limited to, the following:

(a) Any present or proposed contracts, arrangements, understandings or relationships between the issuer and its executive officers, directors or affiliates (other than any contract, arrangement or understanding required to be disclosed pursuant to Item 5 of this schedule);

(b) Any applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(d) Any material pending legal proceedings relating to the tender offer, including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings and the relief sought; and

Instruction. In connection with sub-item (d), a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be furnished promptly to the Commission on a supplemental basis.

(e) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material to be filed as exhibits. Furnish a copy of:

(a) Tender offer material which is published, sent or given to security holders by or on behalf of the person filing this statement in connection with the tender offer;

(b) Any loan agreement referred to in Item 2 of this schedule;

(c) Any document setting forth the terms of any contract, arrangements, understandings or relationships referred to in Items 5 or 8(a) of this Schedule;

(d) Any written opinion prepared by legal counsel at the request of the person filing this statement and communicated to such person pertaining to the tax consequences of the tender offer;

(e) In the exchange offer where securities of the issuer have been or are to be registered under the Securities Act of 1933, any prospectus filed with the Commission in connection with the registration statement; and

(f) If any oral solicitation of security holders is to be made by or on behalf of the person filing this statement, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Date _____

Signature _____

Name and title _____

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the person filing this statement) evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

(Secs. 3(b), 9(a)(6), 10(b), 13(e), 14(e), 15(c)(1), 23(a), 48 Stat. 882, 889, 891, 894, 895, 901, sec. 8, 49 Stat. 1379, sec. 5, 78 Stat. 569, 570, secs. 2, 3, 82 Stat. 454, 455, secs. 1, 2, 3–5, 84 Stat. 1497, secs. 3, 18, 89 Stat. 97, 155 (15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(e), 78*o*(c), 78w(a)))

[44 FR 49412, Aug. 22, 1979, as amended at 51 FR 2477, Jan. 17, 1986; 57 FR 45294, Oct. 1, 1992]

§ 240.13e–102 Schedule 13E–4F. Tender offer statement pursuant to section 13(e) (1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Securities and Exchange Commission
Washington, DC 20549
Schedule 13E–4F
Issuer Tender Offer Statement Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934
[Amendment No. ____]

_____
(Exact name of Issuer as specified in its charter)

_____
(Translation of Issuer's Name into English (if applicable))

_____
(Jurisdiction of Issuer's Incorporation or Organization)

_____
(Name(s) of Person(s) Filing Statement)

_____
(Title of Class of Securities)

_____
(CUSIP Number of Class of Securities) (if applicable)

_____
(Name, address (including zip code) and telephone number (including area code) of person authorized to receive notices and communications on behalf of the person(s) filing statement)

_____
(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*
Transaction Valuation
Amount of Filing Fee

* Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Registration No.: _____
Filing Party:

_____
Form: _____ Date Filed: _____

General Instructions

I. Eligibility Requirements for Use of Schedule 13E–4F

A. Schedule 13E–4F may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada or any Canadian province or territory; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The calculation of securities held by U.S. holders shall be made as of the end of the issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of the issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, ''foreign private issuer'' shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term ''U.S. holder'' shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 14D–1F and/or Form F–8 or Form F–80, the date for calculation of U.S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

4. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any issuer using this Schedule must extend the cash tender or exchange offer to U.S. holders of the class of securities subject to the offer upon terms and conditions not less favorable than those extended to any other holder of the same class of such securities, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the issuer is an investment company registered or required to be registered under the Investment Company Act of 1940.

II. Filing Instructions and Fees

A. Five copies of this Schedule and any amendment thereto (see part I, Item 1.(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule

and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time of filing this Schedule with the Commission, the issuer shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U.S. dollars in the amount prescribed by section 13(e)(3) of the Exchange Act. See also Rule 0–9 of the Exchange Act.

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them, calculated into U.S. dollars.

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based on the market value of the securities to be acquired by the issuer as established in accordance with paragraph (3) of this section.

(3) When the fee is based upon the market value of the securities, such market value shall be established by either the average of the high and low prices reported on the consolidated reporting system (for exchange-traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the Schedule. If there is no market for the securities to be acquired by the issuer, the value shall be based upon the book value of such securities computed as of the latest practicable date prior to the date of filing of the Schedule, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of the schedule, is in a foreign language, it shall be accompanied by a substantive summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

III. COMPLIANCE WITH THE EXCHANGE ACT

A. Pursuant to Rule 13e–4(g) under the Exchange Act, the issuer shall be deemed to comply with the requirements of section 13(e)(1) of the Exchange Act and Rule 13e–4 and Schedule 13E–4 thereunder in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule, *provided that*, if an exemption has been granted from the requirements of Canadian federal, provincial and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Rule 13e–4, the issuer (absent an order from the Commission) shall comply with the provisions of section 13(e)(1) and Rule 13e–4 and Schedule 13E–4 thereunder.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, section 13(e)(1) of the Exchange Act and Rule 13e–4(b)(1) thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed ''filed'' for purposes of section 18 of the Exchange Act.

C. The issuer's attention is directed to Regulation M (§§ 242.100 through 242.105 of this chapter), in the case of an issuer exchange offer, and to Rule 10b–13 under the Exchange Act (§ 240.10b–13), in the case of an issuer cash tender offer or issuer exchange offer. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b–13.]

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired by the issuer in the proposed transaction pursuant to the laws, regulations or policies of the Canadian jurisdiction in which the issuer is incorporated or organized, and any other Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer. The Schedule need not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made by the issuer to a home jurisdiction document or documents

shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the issuer have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two-points leaded:

''This tender offer is made by a foreign issuer for its own securities, and while the offer is subject to disclosure requirements of the country in which the issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

''The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

''Investors should be aware that the issuer or its affiliates, directly or indirectly, may bid for or make purchases of the securities of the issuer subject to the offer, or of its related securities, during the period of the issuer tender offer, as permitted by applicable Canadian laws or provincial laws or regulations.''

NOTE TO ITEM 2. If the home jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and fonts by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be lettered or numbered appropriately for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the issuer in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s) .

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertakings and Consent to Service of Process

1. Undertakings

The Schedule shall set forth the following undertakings of the issuer:

(a) The issuer undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

(b) The issuer also undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

2. Consent to Service of Process

(a) At the time of filing this Schedule, the issuer shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the company), evidence of the representative's authority shall be filed with the Schedule.

B. The name of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the person(s) filing the Schedule consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 13E–4F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

[56 FR 30069, July 1, 1991, as amended at 61 FR 24656, May 15, 1996; 62 FR 544, Jan. 3, 1997]

§ 240.13f–1 Reporting by institutional investment managers of information with respect to accounts over which they exercise investment discretion.

(a) Every institutional investment manager which exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of this section, having an aggregate fair market value on the last trading day of any month of any calendar year of at least $100,000,000 shall file a report on Form 13F (§ 249.325 of this chapter) with the Commission within 45 days after the last day of such calendar year and within 45 days after the last day of each of the first three calendar quarters of the subsequent calendar year.

(b) For the purposes of this rule, ''investment descretion'' has the meaning set forth in section 3(a)(35) of the Act (15 U.S.C. 78c(a)(35)). An institutional investment manager shall also be deemed to exercise ''investment discretion'' with respect to all accounts over which any person under its control exercises investment discretion.

(c) For purposes of this rule ''section 13(f) securities'' shall mean equity securities of a class described in section 13(d)(1) of the Act that are admitted to trading on a national securities exchange or quoted on the automated quotation system of a registered securities association. In determining what classes of securities are section 13(f) securities, an institutional investment manager may rely on the most recent list of such securities published by the Commission pursuant to section 13(f)(3) of the Act (15 U.S.C. 78m(f)(3)). Only securities of a class on such list shall be counted in determining whether an institutional investment manager must file a report under this rule (§ 240.13f–1(a)) and only those securities shall be reported in such report. Where a person controls the issuer of a class of equity securities which are ''section 13(f) securities'' as defined in this rule, those securities shall not be deemed to be ''section 13(f) securities'' with respect to the controlling person, provided that such person does not otherwise exercise investment descretion with respect to accounts with fair market value of at least $100,000,000 within the meaning of paragraph (a) of this section.

(Secs. 3(b), 13(f) and 23 of the Exchange Act (15 U.S.C. 78c(b), 78m(f) and 78w))

[43 FR 26705, June 22, 1978, as amended at 44 FR 3034, Jan. 15, 1979]

§ 240.13f–2 EDGAR Filing of Form 13F Reports by Institutional Money Managers.

(a) An institutional investment manager required by Section 13(f)(1) (15 U.S.C. 78m(f)(1)) of, and rule 13f–1 (§ 240.13f–1 of this chapter) under, the Exchange Act of 1934 to file a report on Form 13F (§ 249.325 of this chapter) with the Commission may file that report on magnetic tape in the format described in Form 13F–E (§ 249.326 of this chapter).

(b) Unless otherwise specifically provided herein, the terms used in this section have the same meaning as in the Exchange Act and in the rules and regulations prescribed under the Exchange Act.

[58 FR 14859, Mar. 18, 1993]

REGULATION 14A: SOLICITATION OF PROXIES

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.14a–1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate*. The term ''associate,'' used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan*. For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term ''employee benefit plan'' means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers*. The term ''entity that exercises fiduciary powers'' means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act or a broker or a dealer.

(d) *Exempt employee benefit plan securities*. For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term ''exempt employee benefit plan securities'' means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current solicitation has been given pursuant to § 240.14a–13(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to § 240.14a–13(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Last fiscal year*. The term ''last fiscal year'' of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting for which proxies are to be solicited or if the solicitation involves written authorizations or consents in lieu of a meeting, the earliest date they may be used to effect corporate action.

(f) *Proxy*. The term ''proxy'' includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(g) *Proxy statement*. The term ''proxy statement'' means the statement required by § 240.14a–3(a) whether or not contained in a single document.

(h) *Record date*. The term ''record date'' means the date as of which the record holders of securities entitled to vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder*. For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term ''record holder'' means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term ''registrant'' means the issuer of the securities in respect of which proxies are to be solicited.

(k) *Respondent bank.* For purposes of §§ 240.14a–13, 240.14b–1 and 240.14b–2, the term ''respondent bank'' means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

(l) *Solicitation.* (1) The terms ''solicit'' and ''solicitation'' include:

(i) Any request for a proxy whether or not accompanied by or included in a form of proxy:

(ii) Any request to execute or not to execute, or to revoke, a proxy; or

(iii) The furnishing of a form of proxy or other communication to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

(2) The terms do not apply, however, to:

(i) The furnishing of a form of proxy to a security holder upon the unsolicited request of such security holder;

(ii) The performance by the registrant of acts required by § 240.14a–7;

(iii) The performance by any person of ministerial acts on behalf of a person soliciting a proxy; or

(iv) A communication by a security holder who does not otherwise engage in a proxy solicitation (other than a solicitation exempt under § 240.14a–2) stating how the security holder intends to vote and the reasons therefor, provided that the communication:

(A) Is made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, or newspaper, magazine or other bona fide publication disseminated on a regular basis,

(B) Is directed to persons to whom the security holder owes a fiduciary duty in connection with the voting of securities of a registrant held by the security holder, or

(C) Is made in response to unsolicited requests for additional information with respect to a prior communication by the security holder made pursuant to this paragraph (l)(2)(iv).

[51 FR 44275, Dec. 9, 1986, as amended at 52 FR 23648, June 24, 1987; 53 FR 16405, May, 9, 1988; 57 FR 48290, Oct. 22, 1992]

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

Sections 240.14a–3 to 240.14a–15, except as specified, apply to every solicitation of a proxy with respect to securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*), whether or not trading in such securities has been suspended. To the extent specified below, certain of these sections also apply to roll-up transactions that do not involve an entity with securities registered pursuant to section 12 of the Act.

(a) Sections 240.14a–3 to 240.14a–15 do not apply to the following:

(1) Any solicitation by a person in respect to securities carried in his name or in the name of his nominee (otherwise than as voting trustee) or held in his custody, if such person—

(i) Receives no commission or remuneration for such solicitation, directly or indirectly, other than reimbursement of reasonable expenses,

(ii) Furnishes promptly to the person solicited a copy of all soliciting material with respect to the same subject matter or meeting received from all persons who shall furnish copies thereof for such purpose and who shall, if requested, defray the reasonable expenses to be incurred in forwarding such material, and

(iii) In addition, does no more than impartially instruct the person solicited to forward a proxy to the person, if any, to whom the person solicited desires to give a proxy, or impartially request from the person solicited instructions as to the authority to be conferred by the proxy and state that a proxy will be given if no instructions are received by a certain date.

(2) Any solicitation by a person in respect of securities of which he is the beneficial owner;

(3) Any solicitation involved in the offer and sale of securities registered under the Securities Act of 1933: *Provided,* That this paragraph shall not apply to securities to be issued in any transaction of the character specified

in paragraph (a) of Rule 145 under that Act;

(4) Any solicitation with respect to a plan of reorganization under Chapter 11 of the Bankruptcy Reform Act of 1978, as amended, if made after the entry of an order approving the written disclosure statement concerning a plan of reorganization pursuant to section 1125 of said Act and after, or concurrently with, the transmittal of such disclosure statement as required by section 1125 of said Act;

(5) Any solicitation which is subject to Rule 62 under the Public Utility Holding Company Act of 1935; and

(6) Any solicitation through the medium of a newspaper advertisement which informs security holders of a source from which they may obtain copies of a proxy statement, form of proxy and any other soliciting material and does no more than:

(i) Name the registrant,

(ii) State the reason for the advertisement, and

(iii) Identify the proposal or proposals to be acted upon by security holders.

(b) Sections 240.14a–3 to 240.14a–6 (other than 14a–6(g)), 240.14a–8, and 240.14a–10 to 240.14a–15 do not apply to the following:

(1) Any solicitation by or on behalf of any person who does not, at any time during such solicitation, seek directly or indirectly, either on its own or another's behalf, the power to act as proxy for a security holder and does not furnish or otherwise request, or act on behalf of a person who furnishes or requests, a form of revocation, abstention, consent or authorization. *Provided, however*, That the exemption set forth in this paragraph shall not apply to:

(i) The registrant or an affiliate or associate of the registrant (other than an officer or director or any person serving in a similar capacity);

(ii) An officer or director of the registrant or any person serving in a similar capacity engaging in a solicitation financed directly or indirectly by the registrant;

(iii) An officer, director, affiliate or associate of a person that is ineligible to rely on the exemption set forth in this paragraph (other than persons specified in paragraph (b)(1)(i) of this section), or any person serving in a similar capacity;

(iv) Any nominee for whose election as a director proxies are solicited;

(v) Any person soliciting in opposition to a merger, recapitalization, reorganization, sale of assets or other extraordinary transaction recommended or approved by the board of directors of the registrant who is proposing or intends to propose an alternative transaction to which such person or one of its affiliates is a party;

(vi) Any person who is required to report beneficial ownership of the registrant's equity securities on a Schedule 13D (§ 240.13d–101), unless such person has filed a Schedule 13D and has not disclosed pursuant to Item 4 thereto an intent, or reserved the right, to engage in a control transaction, or any contested solicitation for the election of directors;

(vii) Any person who receives compensation from an ineligible person directly related to the solicitation of proxies, other than pursuant to § 240.14a–13;

(viii) Where the registrant is an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), an ''interested person'' of that investment company, as that term is defined in section 2(a)(19) of the Investment Company Act (15 U.S.C. 80a–2);

(ix) Any person who, because of a substantial interest in the subject matter of the solicitation, is likely to receive a benefit from a successful solicitation that would not be shared pro rata by all other holders of the same class of securities, other than a benefit arising from the person's employment with the registrant; and

(x) Any person acting on behalf of any of the foregoing.

(2) Any solicitation made otherwise than on behalf of the registrant where the total number of persons solicited is not more than ten;

(3) The furnishing of proxy voting advice by any person (the ''advisor'') to any other person with whom the advisor has a business relationship, if:

(i) The advisor renders financial advice in the ordinary course of his business;

(ii) The advisor discloses to the recipient of the advice any significant relationship with the registrant or any of its affiliates, or a security holder proponent of the matter on which advice is given, as well as any material interests of the advisor in such matter.

(iii) The advisor receives no special commission or remuneration for furnishing the proxy voting advice from any person other than a recipient of the advice and other persons who receive similar advice under this subsection; and

(iv) The proxy voting advice is not furnished on behalf of any person soliciting proxies or on behalf of a participant in an election subject to the provisions of Rule 14a–11; and

(4) Any solicitation in connection with a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901 of this chapter) in which the holder of a security that is the subject of a proposed roll-up transaction engages in preliminary communications with other holders of securities that are the subject of the same limited partnership roll-up transaction for the purpose of determining whether to solicit proxies, consents, or authorizations in opposition to the proposed limited partnership roll-up transaction; *provided, however*, that:

(i) This exemption shall not apply to a security holder who is an affiliate of the registrant or general partner or sponsor; and

(ii) This exemption shall not apply to a holder of five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction who engages in the business of buying and selling limited partnership interests in the secondary market unless that holder discloses to the persons to whom the communications are made such ownership interest and any relations of the holder to the parties of the transaction or to the transaction itself, as required by § 240.14a–6(n)(1) and specified in the Notice of Exempt Preliminary Roll-up Communication (§ 240.14a–104). If the communication is oral, this disclosure may be provided to the security holder orally. Whether the communication is written or oral, the notice required by § 240.14a–6(n) and § 240.14a–104 shall be furnished to the Commission.

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78, Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455, secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*, 78m, 78n, 78*o*(d))

[44 FR 68769, Nov. 29, 1979, as amended at 51 FR 42059, Nov. 20, 1986; 52 FR 21936, June 10, 1987; 57 FR 48290, Oct. 22, 1992; 59 FR 63684, Dec. 8, 1994]

§ 240.14a–3 Information to be furnished to security holders.

(a) No solicitation subject to this regulation shall be made unless each person solicited is concurrently furnished or has previously been furnished with a publicly-filed preliminary or definitive written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) or with a preliminary or definitive written proxy statement included in a registration statement filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23) and containing the information specified in such Form.

(b) If the solicitation is made on behalf of the registrant, other than an investment company registered under the Investment Company Act of 1940, and relates to an annual (or special meeting in lieu of the annual) meeting of security holders, or written consent in lieu of such meeting, at which directors are to be elected, each proxy statement furnished pursuant to paragraph (a) of this section shall be accompanied or preceded by an annual report to security holders as follows:

NOTE TO SMALL BUSINESS ISSUERS—A ''small business issuer,'' defined under Rule 12b–2 of the Exchange Act (§ 240.12b–2), shall refer to the disclosure items in Regulation S–B (§ 228.10—702 of this chapter) rather than Regulation S–K (§ 229.10—702 of this chapter). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§ 240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on

Form 10–KSB (§ 249.310b of this chapter) need not provide the information specified below. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB. The inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

(1) The report shall include, for the registrant and its subsidiaries consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years prepared in accordance with Regulation S–X (part 210 of this chapter), except that the provisions of Article 3 (other than §§ 210.3–03(e), 210.3–04 and 210.3–20) and Article 11 shall not apply. Any financial statement schedules or exhibits or separate financial statements which may otherwise be required in filings with the Commission may be omitted. If the financial statements of the registrant and its subsidiaries consolidated in the annual report filed or to be filed with the Commission are not required to be audited, the financial statements required by this paragraph may be unaudited.

NOTE 1—If the financial statements for a period prior to the most recently completed fiscal year have been examined by a predecessor accountant, the separate report of the predecessor accountant may be omitted in the report to security holders provided the registrant has obtained from the predecessor accountant a reissued report covering the prior period presented and the successor accountant clearly indicates in the scope paragraph of his report (a) that the financial statements of the prior period were examined by other accountants, (b) the date of their report, (c) the type of opinion expressed by the predecessor accountant and (d) the substantive reasons therefor, if it was other than unqualified. It should be noted, however, that the separate report of any predecessor accountant is required in filings with the Commission. If, for instance, the financial statements in the annual report to security holders are incorporated by reference in a Form 10–K and Form 10–KSB, the separate report of a predecessor accountant shall be filed in Part II or in Part IV as a financial statement schedule.

NOTE 2—For purposes of complying with § 240.14a–3, if the registrant has changed its fiscal closing date, financial statements covering two years and one period of 9 to 12 months shall be deemed to satisfy the requirements for statements of income and cash flows for the three most recent fiscal years.

(2)(i) Financial statements and notes thereto shall be presented in roman type at least as large and as legible as 10-point modern type. If necessary for convenient presentation, the financial statements may be in roman type as large and as legible as 8-point modern type. All type shall be leaded at least 2 points.

(ii) Where the annual report to security holders is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

(3) The report shall contain the supplementary financial information required by item 302 of Regulation S–K (§ 229.302 of this chapter).

(4) The report shall contain information concerning changes in and disagreements with accountants on accounting and financial disclosure required by Item 304 of Regulation S-K (§ 229.304 of this chapter).

(5)(i) The report shall contain the selected financial data required by Item 301 of Regulation S–K (§ 229.301 of this chapter).

(ii) The report shall contain management's discussion and analysis of financial condition and results of operations required by Item 303 of Regulation S–K (§ 229.303 of this chapter) or, if applicable, a plan of operation required by Item 303(a) of Regulation S–B (§ 228.303(a) of this chapter).

(iii) The report shall contain the quantitative and qualitative disclosures about market risk required by Item 305 of Regulation S–K (§ 229.305 of this chapter).

(6) The report shall contain a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year which will, in the opinion of management, indicate the general nature and scope of the business of the registrant and its subsidiaries.

(7) The report shall contain information relating to the registrant's industry segments, classes of similar products or services, foreign and domestic operations and exports sales required by paragraphs (b), (c)(1)(i) and (d) of Item 101 of Regulation S–K (§229.101 of this chapter).

(8) The report shall identify each of the registrant's directors and executive officers, and shall indicate the principal occupation or employment of each such person and the name and principal business of any organization by which such person is employed.

(9) The report shall contain the market price of and dividends on the registrant's common equity and related security holder matters required by Item 201 of Regulation S–K (§229.201 of this chapter).

(10) The registrant's proxy statement, or the report, shall contain an undertaking in bold face or otherwise reasonably prominent type to provide without charge to each person solicited upon the written request of any such person, a copy of the registrant's annual report on Form 10–K and Form 10–KSB, including the financial statements and the financial statement schedules, required to be filed with the Commission pursuant to Rule 13a–1 under the Act for the registrant's most recent fiscal year, and shall indicate the name and address (including title or department) of the person to whom such a written request is to be directed. In the discretion of management, a registrant need not undertake to furnish without charge copies of all exhibits to its Form 10–K and Form 10–KSB provided the that copy of the annual report on Form 10–K and Form 10–KSB furnished without charge to requesting security holders is accompanied by a list briefly describing all the exhibits not contained therein and indicating that the registrant will furnish any exhibit upon the payment of a specified reasonable fee which fee shall be limited to the registrant's reasonable expenses in furnishing such exhibit. If the registrant's annual report to security holders complies with all of the disclosure requirements of Form 10–K and Form 10–KSB and is filed with the Commission in satisfaction of its Form 10–K and Form 10–KSB filing requirements, such registrant need not furnish a separate Form 10–K and Form 10–KSB to security holders who receive a copy of such annual report.

NOTE: Pursuant to the undertaking required by paragraph (b)(10) of this section, a registrant shall furnish a copy of its annual report on Form 10–K and Form 10–KSB (§249.310 of this chapter) to a beneficial owner of its securities upon receipt of a written request from such person. Each request must set forth a good faith representation that, as of the record date for the solicitation requiring the furnishing of the annual report to security holders pursuant to paragraph (b) of this section, the person making the request was a beneficial owner of securities entitled to vote.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by paragraphs (b)(5) to (10) of this section may be presented in an appendix or other separate section of the report, provided that the attention of security holders is called to such presentation.

NOTE: Registrants are encouraged to utilize tables, schedules, charts and graphic illustrations of present financial information in an understandable manner. Any presentation of financial information must be consistent with the data in the financial statements contained in the report and, if appropriate, should refer to relevant portions of the financial statements and notes thereto.

(12) [Reserved]

(13) Paragraph (b) of this section shall not apply, however, to solicitations made on behalf of the registrant before the financial statements are available if a solicitation is being made at the same time in opposition to the registrant and if the registrant's proxy statement includes an undertaking in bold face type to furnish such annual report to all persons being solicited at least 20 calendar days before the date of the meeting or, if the solicitation refers to a written consent or authorization in lieu of a meeting, at least 20 calendar days prior to the earliest date on which it may be used to effect corporate action.

(c) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders

or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of solicitation material are filed with the Commission pursuant to Rule 14a–6, whichever date is later. The report is not deemed to be ''soliciting material'' or to be ''filed'' with the Commission or subject to this regulation otherwise than as provided in this Rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the proxy soliciting material or incorporates it in the proxy statement or other filed report by reference.

(d) An annual report to security holders prepared on an integrated basis pursuant to General Instruction H to Form 10–K and Form 10–KSB (§ 249.310) may also be submitted in satisfaction of this rule. When filed as the annual report on Form 10–K and Form 10–KSB, responses to the Items of that form are subject to section 18 of the Act notwithstanding paragraph (c) of this section.

(e) Notwithstanding paragraphs (a) and (b) of this section:

(1) A registrant is not required to send an annual report to a security holder of record having the same address as another security holder of record, provided that:

(i) Such security holders are not holding such registrant's securities in nominee name,

(ii) At least one report is sent to a holder of record at that address and

(iii) The holders of record to whom a report is not sent agree thereto in writing; and

(2) Unless state law requires otherwise, a registrant is not required to send an annual report or proxy statement to a security holder if:

(i) An annual report and a proxy statement for two consecutive annual meetings; or

(ii) All, and at least two, payments (if sent by first class mail) of dividends or interest on securities, or dividend reinvestment confirmations, during a twelve month period, have been mailed to such security holder's address and have been returned as undeliverable. If any such security holder delivers or causes to be delivered to the registrant written notice setting forth his then current address for security holder communications purposes, the registrant's obligation to deliver an annual report or a proxy statement under this section is reinstated.

(f) The provisions of paragraph (a) of this section shall not apply to a communication made by means of speeches in public forums, press releases, published or broadcast opinions, statements, or advertisements appearing in a broadcast media, newspaper, magazine or other bona fide publication disseminated on a regular basis, provided that:

(1) No form of proxy, consent or authorization or means to execute the same is provided to a security holder in connection with the communication; and

(2) At the time the communication is made, a definitive proxy statement is on file with the Commission pursuant to § 240.14a–6(b).

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 17, 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a))

[39 FR 40768, Nov. 20, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.14a–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 240.14a–4 Requirements as to proxy.

(a) The form of proxy (1) shall indicate in bold-face type whether or not the proxy is solicited on behalf of the registrant's board of directors or, if provided other than by a majority of the board of directors, shall indicate in bold-face type on whose behalf the solicitation is made;

(2) Shall provide a specifically designated blank space for dating the proxy card; and

(3) Shall identify clearly and impartially each separate matter intended to be acted upon, whether or not related to or conditioned on the approval of other matters, and whether proposed

by the registrant or by security holders. No reference need be made, however, to proposals as to which discretionary authority is conferred pursuant to paragraph (c) of this section.

Note to paragraph (a)(3) (Electronic filers): Electronic filers shall satisfy the filing requirements of Rule 14a–6(a) or (b) (§240.14a–6(a) or (b)) with respect to the form of proxy by filing the form of proxy as an appendix at the end of the proxy statement. Forms of proxy shall not be filed as exhibits or separate documents within an electronic submission.

(b)(1) Means shall be provided in the form of proxy whereby the person solicited is afforded an opportunity to specify by boxes a choice between approval or disapproval of, or abstention with respect to each separate matter referred to therein as intended to be acted upon, other than elections to office. A proxy may confer discretionary authority with respect to matters as to which a choice is not specified by the security holder provided that the form of proxy states in bold-face type how it is intended to vote the shares represented by the proxy in each such case.

(2) A form of proxy which provides for the election of directors shall set forth the names of persons nominated for election as directors. Such form of proxy shall clearly provide any of the following means for security holders to withhold authority to vote for each nominee:

(i) A box opposite the name of each nominee which may be marked to indicate that authority to vote for such nominee is withheld; or

(ii) An instruction in bold-face type which indicates that the security holder may withhold authority to vote for any nominee by lining through or otherwise striking out the name of any nominee; or

(iii) Designated blank spaces in which the security holder may enter the names of nominees with respect to whom the security holder chooses to withhold authority to vote; or

(iv) Any other similar means, provided that clear instructions are furnished indicating how the security holder may withhold authority to vote for any nominee.

Such form of proxy also may provide a means for the security holder to grant authority to vote for the nominees set forth, as a group, provided that there is a similar means for the security holder to withhold authority to vote for such group of nominees. Any such form of proxy which is executed by the security holder in such manner as not to withhold authority to vote for the election of any nominee shall be deemed to grant such authority, provided that the form of proxy so states in bold-face type.

Instructions. 1. Paragraph (2) does not apply in the case of a merger, consolidation or other plan if the election of directors is an integral part of the plan.

2. If applicable state law gives legal effect to votes cast against a nominee, then in lieu of, or in addition to, providing a means for security holders to withhold authority to vote, the registrant should provide a similar means for security holders to vote against each nominee.

(c) A proxy may confer discretionary authority to vote with respect to any of the following matters:

(1) Matters which the persons making the solicitation do not know, a reasonable time before the solicitation, are to be presented at the meeting, if a specific statement to that effect is made in the proxy statement or form of proxy;

(2) Approval of the minutes of the prior meeting if such approval does not amount to ratification of the action taken at that meeting;

(3) The election of any person to any office for which a bona fide nominee is named in the proxy statement and such nominee is unable to serve or for good cause will not serve.

(4) Any proposal omitted from the proxy statement and form of proxy pursuant to §240.14a–8 or §240.14a–9 of this chapter.

(5) Matters incident to the conduct of the meeting.

(d) No proxy shall confer authority:

(1) To vote for the election of any person to any office for which a bona fide nominee is not named in the proxy statement,

(2) To vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy

statement and form of proxy are first sent or given to security holders,

(3) To vote with respect to more than one meeting (and any adjournment thereof) or more than one consent solicitation or

(4) To consent to or authorize any action other than the action proposed to be taken in the proxy statement, or matters referred to in paragraph (c) of this rule. A person shall not be deemed to be a bona fide nominee and he shall not be named as such unless he has consented to being named in the proxy statement and to serve if elected. *Provided, however,* That nothing in this section 240.14a–4 shall prevent any person soliciting in support of nominees who, if elected, would constitute a minority of the board of directors, from seeking authority to vote for nominees named in the registrant's proxy statement, so long as the soliciting party:

(i) Seeks authority to vote in the aggregate for the number of director positions then subject to election;

(ii) Represents that it will vote for all the registrant nominees, other than those registrant nominees specified by the soliciting party;

(iii) Provides the security holder an opportunity to withhold authority with respect to any other registrant nominee by writing the name of that nominee on the form of proxy; and

(iv) States on the form of proxy and in the proxy statement that there is no assurance that the registrant's nominees will serve if elected with any of the soliciting party's nominees.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the shares represented by the proxy will be voted and that where the person solicited specifies by means of a ballot provided pursuant to paragraph (b) of this section a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specifications so made.

(f) No person conducting a solicitation subject to this regulation shall deliver a form of proxy, consent or authorization to any security holder unless the security holder concurrently receives, or has previously received, a definitive proxy statement that has been filed with, or mailed for filing to, the Commission pursuant to § 240.14a–6(b).

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78, Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455, secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*, 78m, 78n, 78*o*(d), 78w(a))

[17 FR 11432, Dec. 18, 1952, as amended at 31 FR 212, Jan. 7, 1966; 32 FR 20963, Dec. 29, 1967; 44 FR 68770, Nov. 29, 1979; 45 FR 76979, Nov. 21, 1980; 51 FR 42060, Nov. 20, 1986; 57 FR 48291, Oct. 22, 1992; 59 FR 67764, Dec. 30, 1994]

§ 240.14a–5 Presentation of information in proxy statement.

(a) The information included in the proxy statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the proxy statement as to terms of securities or other subject matter which from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. To the extent practicable, the authority to be conferred concerning each such matter shall be confined within limits reasonably related to the need for discretionary authority. Subject to the foregoing, information which is not known to the persons on whose behalf the solicitation is to be made and which it is not reasonably within the power of such persons to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) Any information contained in any other proxy soliciting material which

has been furnished to each person solicited in connection with the same meeting or subject matter may be omitted from the proxy statement, if a clear reference is made to the particular document containing such information.

(d)(1) All printed proxy statements shall be in roman type at least as large and as legible as 10-point modern type, except that to the extent necessary for convenient presentation financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(2) Where a proxy statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by presenting all required information in a format readily communicated to investors.

(e) All proxy statements shall disclose, under an appropriate caption, the date by which proposals of security holders intended to be presented at the next annual meeting must be received by the registrant for inclusion in the registrant's proxy statement and form of proxy relating to that meeting, such date to be calculated in accordance with the provisions of rule 14a–8(a)(3)(i). If the date of the next annual meeting is subsequently advanced by more than 30 calendar days or delayed by more than 90 calendar days from the date of the annual meeting to which the proxy statement relates, the registrant shall, in a timely manner, inform security holders of such change, and the date by which proposals of security holders must be received, by any means reasonably calculated to so inform them.

(Secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 78, Stat. 565–568, 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455, secs. 28(c), 1, 2, 3–5, 84 Stat. 1435, 1497; secs. 10, 18, 89 Stat. 119, 155; sec. 308(b), 90 Stat. 57; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*, 78m, 78n, 78*o*(d), 78w(a))

[17 FR 11432, Dec. 18, 1952, as amended at 36 FR 8935, May 15, 1971; 37 FR 23179, Oct. 31, 1972; 44 FR 68770, Nov. 29, 1979; 51 FR 42061, Nov. 20, 1986; 61 FR 24656, May 15, 1996]

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause thereunder. A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting, or for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company, if the solicitation relates to any meeting of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal included pursuant to Rule 14a–8 (§ 240.14a–8 of this chapter);

(4) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter) or amendments to such a plan;

(5) With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this section; and/or

(6) With respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

NOTE 1: The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the proxy material.

NOTE 2: The official responsible for the preparation of the proxy material should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary material should be filed with the Commission at the earliest practicable date.

NOTE 3: Solicitation in Opposition. For purposes of the exclusion from filing preliminary proxy material, a ''solicitation in opposition'' includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal included in the registrant's proxy material pursuant to Rule 14a–8 (§ 240.14a–8 of this chapter). The inclusion of a security holder proposal in the registrant's proxy material pursuant to Rule 14a–8 does not constitute a ''solicitation in opposition,'' even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

NOTE 4: A registrant that is filing proxy material in preliminary form only because the registrant has commented on or referred to a solicitation in opposition should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) *Definitive proxy statement and other soliciting materials.* Eight definitive copies of the proxy statement, form of proxy and all other soliciting material, in the form in which such material is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date such material is first sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered.

NOTE: A registrant that is filing definitive proxy material without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing of preliminary proxy material.

(c) *Personal solicitation materials.* If the solicitation is to be made in whole or in part by personal solicitation, eight copies of all written instructions or other material which discusses or reviews, or comments upon the merits of, any matter to be acted upon and which is furnished to the persons making the actual solicitation for their use directly or indirectly in connection with the solicitation shall be filed with, or mailed for filing to, the Commission by the person on whose behalf the solicitation is made not later than the date any such material is first sent or given to such individuals.

(d) *Release dates.* All preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which definitive copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material were released to security holders, or, if not released, the date on which copies thereof are intended to be released. All material filed pursuant to paragraph (c) of this section shall be accompanied by a statement of the date on which copies thereof were released to the individual who will make the actual solicitation or if not released, the date on which copies thereof are intended to be released.

(e)(1) *Public availability of information.* All copies of preliminary proxy statements and forms of proxy filed pursuant to paragraph (a) of this section shall be clearly marked ''Preliminary Copies,'' and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (e)(2) of this section.

(2) *Confidential treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§ 240.14a–101), all copies of the preliminary proxy statement and form of proxy filed pursuant to paragraph (a) of this section shall be for the information of the Commission only and shall not be deemed available for public inspection until filed with the Commission in definitive form, provided that:

(i) The proxy statement does not relate to a matter or proposal subject to § 240.13e–3 or a roll-up transaction as

defined in Item 901(c) of Regulation S–K (§229.901(c) of this chapter); and

(ii) The filed material is marked ''Confidential, For Use of the Commission Only.'' In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

(f) *Communications not required to be filed.* Copies of replies to inquiries from security holders requesting further information and copies of communications which do no more than request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this section.

(g) *Solicitations subject to §240.14a–2(b)(1).* (1) Any person who:

(i) Engages in a solicitation pursuant to §240.14a–2(b)(1), and

(ii) At the commencement of that solicitation owns beneficially securities of the class which is the subject of the solicitation with a market value of over $5 million,

shall furnish or mail to the Commission, not later than three days after the date the written solicitation is first sent or given to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Solicitation (§240.14a–103) which statement shall attach as an exhibit all written soliciting materials. Five copies of an amendment to such statement shall be furnished or mailed to the Commission, in connection with dissemination of any additional communications, not later than three days after the date the additional material is first sent or given to any security holder. Three copies of the Notice of Exempt Solicitation and amendments thereto shall, at the same time the materials are furnished or mailed to the Commission, be furnished or mailed to each national securities exchange upon which any class of securities of the registrant is listed and registered.

(2) Notwithstanding paragraph (g)(1) of this section, no such submission need be made with respect to oral solicitations (other than with respect to scripts used in connection with such oral solicitations), speeches delivered in a public forum, press releases, published or broadcast opinions, statements, and advertisements appearing in a broadcast media, or a newspaper, magazine or other bona fide publication disseminated on a regular basis.

(h) *Revised material.* Where any proxy statement, form of proxy or other material filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section (or in the case of investment companies registered under the Investment Company Act of 1940, three of such copies) shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(i) *Fees.* At the time of filing the proxy solicitation material, the persons upon whose behalf the solicitation is made, other than investment companies registered under the Investment Company Act of 1940, shall pay to the Commission the following applicable fee:

(1) For preliminary proxy material involving acquisitions, mergers, spin-offs, consolidations or proposed sales or other dispositions of substantially all the assets of the company, a fee established in accordance with Rule 0–11 (§240.0–11 of this chapter) shall be paid. No refund shall be given.

(2) For all other proxy submissions and submissions made pursuant to §240.14a–6(g), no fee shall be required.

(j) *Merger proxies.* Notwithstanding the foregoing provisions of this section, any proxy statement, form of proxy or other soliciting material included in a registration statement filed under the Securities Act of 1933 on Form N–14, S–4 or F–4 (§239.23, §239.25 or §239.34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section nor shall any fee be required under paragraph (i) of this section. However, any additional soliciting material used

after the effective date of the registration statement on Form N–14, S–4 or F–4 shall be filed in accordance with this section unless separate copies of such material are required to be filed as an amendment of such registration statement.

(k) *Computing time periods.* In computing time periods beginning with the filing date specified in Regulation 14A (§§ 240.14a–1 to 240.14b–1 of this chapter), the filing date shall be counted as the first day of the time period and midnight of the last day shall constitute the end of the specified time period.

(l) *Roll-up transactions.* If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the proxy statement of the sponsor or the general partner as defined in Item 901(d) and Item 901(a), respectively, of Regulation S–K (17 CFR 229.901) must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

(m) *Cover page.* Proxy materials filed with the Commission shall include a cover page in the form set forth in Schedule 14A (§ 240.14a–101 of this chapter). The cover page required by this paragraph need not be distributed to security holders.

(n) *Solicitations subject to § 240.14a–2(b)(4).* Any person who:

(1) Engages in a solicitation pursuant to § 240.14a–2(b)(4); and

(2) At the commencement of that solicitation both owns five percent (5%) or more of the outstanding securities of a class that is the subject of the proposed roll-up transaction, and engages in the business of buying and selling limited partnership interests in the secondary market, shall furnish or mail to the Commission, not later than three days after the date an oral or written solicitation by that person is first made, sent or provided to any security holder, five copies of a statement containing the information specified in the Notice of Exempt Preliminary Roll-up Communication (§ 240.14a–104). Five copies of any amendment to such statement shall be furnished or mailed to the Commission not later than three days after a communication containing revised material is first made, sent or provided to any security holder.

[17 FR 11432, Dec. 18, 1952]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.14a–6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 240.14a–7 Obligations of registrants to provide a list of, or mail soliciting material to, security holders.

(a) If the registrant has made or intends to make a proxy solicitation in connection with a security holder meeting or action by consent or authorization, upon the written request by any record or beneficial holder of securities of the class entitled to vote at the meeting or to execute a consent or authorization to provide a list of security holders or to mail the requesting security holder's materials, regardless of whether the request references this section, the registrant shall:

(1) Deliver to the requesting security holder within five business days after receipt of the request:

(i) Notification as to whether the registrant has elected to mail the security holder's soliciting materials or provide a security holder list if the election under paragraph (b) of this section is to be made by the registrant;

(ii) A statement of the approximate number of record holders and beneficial holders, separated by type of holder and class, owning securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; and

(iii) The estimated cost of mailing a proxy statement, form of proxy or other communication to such holders, including to the extent known or reasonably available, the estimated costs of any bank, broker, and similar person through whom the registrant has solicited or intends to solicit beneficial

owners in connection with the security holder meeting or action;

(2) Perform the acts set forth in either paragraphs (a)(2)(i) or (a)(2)(ii) of this section, at the registrant's or requesting security holder's option, as specified in paragraph (b) of this section:

(i) Mail copies of any proxy statement, form of proxy or other soliciting material furnished by the security holder to the record holders, including banks, brokers, and similar entities, designated by the security holder. A sufficient number of copies must be mailed to the banks, brokers and similar entities for distribution to all beneficial owners designated by the security holder. The registrant shall mail the security holder material with reasonable promptness after tender of the material to be mailed, envelopes or other containers therefor, postage or payment for postage and other reasonable expenses of effecting such mailing. The registrant shall not be responsible for the content of the material; or

(ii) Deliver the following information to the requesting security holder within five business days of receipt of the request: a reasonably current list of the names, addresses and security positions of the record holders, including banks, brokers and similar entities, holding securities in the same class or classes as holders which have been or are to be solicited on management's behalf, or any more limited group of such holders designated by the security holder if available or retrievable under the registrant's or its transfer agent's security holder data systems; the most recent list of names, addresses and security positions of beneficial owners as specified in §240.14a–13(b), in the possession, or which subsequently comes into the possession, of the registrant. All security holder list information shall be in the form requested by the security holder to the extent that such form is available to the registrant without undue burden or expense. The registrant shall furnish the security holder with updated record holder information on a daily basis or, if not available on a daily basis, at the shortest reasonable intervals, *provided, however*, the registrant need not provide beneficial or record holder information more current than the record date for the meeting or action.

(b)(1) The requesting security holder shall have the options set forth in paragraph (a)(2) of this section, and the registrant shall have corresponding obligations, if the registrant or general partner or sponsor is soliciting or intends to solicit with respect to:

(i) A proposal that is subject to §240.13e–3;

(ii) A roll-up transaction as defined in Item 901(c) of Regulation S–K (§229.901(c) of this chapter) that involves an entity with securities registered pursuant to Section 12 of the Act (15 U.S.C. 78*l*); or

(iii) A roll-up transaction as defined in Item 901(c) of Regulation S–K (§229.901(c) of this chapter) that involves a limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under Section 11A of the Act (15 U.S.C. 78k–1).

(2) With respect to all other requests pursuant to this section, the registrant shall have the option to either mail the security holder's material or furnish the security holder list as set forth in this section.

(c) At the time of a list request, the security holder making the request shall:

(1) If holding the registrant's securities through a nominee, provide the registrant with a statement by the nominee or other independent third party, or a copy of a current filing made with the Commission and furnished to the registrant, confirming such holder's beneficial ownership; and

(2) Provide the registrant with an affidavit, declaration, affirmation or other similar document provided for under applicable state law identifying the proposal or other corporate action that will be the subject of the security

holder's solicitation or communication and attesting that:

(i) The security holder will not use the list information for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; and

(ii) The security holder will not disclose such information to any person other than a beneficial owner for whom the request was made and an employee or agent to the extent necessary to effectuate the communication or solicitation.

(d) The security holder shall not use the information furnished by the registrant pursuant to paragraph (a)(2)(ii) of this section for any purpose other than to solicit security holders with respect to the same meeting or action by consent or authorization for which the registrant is soliciting or intends to solicit or to communicate with security holders with respect to a solicitation commenced by the registrant; or disclose such information to any person other than an employee, agent, or beneficial owner for whom a request was made to the extent necessary to effectuate the communication or solicitation. The security holder shall return the information provided pursuant to paragraph (a)(2)(ii) of this section and shall not retain any copies thereof or of any information derived from such information after the termination of the solicitation.

(e) The security holder shall reimburse the reasonable expenses incurred by the registrant in performing the acts requested pursuant to paragraph (a) of this section.

NOTE TO § 240.14A–7. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If an alternative distribution method is chosen, the costs of that method should be considered where necessary rather than the costs of mailing.

[57 FR 48292, Oct. 22, 1992, as amended at 59 FR 63684, Dec. 8, 1994; 61 FR 24657, May 15, 1996]

§ 240.14a–8 Proposals of security holders.

(a) If any security holder of a registrant notifies the registrant of his intention to present a proposal for action at a forthcoming meeting of the registrant's security holders, the registrant shall set forth the proposal in its proxy statement and identify it in its form of proxy and provide means by which security holders can make the specification required by Rule 14a–4(b) (17 CFR 240.14a–4(b)). Notwithstanding the foregoing, the registrant shall not be required to include the proposal in its proxy statement or form of proxy unless the security holder (hereinafter, the ''proponent'') has complied with the requirements of this paragraph and paragraphs (b) and (c) of this section:

(1) *Eligibility*. At the time he submits the proposal, the proponent shall be a record or beneficial owner of at least 1% or $1000 in market value of securities entitled to be voted on the proposal at the meeting and have held such securities for at least one year, and he shall continue to own such securities through the date on which the meeting is held. If the registrant requests documentary support for a proponent's claim that he is the beneficial owner of at least 1% or $1000 in market value of such voting securities of the registrant or that he has been a beneficial owner of the securities for one or more years, the registrant shall make such request within 14 calendar days after receiving the security holder proposal and the proponent shall furnish appropriate documentation within 21 calendar days after receiving the request. Appropriate documentation of the proponent's claim of beneficial ownership shall include:

(i) A written statement by a record owner or an independent third party, accompanied by the proponent's written statement that the proponent intends to continue ownership of such securities through the date on which the meeting is held; or

(ii) A copy of a Schedule 13D (§ 240.13d–101 of this chapter), Schedule 13G (§ 240.13d–102 of this chapter), Form 13F (§ 249.325 of this chapter), Form 3 (§ 249.103 of this chapter) and/or Form 4

(§249.104 of this chapter), or amendments thereto, filed with the Commission and furnished to the registrant by the proponent, provided that such filings indicate the proponent's beneficial ownership as of or prior to the date on which the relevant one year period commences, and are supported by

(A) A copy of all subsequent amendments reporting a change in ownership level,

(B) The proponent's affidavit, declaration, affirmation or other similar document provided for under applicable state law attesting that the proponent continued to be the beneficial owner of at least 1% or $1000 in market value of such voting securities of the registrant throughout the required one year period and as of the date of the affidavit, declaration, affirmation or other similar document provided for under applicable state law, and

(C) The proponent's written statement that the proponent intends to continue ownership of such securities through the date on which the meeting is held. In the event the registrant includes the proponent's proposal in its proxy soliciting material for the meeting and the proponent fails to comply with the requirement that he continuously hold such securities through the meeting date, the registrant shall not be required to include any proposals submitted by the proponent in its proxy material for any meeting held in the following two calendar years.

(2) *Notice and attendance at the meeting.* At the time he submits a proposal, a proponent shall provide the registrant in writing with his name, address, the number of the registrant's voting securities that he holds of record or beneficially, the dates upon which he acquired such securities, and documentary support for a claim of beneficial ownership. A proposal may be presented at the meeting either by the proponent or his representative who is qualified under state law to present the proposal on the proponent's behalf at the meeting. In the event that the proponent or his representative fails, without good cause, to present the proposal for action at the meeting, the registrant shall not be required to include any proposals submitted by the proponent in its proxy soliciting material for any meeting held in the following two calendar years.

(3) *Timeliness.* The proponent shall submit his proposal sufficiently far in advance of the meeting so that it is received by the registrant within the following time periods:

(i) *Annual meetings.* A proposal to be presented at an annual meeting shall be received at the registrant's principal executive offices not less than 120 calendar days in advance of the date of the registrant's proxy statement released to security holders in connection with the previous year's annual meeting of security holders except that if no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than 30 calendar days from the date contemplated at the time of the previous year's proxy statement, a proposal shall be received by the registrant a reasonable time before the solicitation is made.

(ii) *Other meetings.* A proposal to be presented at any meeting other than an annual meeting specified in paragraph (a)(3)(i) of this section shall be received a reasonable time before the solicitation is made.

NOTE: In order to curtail controversy as to the date on which a proposal was received by the registrant, it is suggested that proponents submit their proposals by Certified Mail-Return Receipt Requested.

(4) *Number of proposals.* The proponent may submit no more than one proposal and an accompanying supporting statement for inclusion in the registrant's proxy materials for a meeting of security holders. If the proponent submits more than one proposal, or if he fails to comply with the 500 word limit mentioned in paragraph (b)(1) of this section, he shall be provided the opportunity to reduce the items submitted by him to the limits required by this rule, within 14 calendar days of notification of such limitations by the registrant.

(b)(1) *Supporting statement.* The registrant, at the request of the proponent, shall include in its proxy statement a statement of the proponent in support of the proposal, which statement shall not include the name and address of the proponent. A proposal

and its supporting statement in the aggregate shall not exceed 500 words. The supporting statement shall be furnished to the registrant at the time that the proposal is furnished, and the registrant shall not be responsible for such statement and the proposal to which it relates.

(2) *Identification of proponent.* The proxy statement shall also include either the name and address of the proponent and the number of shares of the voting security held by the proponent or a statement that such information will be furnished by the registrant to any person, orally or in writing as requested, promptly upon the receipt of any oral or written request therefor.

(c) The registrant may omit a proposal and any statement in support thereof from its proxy statement and form of proxy under any of the following circumstances:

(1) If the proposal is, under the laws of the registrant's domicile, not a proper subject for action by security holders.

NOTE: Whether a proposal is a proper subject for action by security holders will depend on the applicable state law. Under certain states' laws, a proposal that mandates certain action by the registrant's board of directors may not be a proper subject matter for shareholder action, while a proposal recommending or requesting such action of the board may be proper under such state laws.

(2) If the proposal, if implemented, would require the registrant to violate any state law or Federal law of the United States, or any law of any foreign jurisdiction to which the registrant is subject, except that this provision shall not apply with respect to any foreign law compliance with which would be violative of any state law or Federal law of the United States.

(3) If the proposal or the supporting statement is contrary to any of the Commission's proxy rules and regulations, including Rule 14a–9 (§ 240.14a–9 of this chapter), which prohibits false or misleading statements in proxy soliciting materials;

(4) If the proposal relates to the redress of a personal claim or grievance against the registrant or any other person, or if it is designed to result in a benefit to the proponent or to further a personal interest, which benefit or interest is not shared with the other security holders at large;

(5) If the proposal relates to operations which account for less than 5 percent of the registrant's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the registrant's business;

(6) If the proposal deals with a matter beyond the registrant's power to effectuate;

(7) If the proposal deals with a matter relating to the conduct of the ordinary business operations of the registrant;

(8) If the proposal relates to an election to office;

(9) If the proposal is counter to a proposal to be submitted by the registrant at the meeting;

(10) If the proposal has been rendered moot;

(11) If the proposal is substantially duplicative of a proposal previously submitted to the registrant by another proponent, which proposal will be included in the registrant's proxy material for the meeting;

(12) If the proposal deals with substantially the same subject matter as a prior proposal submitted to security holders in the registrant's proxy statement and form of proxy relating to any annual or special meeting of security holders held within the preceding five calendar years, it may be omitted from the registrant's proxy materials relating to any meeting of security holders held within three calendar years after the latest such previous submission: *Provided*, That—

(i) If the proposal was submitted at only one meeting during such preceding period, it received less than three percent of the total number of votes cast in regard thereto; or

(ii) If the proposal was submitted at only two meetings during such preceding period, it received at the time of its second submission less than six percent of the total number of votes cast in regard thereto; or

(iii) If the prior proposal was submitted at three or more meetings during such preceding period, it received at the time of its latest submission less

than 10 percent of the total number of votes cast in regard thereto; or

(13) If the proposal relates to specific amounts of cash or stock dividends.

(d) Whenever the registrant asserts, for any reason, that a proposal and any statement in support thereof received from a proponent may properly be omitted from its proxy statement and form of proxy, it shall file with the Commission, not later than 80 calendar days prior to the date the definitive copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6 (§ 240.14a–6 of this chapter), or such shorter period prior to such date as the Commission or its staff may permit, six copies of the following items:

(1) The proposal;

(2) Any statement in support thereof as received from the proponent;

(3) A statement of the reasons why the registrant deems such omission to be proper in the particular case; and

(4) Where such reasons are based on matters of law, a supporting opinion of counsel. The registrant shall at the same time, if it has not already done so, notify the proponent of its intention to omit the proposal from its proxy statement and form of proxy and shall forward to him a copy of the statement of reasons why the registrant deems the omission of the proposal to be proper and a copy of such supporting opinion of counsel.

(e) If the registrant intends to include in the proxy statement a statement in opposition to a proposal received from a proponent, it shall, not later than 30 calendar days prior to the date the definitive copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6, or, in the event that the proposal must be revised to be includable, not later than five calendar days after receipt by the registrant of the revised proposal, promptly forward to the proponent a copy of the statement in opposition to the proposal. In the event the proponent believes that the statement in opposition contains materially false or misleading statements within the meaning of Rule 14a–9 and the proponent wishes to bring this matter to the attention of the Commission, the proponent promptly should provide the staff with a letter setting forth the reasons for this view and a copy of the statement in opposition and at the same time promptly provide the registrant with a copy of his letter.

(Secs. 14(a) and 23(a), 48 Stat. 895 and 901; sec. 12(e) and 20(a), 49 Stat. 823 and 833; sec. 20(a) and 38(a), 54 Stat. 822 and 841; 15 U.S.C. 78n(a); 78w(a), 79(e), 79t(a), 80a–20(a), 80a–37(a))

[48 FR 38222, Aug. 23, 1983, as amended at 50 FR 48181, Nov. 22, 1985; 51 FR 42062, Nov. 20, 1986; 52 FR 21936, June 10, 1987; 52 FR 48983, Dec. 29, 1987]

§ 240.14a–9 False or misleading statements.

(a) No solicitation subject to this regulation shall be made by means of any proxy statement, form of proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

(b) The fact that a proxy statement, form of proxy or other soliciting material has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

NOTE: The following are some examples of what, depending upon particular facts and circumstances, may be misleading within the meaning of this section.

(a) Predictions as to specific future market values.

(b) Material which directly or indirectly impugns character, integrity or personal reputation, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation.

(c) Failure to so identify a proxy statement, form of proxy and other soliciting material as to clearly distinguish it from the

soliciting material of any other person or persons soliciting for the same meeting or subject matter.

(d) Claims made prior to a meeting regarding the results of a solicitation.

(Secs. 19(a), 3(b), 23(a)(1), 20, 319(a), 48 Stat. 85, 882, 901; sec. 209, 48 Stat. 908; 49 Stat. 833; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; 53 Stat. 1173; secs. 3, 18, 89 Stat. 97, 155; sec. 308(a)(2), 90 Stat. 57; 15 U.S.C. 77s(a), 78c(b), 78w(a)(1), 79t, 77sss(a))

[31 FR 212, Jan. 7, 1966, as amended at 41 FR 19933, May 14, 1976; 44 FR 38815, July 2, 1979; 44 FR 68456, Nov. 29, 1979]

§ 240.14a–10 Prohibition of certain solicitations.

No person making a solicitation which is subject to §§ 240.14a–1 to 240.14a–10 shall solicit:

(a) Any undated or postdated proxy; or

(b) Any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the security holder.

[17 FR 11434, Dec. 18, 1952]

§ 240.14a–11 Special provisions applicable to election contests.

(a) *Solicitations to which this section applies.* This section applies to any solicitation subject to §§ 240.14a–1 to 240.14a–11 by any person or group of persons for the purpose of opposing a solicitation subject to §§ 240.14a–1 to 240.14a–11 by any other person or group of persons with respect to the election or removal of directors at any annual or special meeting of security holders.

(b) *Solicitations prior to furnishing required written proxy statement.* Notwithstanding the provisions of Rule 14a–3(a) (§ 240.14a–3(a)), a solicitation subject to this section may be made prior to furnishing security holders a written proxy statement containing the information specified in Schedule 14A (§ 240.14a–101) with respect to such solicitation: *Provided,* That—

(1) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) (§ 240.14a–3(a)) is furnished to security holders: *Provided, however,* That this paragraph (b)(1) shall not apply where a proxy statement then meeting the requirements of Schedule 14A (§ 240.14a–101) has been furnished to security holders by or on behalf of the person making the solicitation.

(2) The identity of the participants in the solicitation (as defined in Instruction 3 of Item 4 of Schedule 14A [§ 240.14a–101]) and a description of their interests, direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation.

(3) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this paragraph (b) at the earliest practicable date.

(c) *Solicitation prior to furnishing required written proxy statement; filing requirements.* Eight copies of any soliciting material published, sent or given to security holders prior to the furnishing of the written proxy statement required by § 240.14a–3(a) shall be filed with, or mailed for filing to, the Commission no later than the date such material is published, sent or given to any security holder. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. Such soliciting material filed with the Commission shall include a cover page in the form set forth in Schedule 14A and the appropriate box on that cover page shall be checked to indicate such filing.

(d)(1) *Application of this section to annual report.* Notwithstanding the provisions of § 240.14a–3 (b) and (c), three copies of any portion of the annual report referred to in § 240.14a–3(b) which comments upon or refers to any solicitation subject to this section, or to any participant in any such solicitation, other than the solicitation by the management, shall be filed with the Commission as proxy material subject to §§ 240.14a–1 to 240.14a–11.

(2) *Electronic filers.* Any portion of the annual report to security holders required to be filed with the Commission pursuant to paragraph (d)(1) of this section shall be filed with the Commission in electronic format.

(e) *Application of § 240.14a–6.* The provisions of paragraphs (b), (c), (d), and

(e) of § 240.14a–6 shall apply, to the extent pertinent, to soliciting material subject to paragraphs (c) and (d) of this section.

(f) *Use of reprints or reproductions.* In any solicitation subject to this section, soliciting material which includes, in whole or part, any reprints or reproductions of any previously published material shall:

(1) State the name of the author and publication, the date of prior publication, and identify any person who is quoted without being named in the previously published material.

(2) Except in the case of a public official document or statement, state whether or not the consent of the author and publication has been obtained to the use of the previously published material as proxy soliciting material.

(3) If any participant using the previously published material, or anyone on his behalf, paid, directly or indirectly, for the preparation or prior publication of the previously published material, or has made or proposes to make any payments or give any other consideration in connection with the publication or republication of such material, state the circumstances.

[21 FR 579, Jan. 26, 1956, as amended at 31 FR 212, Jan. 7, 1966; 32 FR 20964, Dec. 29, 1967; 33 FR 2993, Feb. 15, 1968; 44 FR 68456, Nov. 29, 1979; 44 FR 71821, Dec. 12, 1979; 51 FR 42062, Nov. 20, 1986; 52 FR 21936, June 10, 1987; 57 FR 48293, Oct. 22, 1992; 58 FR 14683, Mar. 18, 1993]

§ 240.14a–12 Solicitation prior to furnishing required proxy statement.

(a) Notwithstanding the provisions of Rule 14a–3(a) (§ 240.14a–3(a)), a solicitation (other than one subject to Rule 14a–11 (§ 240.14a–11) may be made prior to furnishing security holders a written proxy statement meeting the requirements of Rule 14a–3(a) if—

(1) The solicitation is made in opposition to a prior solicitation or an invitation for tenders or other publicized activity, which if successful, could reasonably have the effect of defeating the action proposed to be taken at the meeting;

(2) No form of proxy is furnished to security holders prior to the time the written proxy statement required by Rule 14a–3(a) (§ 240.14a–3(a)) is furnished to security holders: *Provided, however,* That this subparagraph (2) shall not apply where a proxy statement then meeting the requirements of Rule 14a–3(a) has been furnished to security holders by or on behalf of the person making the solicitation.

(3) The identity of the participants in the solicitation (as defined in Instruction 3 to Item 4 of Schedule 14A [§ 240.14a–101]) and a description of their interests direct or indirect, by security holdings or otherwise, are set forth in each communication published, sent or given to security holders in connection with the solicitation; and

(4) A written proxy statement meeting the requirements of this regulation is sent or given to security holders solicited pursuant to this section at the earliest practicable date.

(b) Eight copies of any soliciting material published, sent or given to security holders prior to the furnishing of a written proxy statement required by Rule 14a–3(a) [§ 240.14a–3(a)] shall be filed with, or mailed for filing to, the Commission no later than the date such material is published, sent or given to any security holders. Three copies of such material shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any class of securities of the registrant is listed and registered. Such soliciting material shall include a cover page in the form set forth in Schedule 14A and the appropriate box on that cover page shall be checked to indicate such filing.

[31 FR 213, Jan. 7, 1966, as amended at 45 FR 63659, Sept. 25, 1980; 57 FR 48293, 0ct. 22, 1992; 58 FR 14683, Mar. 18, 1993]

§ 240.14a–13 Obligation of registrants in communicating with beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting (or by written consents or authorizations if no meeting is held) with respect to which the registrant intends to solicit proxies, consents or authorizations are held of record by a broker, dealer, voting trustee, bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and if so, the number of copies of the proxy and other soliciting material necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders necessary to supply such report to beneficial owners to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

(C) If the record holder has an obligation under § 240.14b–1(b)(3) or § 240.14b–2(b)(4)(ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation and, if so, the name and address of such agent; and

(D) Whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the registrant, pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to § 240.14b–1(b)(3) or § 240.14b–2(b)(4)(ii) and (iii);

(B) The record date; and

(C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to § 240.14b–2(b)(1)(i), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section at least 20 business days prior to the record date of the meeting of security holders, or

(i) If such inquiry is impracticable 20 business days prior to the record date of a special meeting, as many days before the record date of such meeting as is practicable or,

(ii) If consents or authorizations are solicited, and such inquiry is impracticable 20 business days before the earliest date on which they may be used to effect corporate action, as many days before that date as is practicable, or

(iii) At such later time as the rules of a national securities exchange on which the class of securities in question is listed may permit for good cause shown; *Provided, however,* That if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s); and

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the proxy, other proxy soliciting material, and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with proxy soliciting material and/or annual reports to security holders pursuant to paragraph (a)(4) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to Section 17A of the Act (e.g., ''Cede & Co.,'' nominee for the Depository Trust Company), the registrant

shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* § 240.14a–1(i)).

NOTE 2: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to § 240.14b–1 and § 240.14b–2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) proxies (or in lieu thereof requests for voting instructions) and proxy soliciting materials to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to § 240.14b–1(b)(3) and § 240.14b–2(b)(4)(ii) and (iii).

NOTE 3: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause proxies (or in lieu thereof requests for voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to § 240.14b–1(b)(3) or § 240.14b–2(b)(4)(ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to § 240.14b–2(b)(4)(i) whether such record holder or respondent bank holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list to be compiled as of a date no earlier than five business days after the date the registrant's request is received by the record holder or respondent bank; *Provided, however,* That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercises fiduciary powers; *Provided however,* such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in § 240.14a–1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may mail its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to § 240.14b–1(b)(3) or § 240.14b–2(b)(4)(ii) and (iii), provided that such registrant notifies the record holders and respondent banks, at the time it makes the inquiry required by paragraph (a) of this section, that the registrant will mail the annual report to security holders to the beneficial owners so identified.

(d) If a registrant solicits proxies, consents or authorizations from record holders and respondent banks who hold

securities on behalf of beneficial owners, the registrant shall cause proxies (or in lieu thereof requests or voting instructions), proxy soliciting material and annual reports to security holders to be furnished, in a timely manner, to beneficial owners of exempt employee benefit plan securities.

[51 FR 44276, Dec. 9, 1986; 52 FR 2220, Jan. 21, 1987, as amended at 52 FR 23648, June 24, 1987; 53 FR 16405, May 9, 1988; 57 FR 1099, Jan. 10, 1992]

§ 240.14a–14 Modified or superseded documents.

(a) Any statement contained in a document incorporated or deemed to be incorporated by reference shall be deemed to be modified or superseded, for purposes of the proxy statement, to the extent that a statement contained in the proxy statement or in any other subsequently filed document that also is or is deemed to be incorporated by reference modifies or replaces such statement.

(b) The modifying or superseding statement may, but need not, state it has modified or superseded a prior statement or include any other information set forth in the document that is not so modified or superseded. The making of a modifying or superseding statement shall not be deemed an admission that the modified or superseded statement, when made, constituted an untrue statement of a material fact, an omission to state a material fact necessary to make a statement not misleading, or the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business or artifice to defraud, as those terms are used in the Securities Act of 1933, the Securities Exchange Act of 1934 (''the Act''), the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940, or the rules and regulations thereunder.

(c) Any statement so modified shall not be deemed in its unmodified form to constitute part of the proxy statement for purposes of the Act. Any statement so superseded shall not be deemed to constitute a part of the proxy statement for purposes of the Act.

[52 FR 21936, June 10, 1987]

§ 240.14a–15 Differential and contingent compensation in connection with roll-up transactions.

(a) It shall be unlawful for any person to receive compensation for soliciting proxies, consents, or authorizations directly from security holders in connection with a roll-up transaction as provided in paragraph (b) of this section, if the compensation is:

(1) Based on whether the solicited proxy, consent, or authorization either approves or disapproves the proposed roll-up transaction; or

(2) Contingent on the approval, disapproval, or completion of the roll-up transaction.

(b) This section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), except for a transaction involving only:

(1) Finite-life entities that are not limited partnerships;

(2) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1); or

(3) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1).

[59 FR 63684, Dec. 8, 1994]

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant [ ]
Filed by a party other than the Registrant [ ]
Check the appropriate box:
[ ] Preliminary Proxy Statement
[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14a–6(e)(2))
[ ] Definitive Proxy Statement
[ ] Definitive Additional Materials
[ ] Soliciting Material Pursuant to

§240.14a–11(c) or §240.14a–12

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

[ ] No fee required

[ ] Fee computed on table below per Exchange Act Rules 14a–6(i)(1) and 0–11

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

NOTES

NOTES: A. Where any item calls for information with respect to any matter to be acted upon and such matter involves other matters with respect to which information is called for by other items of this schedule, the information called for by such other items also shall be given. For example, where a solicitation of security holders is for the purpose of approving the authorization of additional securities which are to be used to acquire another specified company, and the registrants' security holders will not have a separate opportunity to vote upon the transaction, the solicitation to authorize the securities is also a solicitation with respect to the acquisition. Under those facts, information required by Items 11, 13 and 14 shall be furnished.

B. Where any item calls for information with respect to any matter to be acted upon at the meeting, such item need be answered in the registrant's soliciting material only with respect to proposals to be made by or on behalf of the registrant.

C. Except as otherwise specifically provided, where any item calls for information for a specified period with regard to directors, executive officers, officers or other persons holding specified positions or relationships, the information shall be given with regard to any person who held any of the specified positions or relationships at any time during the period. Information need not be included for any portion of the period during which such person did not hold any such position or relationship, provided a statement to that effect is made.

D. Information may be incorporated by reference only in the manner and to the extent specifically permitted in the items of this schedule. Where incorporation by reference is used, the following shall apply:

1. Any incorporation by reference of information pursuant to the provisions of this schedule shall be subject to the provisions of §228.10(f) and §229.10(d) of this chapter restricting incorporation by reference of documents which incorporate by reference other information. A registrant incorporating any documents, or portions of documents, shall include a statement on the last page(s) of the proxy statement as to which documents, or portions of documents, are incorporated by reference. Information shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

2. If a document is incorporated by reference but not delivered to security holders, include an undertaking to provide, without charge, to each person to whom a proxy statement is delivered, upon written or oral request of such person and by first class mail or other equally prompt means within one business day of receipt of such request, a copy of any and all of the information that has been incorporated by reference in the proxy statement (not including exhibits to the information that is incorporated by reference unless such exhibits are specifically incorporated by reference into the information that the proxy statement incorporates), and the address (including title or department) and telephone numbers to which such a request is to be directed. This includes information contained in documents filed subsequent to the date on which definitive copies of the proxy statement are sent or given to security holders, up to the date of responding to the request.

3. If a document or portion of a document other than an annual report sent to security holders pursuant to the requirements of Rule

14a–3 (§ 240.14a–3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates is incorporated by reference in the manner permitted by Item 13(b) or 14(b) of this schedule, the proxy statement must be sent to security holders no later than 20 business days prior to the date on which the meeting of such security holders is held or, if no meeting is held, at least 20 business days prior to the date the votes, consents or authorizations may be used to effect the corporate action.

4. *Electronic filings*. If any of the information required by Items 13 or 14 of this Schedule is incorporated by reference from an annual or quarterly report to security holders, such report, or any portion thereof incorporated by reference, shall be filed in electronic format with the proxy statement. This provision shall not apply to registered investment companies.

E. In Items 13 and 14 of this Schedule, the reference to ''meets the requirements of Form S–2'' shall refer to a registrant or to an ''other person'' specified in Item 14(a) of this Schedule which meets the requirements for use of Form S–2 (§ 239.12 of this chapter) and the reference to ''meets the requirement of Form S–3'' shall refer to a registrant or to an ''other person'' specified in Item 14(a) of this Schedule which meets the following requirements:

(1) The registrant or other person meets the requirements of General Instruction I.A. of Form S–3 (§ 239.13 of this chapter); and

(2) One of the following is met:

(i) The registrant or other person meets the aggregate market value requirement of General Instruction I.B.1 of Form S–3; or

(ii) Action is to be taken as described in Items 11, 12 and 14 of this schedule which concerns non-convertible debt or preferred securities which are ''investment grade securities'' as defined in General Instruction I.B.2 of Form S–3, except that the time by which the rating must be assigned shall be the date on which definitive copies of the proxy statement are first sent or given to security holders; or

(iii) The registrant or other person is a majority-owned subsidiary and one of the conditions of General Instruction I.C. of Form S–3 is met.

F. *Note to Small Business Issuers*— Registrants and acquirees that meet the definition of ''small business issuer'' under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of the financial statements required in Schedule 14A.

G. Special Note for Small Business Issuers

(1) Registrants and acquirees which meet the definition of ''small business issuer'' in Rule 12b–2 of the Exchange Act and filed their latest annual report in accordance with ''Information Required in Annual Report of Transitional Small Business Issuers'' in Form 10–KSB shall refer to this ''Special Note for Small Business Issuers'' with respect to the specified items in this Schedule. If paragraph G(2) or G(3), below, does not contain an alternative disclosure instruction, small business issuers should comply with the disclosure item in this schedule, as modified by Instruction F.

(2) Registrants and acquirees which relied upon Alternative 1 in their most recent Form 10–KSB may provide the following information (Questions numbers are in reference to Model A of Form 1–A): (a) Questions 37 and 38 instead of Item 6(d); (b) Question 43 instead of Item 7(a); (c) Questions 29–36 and 39 instead of Item 7(b); (d) Questions 40–42 instead of Item 8; (e) Questions 40–42 instead of Item 10; (e) the information required in Part F/S of Form 10–SB instead of the financial statement requirements of Items 13 or 14; (f) Questions 4, 11 and 47–50 instead of Item 13(a)(1)(3); (g) Question 3 instead of Item 14(b)(3)(i) (A) and (B); and (h) Questions 4, 11 and 47–50 instead of Item 14(b)(3)(i)(H).

(3) Registrants and acquirees which relied upon Alternative 2 in their most recent Form 10–KSB may provide the following information (''Model B'' refers to Model B of Form 1–A): (a) Item 10 of Model B instead of Item 6(d) of Schedule 14A; (b) Item 8(d) of Model B instead of Item 7(a) of Schedule 14A; (c) Items 8(a)–8(c) and Item 11 of Model B instead of Item 7(b) of Schedule 14A; (d) Item 9 of Model B instead of Item 8 of Schedule 14A; (e) Item 9 of Model B instead of Item 10 of Schedule 14A; (f) the information required in Part F/S of Form 10–SB instead of the financial statement requirements of Items 13 or 14 of Schedule 14A; (g) Item 6(a)(3)(i) of Model B instead of Item 13(a)(1)(3) of Schedule 14A; (h) Items 6 and 7 of Model B instead of Item 14(b)(3)(i)(A) and (B) of Schedule 14A; and (i) Item 6(a)(3)(i) of Model B instead of Item 14(b)(3)(i)(H) of Schedule 14A.

Item 1. Date, time and place information. (a) State the date, time and place of the meeting of security holders, and the complete mailing address, including ZIP Code, of the principal executive offices of the registrant, unless such information is otherwise disclosed in material furnished to security holders with or preceding the proxy statement. If action is to be taken by written consent, state the date by which consents are to be submitted if state law requires that such

a date be specified or if the person soliciting intends to set a date.

(b) On the first page of the proxy statement, as delivered to security holders, state the approximate date on which the proxy statement and form of proxy are first sent or given to security holders.

(c) Furnish the information required to be in the proxy statement by Rule 14a–5(e) (§240.14a–5(e) of this chapter).

Item 2. Revocability of proxy. State whether or not the person giving the proxy has the power to revoke it. If the right of revocation before the proxy is exercised is limited or is subject to compliance with any formal procedure, briefly describe such limitation or procedure.

Item 3. Dissenters' right of appraisal. Outline briefly the rights of appraisal or similar rights of dissenters with respect to any matter to be acted upon and indicate any statutory procedure required to be followed by dissenting security holders in order to perfect such rights. Where such rights may be exercised only within a limited time after the date of adoption of a proposal, the filing of a charter amendment or other similar act, state whether the persons solicited will be notified of such date.

Instructions. 1. Indicate whether a security holder's failure to vote against a proposal will constitute a waiver of his appraisal or similar rights and whether a vote against a proposal will be deemed to satisfy any notice requirements under State law with respect to appraisal rights. If the State law is unclear, state what position will be taken in regard to these matters.

2. Open-end investment companies registered under the Investment Company Act of 1940 are not required to respond to this item.

Item 4. Persons Making the Solicitation—(a) Solicitations not subject to Rule 14a–11 (§240.14a–11 of this chapter.) (1) If the solicitation is made by the registrant, so state. Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action intended to be taken by the registrant and indicate the action which he intends to oppose.

(2) If the solicitation is made otherwise than by the registrant, so state and give the names of the participants in the solicitation, as defined in paragraphs (a) (iii), (iv), (v) and (vi) of Instruction 3 to this Item.

(3) If the solicitation is to be made otherwise than by the use of the mails, describe the methods to be employed. If the solicitation is to be made by specially, engaged employees or paid solicitors, state (i) the material features of any contract or arrangement for such solicitation and identify the parties, and (ii) the cost or anticipated cost thereof.

(4) State the names of the persons by whom the cost of solicitation has been or will be borne, directly or indirectly.

(b) *Solicitations subject to Rule 14a–11 (§240.14a–11 of this chapter).* (1) State by whom the solicitation is made and describe the methods employed and to be employed to solicit security holders.

(2) If regular employees of the registrant or any other participant in a solicitation have been or are to be employed to solicit security holders, describe the class or classes of employees to be so employed, and the manner and nature of their employment for such purpose.

(3) If specially engaged employees, representatives or other persons have been or are to be employed to solicit security holders, state (i) the material features of any contract or arrangement for such solicitation and the identity of the parties, (ii) the cost or anticipated cost thereof and (iii) the approximate number of such employees of employees or any other person (naming such other person) who will solicit security holders).

(4) State the total amount estimated to be spent and the total expenditures to date for, in furtherance of, or in connection with the solicitation of security holders.

(5) State by whom the cost of the solicitation will be borne. If such cost is to be borne initially by any person other than the registrant, state whether reimbursement will be sought from the registrant, and, if so, whether the question of such reimbursement will be submitted to a vote of security holders.

(6) If any such solicitation is terminated pursuant to a settlement between the registrant and any other participant in such solicitation, describe the terms of such settlement, including the cost or anticipated cost thereof to the registrant.

Instructions. 1. With respect to solicitations subject to Rule 14a–11 (§240.14a–11 of this chapter), costs and expenditures within the meaning of this Item 4 shall include fees for attorneys, accountants, public relations or financial advisers, solicitors, advertising, printing, transportation, litigation and other costs incidental to the solicitation, except that the registrant may exclude the amount of such costs represented by the amount normally expended for a solicitation for an election of directors in the absence of a contest, and costs represented by salaries and wages of regular employees and officers, provided a statement to that effect is included in the proxy statement.

2. The information required pursuant to paragraph (b)(6) of this Item should be included in any amended or revised proxy statement or other soliciting materials relating to the same meeting or subject matter furnished to security holders by the registrant subsequent to the date of settlement.

3. For purposes of this Item 4 and Item 5 of this Schedule 14A:

(a) The terms ''participant'' and ''participant in a solicitation'' include the following:

(i) The registrant;

(ii) Any director of the registrant, and any nominee for whose election as a director proxies are solicited;

(iii) Any committee or group which solicits proxies, any member of such committee or group, and any person whether or not named as a member who, acting alone or with one or more other persons, directly or indirectly takes the initiative, or engages, in organizing, directing, or arranging for the financing of any such committee or group;

(iv) Any person who finances or joins with another to finance the solicitation of proxies, except persons who contribute not more than $500 and who are not otherwise participants;

(v) Any person who lends money or furnishes credit or enters into any other arrangements, pursuant to any contract or understanding with a participant, for the purpose of financing or otherwise inducing the purchase, sale, holding or voting of securities of the registrant by any participant or other persons, in support of or in opposition to a participant; except that such terms do not include a bank, broker or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of securities and who is not otherwise a participant; and

(vi) Any person who solicits proxies.

(b) The terms ''participant'' and ''participant in a solicitation'' do not include:

(i) Any person or organization retained or employed by a participant to solicit security holders and whose activities are limited to the duties required to be performed in the course of such employment;

(ii) Any person who merely transmits proxy soliciting material or performs other ministerial or clerical duties;

(iii) Any person employed by a participant in the capacity of attorney, accountant, or advertising, public relations or financial adviser, and whose activities are limited to the duties required to be performed in the course of such employment;

(iv) Any person regularly employed as an officer or employee of the registrant or any of its subsidiaries who is not otherwise a participant; or

(v) Any officer or director of, or any person regularly employed by, any other participant, if such officer, director or employee is not otherwise a participant.

Item 5. Interest of certain Persons in Matters To Be Acted Upon—(a) *Solicitations not subject to Rule 14a–11 (§ 240.14a–*11 of this chapter). Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) If the solicitation is made on behalf of the registrant, each person who has been a director or executive officer of the registrant at any time since the beginning of the last fiscal year.

(2) If the solicitation is made otherwise than on behalf of the registrant, each participant in the solicitation, as defined in paragraphs (a) (iii), (iv), (v), and (vi) of Instruction 3 to Item 4 of this Schedule 14A.

(3) Each nominee for election as a director of the registrant.

(4) Each associate of any of the foregoing persons.

Instruction. Except in the case of a solicitation subject to this regulation made in opposition to another solicitation subject to this regulation, this sub-item (a) shall not apply to any interest arising from the ownership of securities of the registrant where the security holder receives no extra or special benefit not shared on a pro rata basis by all other holders of the same class.

(b) *Solicitation subject to Rule 14a–11 (§ 240.14a–11 of this chapter)*. With respect to any solicitation subject to Rule 14a–11 (§ 240.14a–11):

(1) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each participant as defined in paragraphs (a) (ii), (iii), (iv), (v) and (vi) of Instruction 3 to Item 4 of this Schedule 14A, in any matter to be acted upon at the meeting, and include with respect to each participant the following information, or a fair and accurate summary thereof:

(i) Name and business address of the participant.

(ii) The participant's present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment is carried on.

(iii) State whether or not, during the past ten years, the participant has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case. A negative answer need not be included in the proxy statement or other soliciting material.

(iv) State the amount of each class of securities of the registrant which the participant owns beneficially, directly or indirectly.

(v) State the amount of each class of securities of the registrant which the participant owns of record but not beneficially.

(vi) State with respect to all securities of the registrant purchased or sold within the past two years, the dates on which they were purchased or sold and the amount purchased or sold on each such date.

(vii) If any part of the purchase price or market value of any of the shares specified

in paragraph (b)(1)(vi) of this Item is represented by funds borrowed or otherwise obtained for the purpose of acquiring or holding such securities, so state and indicate the amount of the indebtedness as of the latest practicable date. If such funds were borrowed or obtained otherwise than pursuant to a margin account or bank loan in the regular course of business of a bank, broker or dealer, briefly describe the transaction, and state the names of the parties.

(viii) State whether or not the participant is, or was within the past year, a party to any contract, arrangements or understandings with any person with respect to any securities of the registrant, including, but not limited to joint ventures, loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit, division of losses or profits, or the giving or withholding of proxies. If so, name the parties to such contracts, arrangements or understandings and give the details thereof.

(ix) State the amount of securities of the registrant owned beneficially, directly or indirectly, by each of the participant's associates and the name and address of each such associate.

(x) State the amount of each class of securities of any parent or subsidiary of the registrant which the participant owns beneficially, directly or indirectly.

(xi) Furnish for the participant and associates of the participant the information required by Item 404(a) of Regulation S–K (§229.404(a) of this chapter).

(xii) State whether or not the participant or any associates of the participant have any arrangement or understanding with any person—

(A) with respect to any future employment by the registrant or its affiliates; or

(B) with respect to any future transactions to which the registrant or any of its affiliates will or may be a party.

If so, describe such arrangement or understanding and state the names of the parties thereto.

(2) With respect to any person, other than a director or executive officer of the registrant acting solely in that capacity, who is a party to an arrangement or understanding pursuant to which a nominee for election as director is proposed to be elected, describe any substantial interest, direct or indirect, by security holdings or otherwise, that such person has in any matter to be acted upon at the meeting, and furnish the information called for by paragraphs (b)(1) (xi) and (xii) of this Item.

Instruction: For purposes of this Item 5, beneficial ownership shall be determined in accordance with Rule 13d–3 under the Act (Section 240.13d–3 of this chapter).

Item 6. Voting securities and principal holders thereof, (a) As to each class of voting securities of the registrant entitled to be voted at the meeting (or by written consents or authorizations if no meeting is held), state the number of shares outstanding and the number of votes to which each class is entitled.

(b) State the record date, if any, with respect to this solicitation. If the right to vote or give consent is not to be determined, in whole or in part, by reference to a record date, indicate the criteria for the determination of security holders entitled to vote or give consent.

(c) If action is to be taken with respect to the election of directors and if the persons solicited have cumulative voting rights: (1) Make a statement that they have such rights, (2) briefly describe such rights, (3) state briefly the conditions precedent to the exercise thereof, and (4) if discretionary authority to cumulate votes is solicited, so indicate.

(d) Furnish the information required by Item 403 of Regulation S–K (§229.403 of this chapter) to the extent known by the persons on whose behalf the solicitation is made.

(e) If, to the knowledge of the persons on whose behalf the solicitation is made, a change in control of the registrant has occurred since the beginning of its last fiscal year, state the name of the person(s) who acquired such control, the amount and the source of the consideration used by such person or persons; the basis of the control, the date and a description of the transaction(s) which resulted in the change of control and the percentage of voting securities of the registrant now beneficially owned directly or indirectly by the person(s) who acquired control; and the identity of the person(s) from whom control was assumed. If the source of all or any part of the consideration used is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the identity of such bank shall be omitted provided a request for confidentiality has been made pursuant to section 13(d)(1)(B) of the Act by the person(s) who acquired control. In lieu thereof, the material shall indicate that the identity of the bank has been so omitted and filed separately with the Commission.

Instruction. 1. State the terms of any loans or pledges obtained by the new control group for the purpose of acquiring control, and the names of the lenders or pledgees.

2. Any arrangements or understandings among members of both the former and new control groups and their associates with respect to election of directors or other matters should be described.

Item 7. Directors and executive officers. If action is to be taken with respect to the election of directors, furnish the following information in tabular form to the extent practicable. If, however, the solicitation is made on behalf of persons other than the registrant, the information required need be

furnished only as to nominees of the persons making the solicitation.

(a) The information required by instruction 4 to Item 103 of Regulation S–K (§ 229.103 of this chapter) with respect to directors and executive officers.

(b) The information required by Items 401, 404 (a) and (c), and 405 of Regulation S–K (§ 229.401, § 229.404 and § 229.405 of this chapter).

(c) The information required by Item 404(b) of Regulation S–K (§ 229.404 of this chapter).

(d) In lieu of paragraphs (a) through (c) of this Item, investment companies registered under the Investment Company Act of 1940 shall furnish the information required by paragraphs (1) through (5) of Item 22(b) of this Schedule 14A.

(e)(1) State whether or not the registrant has standing audit, nominating and compensation committees of the Board of Directors, or committees performing similar functions. If the registrant has such committees, however designated, identify each committee member, state the number of committee meetings held by each such committee during the last fiscal year and describe briefly the functions performed by such committees. In the case of investment companies registered under the Investment Company Act of 1940, indicate by an asterisk whether that member is an ''interested person'' as defined in section 2(a)(19) of that Act. Information concerning compensation committees is not required of registered investment companies whose management functions are performed by external managers.

(2) If the registrant has a nominating or similar committee, state whether the committee will consider nominees recommended by security holders and, if so, describe the procedures to be followed by security holders in submitting such recommendations.

(f) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of (1) the total number of meetings of the board of directors (held during the period for which he has been a director) and (2) the total number of meetings held by all committees of the board on which he served (during the periods that he served).

(g) If a director has resigned or declined to stand for re-election to the board of directors since the date of the last annual meeting of security holders because of a disagreement with the registrant on any matter relating to the registrant's operations, policies or practices, and if the director has furnished the registrant with a letter describing such disagreement and requesting that the matter be disclosed, the registrant shall state the date of resignation or declination to stand for re-election and summarize the director's description of the disagreement.

If the registrant believes that the description provided by the director is incorrect or incomplete, it may include a brief statement presenting its view of the disagreement.

Item 8. Compensation of directors and executive officers. Furnish the information required by Item 402 (§ 229.402 of this chapter) of Regulation S–K if action is to be taken with regard to:

(a) The election of directors;

(b) Any bonus, profit sharing or other compensation plan, contract or arrangement in which any director, nominee for election as a director, or executive officer of the registrant will participate;

(c) Any pension or retirement plan in which any such person will participate; or

(d) The granting or extension to any such person of any options, warrants or rights to purchase any securities, other than warrants or rights issued to security holders as such, on a pro rata basis.

However, if the solicitation is made on behalf of persons other than the registrant, the information required need be furnished only as to nominees of the persons making the solicitation and associates of such nominees. In the case of investment companies registered under the Investment Company Act of 1940 and registrants that have elected to be regulated as business development companies, furnish the information required by Item 22(b)(6) of this Schedule.

Instruction.

If an otherwise reportable compensation plan became subject to such requirements because of an acquisition or merger and, within one year of the acquisition or merger, such plan was terminated for purposes of prospective eligibility, the registrant may furnish a description of its obligation to the designated individuals pursuant to the compensation plan. Such description may be furnished in lieu of a description of the compensation plan in the proxy statement.

Item 9. Independent public accountants. If the solicitation is made on behalf of the registrant and relates to: (1) The annual (or special meeting in lieu of annual) meeting of security holders at which directors are to be elected, or a solicitation of consents or authorizations in lieu of such meeting or (2) the election, approval or ratification of the registrant's accountant, furnish the following information describing the registrant's relationship with its independent public accountant:

(a) The name of the principal accountant selected or being recommended to security holders for election, approval or ratification for the current year. If no accountant has been selected or recommended, so state and briefly describe the reasons therefor.

(b) The name of the principal accountant for the fiscal year most recently completed if different from the accountant selected or recommended for the current year or if no accountant has yet been selected or recommended for the current year.

(c) The proxy statement shall indicate: (1) Whether or not representatives of the principal accountant for the current year and for the most recently completed fiscal year are expected to be present at the security holders' meeting, (2) whether or not they will have the opportunity to make a statement if they desire to do so, and (3) whether or not such representatives are expected to be available to respond to appropriate questions.

(d) If during the registrant's two most recent fiscal years or any subsequent interim period, (1) an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant on whom the principal accountant expressed reliance in its report regarding a significant subsidiary, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, or (2) a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements or as an independent accountant on whom the principal accountant has expressed or is expected to express reliance in its report regarding a significant subsidiary, then, notwithstanding any previous disclosure, provide the information required by Item 304(a) of Regulation S–K (§229.304 of this chapter).

Item 10. Compensation Plans. If action is to be taken with respect to any plan pursuant to which cash or noncash compensation may be paid or distributed, furnish the following information:

(a) *Plans subject to security holder action.* (1) Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.

(2)(i) In the tabular format specified below, disclose the benefits or amounts that will be received by or allocated to each of the following under the plan being acted upon, if such benefits or amounts are determinable:

NEW PLAN BENEFITS

Plan name		
Name and position	Dollar value ($)	Number of units
CEO.		
A.		
B.		
C.		
D.		

NEW PLAN BENEFITS—Continued

Plan name		
Name and position	Dollar value ($)	Number of units
Executive Group.		
Non-Executive Director Group.		
Non-Executive Officer Employee Group.		

(ii) The table required by paragraph (a)(2)(i) of this Item shall provide information as to the following persons:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§229.402(a)(3) of this chapter);

Instruction: In the case of investment companies registered under the Investment Company Act of 1940, furnish the information for Compensated Persons as defined in Item 22(b)(6) of this Schedule in lieu of the persons specified in paragraph (a)(3) of Item 402 of Regulation S–K (§229.402(a)(3) of this chapter).

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

INSTRUCTION TO NEW PLAN BENEFITS TABLE

Additional columns should be added for each plan with respect to which security holder action is to be taken.

(iii) If the benefits or amounts specified in paragraph (a)(2)(i) of this item are not determinable, state the benefits or amounts which would have been received by or allocated to each of the following for the last completed fiscal year if the plan had been in effect, if such benefits or amounts may be determined, in the table specified in paragraph (a)(2)(i) of this Item:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group; and

(D) All employees, including all current officers who are not executive officers, as a group.

(3) If the plan to be acted upon can be amended, otherwise than by a vote of security holders, to increase the cost thereof to the registrant or to alter the allocation of the benefits as between the persons and groups specified in paragraph (a)(2) of this item, state the nature of the amendments which can be so made.

(b)(1) *Additional information regarding specified plans subject to security holder action.* With respect to any pension or retirement plan submitted for security holder action, state:

(i) The approximate total amount necessary to fund the plan with respect to past services, the period over which such amount is to be paid and the estimated annual payments necessary to pay the total amount over such period; and

(ii) The estimated annual payment to be made with respect to current services. In the case of a pension or retirement plan, information called for by paragraph (a)(2) of this Item may be furnished in the format specified by paragraph (f)(1) of Item 402 of Regulation S–K (§ 229.402(f)(1) of this chapter).

Instruction. In the case of investment companies registered under the Investment Company Act of 1940, refer to instruction 4 in Item 22(b)(6)(ii) of this Schedule in lieu of paragraph (f)(1) of Item 402 of Regulation S–K (§ 229.402(f)(1) of this chapter).

(2)(i) With respect to any specific grant of or any plan containing options, warrants or rights submitted for security holder action, state:

(A) The title and amount of securities underlying such options, warrants or rights;

(B) The prices, expiration dates and other material conditions upon which the options, warrants or rights may be exercised;

(C) The consideration received or to be received by the registrant or subsidiary for the granting or extension of the options, warrants or rights;

(D) The market value of the securities underlying the options, warrants, or rights as of the latest practicable date; and

(E) In the case of options, the federal income tax consequences of the issuance and exercise of such options to the recipient and the registrant; and

(ii) State separately the amount of such options received or to be received by the following persons if such benefits or amounts are determinable:

(A) Each person (stating name and position) specified in paragraph (a)(3) of Item 402 of Regulation S–K (§ 229.402(a)(3) of this chapter);

(B) All current executive officers as a group;

(C) All current directors who are not executive officers as a group;

(D) Each nominee for election as a director;

(E) Each associate of any of such directors, executive officers or nominees;

(F) Each other person who received or is to receive 5 percent of such options, warrants or rights; and

(G) All employees, including all current officers who are not executive officers, as a group.

Instructions

1. The term ''plan'' as used in this Item means any plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter).

2. If action is to be taken with respect to a material amendment or modification of an existing plan, the item shall be answered with respect to the plan as proposed to be amended or modified and shall indicate any material differences from the existing plan.

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form of proxy are first filed pursuant to paragraph (a) or (b) of § 240.14a–6. Electronic filers shall file with the Commission a copy of such written plan document in electronic format as an appendix to the proxy statement. It need not be provided to security holders unless it is a part of the proxy statement.

4. Paragraph (b)(2)(ii) does not apply to warrants or rights to be issued to security holders as such on a pro rata basis.

5. The Commission shall be informed, as supplemental information, when the proxy statement is first filed, as to when the options, warrants or rights and the shares called for thereby will be registered under the Securities Act or, if such registration is not contemplated, the section of the Securities Act or rule of the Commission under which exemption from such registration is claimed and the facts relied upon to make the exemption available.

Item 11. Authorization or issuance of securities otherwise than for exchange. If action is to be taken with respect to the authorization or issuance of any securities otherwise than for exchange for outstanding securities of the registrant, furnish the following information:

(a) State the title and amount of securities to be authorized or issued.

(b) Furnish the information required by Item 202 of Regulation S–K (§ 229.202 of this chapter). If the terms of the securities cannot be stated or estimated with respect to any or all of the securities to be authorized, because no offering thereof is contemplated in the proximate future, and if no further authorization by security holders for the issuance thereof is to be obtained, it should be stated that the terms of the securities to be authorized, including dividend or interest rates, conversion prices, voting rights, redemption prices, maturity dates, and similar matters will be determined by the board of directors. If the securities are additional shares of common stock of a class outstanding, the description may be omitted except for a statement of the preemptive rights, if any. Where the statutory provisions with respect to preemptive rights are so indefinite or complex that they cannot be stated in

summarized form, it will suffice to make a statement in the form of an opinion of counsel as to the existence and extent of such rights.

(c) Describe briefly the transaction in which the securities are to be issued including a statement as to (1) the nature and approximate amount of consideration received or to be received by the registrant and (2) the approximate amount devoted to each purpose so far as determinable for which the net proceeds have been or are to be used. If it is impracticable to describe the transaction in which the securities are to be issued, state the reason, indicate the purpose of the authorization of the securities, and state whether further authorization for the issuance of the securities by a vote of security holders will be solicited prior to such issuance.

(d) If the securities are to be issued otherwise than in a public offering for cash, state the reasons for the proposed authorization or issuance and the general effect thereof upon the rights of existing security holders.

(e) Furnish the information required by Item 13(a) of this schedule.

Item 12. Modification or exchange of securities. If action is to be taken with respect to the modification of any class of securities of the registrant, or the issuance or authorization for issuance of securities of the registrant in exchange for outstanding securities of the registrant furnish the following information:

(a) If outstanding securities are to be modified, state the title and amount thereof. If securities are to be issued in exchange for outstanding securities, state the title and amount of securities to be so issued, the title and amount of outstanding securities to be exchanged therefor and the basis of the exchange.

(b) Describe any material differences between the outstanding securities and the modified or new securities in respect of any of the matters concerning which information would be required in the description of the securities in Item 202 of Regulation S–K (§ 229.202 of this chapter).

(c) State the reasons for the proposed modification or exchange and the general effect thereof upon the rights of existing security holders.

(d) Furnish a brief statement as to arrears in dividends or as to defaults in principal or interest in respect to the outstanding securities which are to be modified or exchanged and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(e) Outline briefly any other material features of the proposed modification or exchange. If the plan of proposed action is set forth in a written document, file copies thereof with the Commission in accordance with § 240.14a–6.

(f) Furnish the information required by Item 13(a) of this Schedule.

Instruction. If the existing security is presently listed and registered on a national securities exchange, state whether the registrant intends to apply for listing and registration of the new or reclassified security on such exchange or any other exchange. If the registrant does not intend to make such application, state the effect of the termination of such listing and registration.

Item 13. Financial and other information. (*See* Notes D and E at the beginning of this Schedule.)

(a) *Information required.* If action is to be taken with respect to any matter specified in Item 11 or 12, furnish the following information:

(1) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement;

(2) Item 302 of Regulation S–K, supplementary financial information;

(3) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(4) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure;

(5) Item 305 of Regulation S–K, quantitative and qualitative disclosures about market risk; and

(6) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year:

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Incorporation by reference.* The information required pursuant to paragraph (a) of this Item may be incorporated by reference into the proxy statement as follows:

(1) *S–3 registrants.* If the registrant meets the requirements of Form S–3(*see* Note E to this Schedule), it may incorporate by reference to previously-filed documents any of the information required by paragraph (a) of this Item, provided that the requirements of paragraph (c) are met. Where the registrant meets the requirements of Form S–3 and has elected to furnish the required information by incorporation by reference, the registrant may elect to update the information so incorporated by reference to information in subsequently-filed documents.

(2) *All registrants.* The registrant may incorporate by reference any of the information required by paragraph (a) of this Item, provided that the information is contained in an annual report to security holders or a previously-filed statement or report, such report or statement is delivered to security holders with the proxy statement and the requirements of paragraph (c) are met.

(c) *Certain conditions applicable to incorporation by reference.* Registrants eligible to incorporate by reference into the proxy statement the information required by paragraph (a) of this Item in the manner specified by paragraphs (b)(1) and (b)(2) may do so only if:

(1) The information is not required to be included in the proxy statement pursuant to the requirement of another Item;

(2) The proxy statement identifies on the last page(s) the information incorporated by reference; and

(3) The material incorporated by reference substantially meets the requirements of this Item or the appropriate portions of this Item.

Instructions to Item 13.

1. Notwithstanding the provisions of this Item, any or all of the information required by paragraph (a) of this Item not material for the exercise of prudent judgment in regard to the matter to be acted upon may be omitted. In the usual case the information is deemed material to the exercise of prudent judgment where the matter to be acted upon is the authorization or issuance of a material amount of senior securities, but the information is not deemed material where the matter to be acted upon is the authorization or issuance of common stock, otherwise than in an exchange, merger, consolidation, acquisition or similar transaction, the authorization of preferred stock without present intent to issue or the authorization of preferred stock for issuance for cash in an amount constituting fair value.

2. In order to facilitate compliance with Rule 2–02(a) of Regulation S–X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

3. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

4. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraph (a)(2) or (3) of this Item.

5. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

6. A registered investment company need not comply with items (a)(2), (a)(3), and (a)(5) of this Item 13.

Item 14. Mergers, consolidations, acquisitions and similar matters. (See Notes A, D and E at the beginning of this Schedule.)

If action is to be taken with respect to any transaction involving: (i) The merger or consolidation of the registrant into or with any other person or of any other person into or with the registrant, (ii) the acquisition by the registrant or any of its security holders of securities of another person, (iii) the acquisition by the registrant of any other going business or of the assets thereof, (iv) the sale or other transfer of all or any substantial part of the assets of the registrant, or (v) the liquidation or dissolution of the registrant, furnish the following information:

(a) *Information about the transaction.* Furnish the following information concerning the registrant and (unless otherwise indicated) each other person: Which is to be merged into the registrant or into or with which the registrant is to be merged or consolidated; the business or assets of which are to be acquired; which is the issuer of securities to be acquired by the registrant in exchange for all or a substantial part of the registrant's assets; or which is the issuer of securities to be acquired by the registrant or its security holders:

(1) The name, complete mailing address (including the ZIP Code) and telephone number (including the area code) of the principal executive offices.

(2) A brief description of the general nature of the business conducted by the other person.

(3) A summary of the material features of the proposed transaction. If the transaction is set forth in a written document, file three copies thereof with the Commission at the time preliminary copies of the proxy statement and form of proxy are filed pursuant to Rule 14a–6(a)(§ 240.14a–6(a) of this chapter). The summary shall include, where applicable:

(i) A brief summary of the terms of the transaction agreement;

(ii) The reasons for engaging in the transaction;

(iii) An explanation of any material differences in the rights of security holders of the registrant as a result of this transaction;

(iv) A brief statement as to the accounting treatment of the transaction; and

(v) The federal income tax consequences of the transaction.

(vi) The information required by Item 202 of Regulation S–K (§229.202 of this chapter), description of registrant's securities, for any securities that are exempt from registration and are being issued in connection with the transaction if the security holders entitled to vote or give an authorization or consent with regard to the transaction will receive such securities, unless: (i) The issuer of the securities would meet the requirements for use of Form S–3 and elects to furnish information in accordance with the provisions of paragraph (b)(1), (ii) capital stock is to be issued and (iii) securities of the same class are registered under section 12 of the Exchange Act and either (a) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (b) are securities for which bid and offer quotations are reported in an automated quotations system operated by a national securities association;

(4) A brief statement as to dividends in arrears or defaults in principal or interest in respect of any securities of the registrant or of such other person and as to the effect of the transaction thereon and such other information as may be appropriate in the particular case to disclose adequately the nature and effect of the proposed action.

(5) The information required by Item 301 of Regulation S–K (§229.301 of this chapter), selected financial data, for the registrant and the other person.

(6) If material, the information required by Item 301 of Regulation S–K for the registrant or the other person on a pro forma basis, giving effect to the transaction.

(7) In comparative columnar form, historical and pro forma per share data of the registrant and historical and equivalent pro forma per share data of the other person for the following items:

(i) Book value per share as of the date financial data is presented pursuant to Item 301 of Regulation S–K(§229.301 of this chapter) (selected financial data);

(ii) Cash dividends declared per share for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K (§229.301 of this chapter) (selected financial data); and

(iii) Income (loss) per share from continuing operations for the periods for which financial data is presented pursuant to Item 301 of Regulation S–K(§229.301 of this chapter) (selected financial data).

Instructions to paragraphs (a)(6) and (a)(7).

For a business combination accounted for as a purchase, the financial information required by paragraphs (a)(6) and (a)(7) shall be presented only for the most recent fiscal year and interim period. For a business combination accounted for as a pooling, the financial information required by paragraphs (a)(6) and (a)(7) (except for information with regard to book value) shall be presented for the most recent three fiscal years and interim period. For a business combination accounted for as a pooling, information with regard to book value shall be presented as of the end of the most recent fiscal year and interim period. Equivalent pro forma per share amounts shall be calculated by multiplying the pro forma income (loss) per share before non-recurring charges or credits directly attributable to the transaction, pro forma book value per share, and the pro forma dividends per share of the registrant by the exchange ratio so that the per share amounts are equated to the respective values for one share of the other person.

(8) Financial information required by Article 11 of Regulation S–X (§210.11–01 et seq. of this chapter) with respect to this transaction.

Instructions to paragraph (a)(8).

1. Any other Article 11 information that is presented (rather than incorporated by reference) pursuant to other Items of this schedule shall be presented together with the information provided pursuant to paragraph (a)(7), but the presentation shall clearly distinguish between this transaction and any other.

2. If pro forma financial information with respect to all other transactions is incorporated by reference pursuant to paragraph (b) of this Item, only the pro forma results need be presented as part of the pro forma financial information required by this Item.

(9) A statement as to whether any federal or state regulatory requirements must be complied with or approval must be obtained in connection with the transaction and if so the status of such compliance or approval.

(10) If a report, opinion or appraisal materially relating to the transaction has been received from an outside party, and such report, opinion or appraisal is referred to in the proxy statement, furnish the same information as would be required by Item 9(b)(1) through (6) of Schedule 13E–3 (§240.13e–100 of this chapter).

(11) A description of any past, present or proposed material contracts, arrangements, understandings, relationships, negotiations or transactions during the periods for which financial statements are presented or incorporated by reference pursuant to this Item between the other person or its affiliates and the registrant or its affiliates such as those concerning a merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

(12) As to each class of securities of the registrant or of the other person which is admitted to trading on a national securities exchange or with respect to which a market otherwise exists, and which will be materially affected by the transaction, state the high and low sale prices (or in the absence of

trading in a particular period, the range of the bid and asked prices) as of the date preceding public announcement of the proposed transaction, or if no such public announcement was made, as of the day preceding the day the agreement or resolution with respect to the action was made.

(13) A statement as to whether or not representatives of the principal accountants for the current year and for the most recently completed fiscal year

(i) Are expected to be present at the security holders' meeting;

(ii) Will have the opportunity to make a statement if they desire to do so; and

(iii) Are expected to be available to respond to appropriate questions.

(b) *Information about the registrant and the other person.* Furnish the information specified below for the registrant and for the other person designated in paragraph(a) of this Item, if applicable (hereinafter all references to the registrant should be read to include a reference to such other person unless the context otherwise indicates):

(1) *Information with respect to S–3 registrants.* If the registrant meets the requirements of Form S–3 (See Note E to this Schedule) and elects to furnish information in accordance with the provisions of this paragraph, furnish information as required below.

(i) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and that have not been described in a report on Form 10–Q and Form 10–QSB (§ 249.308(a) of this chapter) or Form 8–K(§ 249.308 of the chapter) filed under the Exchange Act;

(ii) Include in the proxy statement, if not incorporated by reference from the reports filed under the Exchange Act specified in paragraph (b)(1)(iii) of this Item, from a proxy or information statement filed pursuant to section 14 of the Exchange Act, from a prospectus previously filed pursuant to Rule 424 under the Securities Act (§ 230.424 of this chapter) or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 8–K filed during either of the two preceding fiscal years:

(A) Financial information required by Rule 3–05(§ 210.3–05 of this chapter) and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which action is to be taken as described in this proxy statement.

(B) Restated financial statements prepared in accordance with Regulation S–X (Part 210 of this chapter), if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(C) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§ 210.11(b) of this chapter); or

(D) Any financial information required because of a material disposition of assets outside the normal course of business.

(iii) Incorporate by reference into the proxy statement the documents listed in paragraphs (A), (B) and, if applicable, (C) below:

(A) The registrant's latest annual report on Form 10–K and Form 10–KSB (§ 249.310 of this chapter) filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 10–K and Form 10–KSB was required to be filed;

(B) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph(b)(1)(iii)(A) of this Item.

(C) If capital stock is to be issued to security holders entitled to vote or give an authorization or consent and securities of the same class are registered under section 12 of the Exchange Act and: (i) are listed for trading or admitted to unlisted trading privileges on a national securities exchange; or (ii) are securities for which bid and offer quotations are reported on an automated quotations system operated by a national securities association, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description.

(iv) The proxy statement also shall state on the last page(s) that all documents subsequently filed by the registrant pursuant to sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to one of the following dates, whichever is applicable, shall be deemed to be incorporated by reference into the proxy statement:

(A) If a meeting of security holders is to be held, the date on which such meeting is held;

(B) If a meeting of security holders is not to held, the date on which the consents or authorizations are used to effect the proposed action.

(2) *Information with respect to S–2 or S–3 registrants*—(i) *Information required to be furnished.* If the registrant meets the requirements of Form S–2 or Form S–3 (*See* Note E of this Schedule) and elects to comply with

this paragraph, furnish the information required by either paragraph (b)(2)(i) (A) or (B) of this section. However, the registrant shall not provide information in the manner allowed by paragraph (b)(2)(i)(A) of this section, if the financial statements in the registrant's latest annual report to security holders do not reflect: restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements; restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are signficant pursuant to Rule 11–01(b) of Regulation S–X; or any financial information required because of a material disposition of assets outside of the normal course of business.

(A) If the registrant elects to furnish information pursuant to this paragraph (b)(2)(i)(A) and delivers the proxy statement together with a copy of either its latest Form 10–K or Form 10–KSB filed pursuant to sections 13(a) or 15(d) of the Exchange Act or its latest annual report to security holders which, at the time of original preparation met the requirements of either Rule 14a–3 (§240.14a–3 or 14c–3 (§240.14c–3):

(*1*) Indicate that the proxy statement is accompanied by either a copy of the registrant's latest Form 10–K or Form 10–KSB or a copy of its latest annual report to security holders.

(*2*) Provide financial and other information with respect to the registrant in the form required by Part I of Form 10–Q and Form 10–QSB as of the end of the most recent fiscal quarter which ended after the end of the latest fiscal year for which audited financial statements were included in the latest report to security holders and more than 45 days prior to the date the proxy statement is filed in definitive form (or as of a more recent date) by one of the following means:

(i) Including such information in the proxy statement;

(ii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest Form 10–Q and Form 10–QSB; or

(iii) Providing without charge to each person to whom a proxy statement is delivered a copy of the registrant's latest quarterly report that was delivered to its security holders and that included the required financial information.

(*3*) If not reflected in the registrant's latest annual report to security holders, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in the proxy statement.

(*4*) Describe any and all material changes in the registrant's affairs that have occurred between the end of the latest fiscal year for which audited financial statements were included in the latest annual report to security holders and the date the definitive proxy statement is filed and that were not described in a Form 10–Q and Form 10–QSB or quarterly report delivered with the proxy statement in accordance with paragraph (b)(2)(i)(A)*(2) (ii) or (iii)*.

(B) If the registrant does not elect to furnish information and deliver its latest Form 10–K or Form 10–KSB or a copy of its latest annual report to security holders pursuant to paragraph (b)(2)(i)(A):

(*1*) Furnish a brief description of the business done by the registrant and its subsidiaries during the most recent fiscal year as required by Rule 14a–3 (§240.14a–3 of this chapter) to be included in an annual report to security holders. The description also should take into account changes in the registrant's business that have occurred between the end of the last fiscal year and the filing of definitive proxy materials.

(*2*) Include financial statements and information as required by Rule 14a–3(b)(1) (§240.14a–3(b)(1) of this chapter) to be included in an annual report to security holders. In addition, provide:

(*i*) The interim financial information required by Rule 10–01 of Regulation S–X (§210.10–01 of this chapter) for a report on Form 10–Q and Form 10–QSB;

(*ii*) Financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in this proxy statement;

(*iii*) Restated financial statements prepared in accordance with Regulation S–X if there has been a change in accounting principles or a correction of an error where such change or correction requires a material retroactive restatement of financial statements;

(*iv*) Restated financial statements prepared in accordance with Regulation S–X where one or more business combinations accounted for by the pooling of interest method of accounting have been consummated subsequent to the most recent fiscal year and the acquired businesses, considered in the aggregate, are significant pursuant to Rule 11–01(b) of Regulation S–X (§210.11–01 of this chapter); and

(*v*) Any financial information required because of a material disposition of assets outside of the normal course of business.

(*3*) Furnish the information required by the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K (§229.101 of this chapter), industry

segments, classes of similar products or services, foreign and domestic operations and import sales;

(*ii*) Item 102 of Regulation S–K (§ 229.102 of this chapter) for any property involved in the transaction, if such disclosure is material to the security holder's understanding of the transaction;

(*iii*) Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrant's common equity and related stockholder matters;

(*iv*) Item 301 of Regulation S–K (§ 229.301 of this chapter), selected financial data;

(*v*) Item 302 of Regulation S–K (§ 229.302 of this chapter), supplementary financial information;

(*vi*) Item 303 of Regulation S–K (§ 229.303 of this chapter), management's discussion and analysis of financial condition and results of operations;

(*vii*) Item 304 of Regulation S–K (§ 229.304 of this chapter), changes in and disagreements with accountants on accounting and financial disclosure; and

(viii) Item 305 of Regulation S–K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

(ii) *Incorporation of certain information by reference*. If the registrant meets the requirements of Form S–2 or S–3 (*See* Note E of this Schedule) and elects to furnish information in accordance with the provisions of paragraph (b)(2)(i) of this Item:

(A) Incorporate by reference into the proxy statement the documents listed in paragraphs (b)(2)(ii)(A) (*1*) and (*2*) below and, if applicable, the portions of the documents listed in paragraphs (b)(2)(ii)(A) (*3*) and (*4*) below.

(*1*) The registrant's latest annual report on Form 10–K and Form 10–KSB filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 10–K and Form 10–KSB was required to be filed.

(*2*) All other reports filed pursuant to section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in paragraph (a)(2)(i)(A)(*1*).

(*3*) If the registrant elects to deliver its latest annual report to security holders pursuant to paragraph(b)(2)(i)(A) of this Item, the information furnished in accordance with the following:

(*i*) Item 101 (b), (c)(1)(i) and (d) of Regulation S–K, industry segments, classes of similar products or services, foreign and domestic operations and export sales;

(*ii*) Item 201 of Regulation S–K, market price of and dividends on the registrant's common equity and related stockholder matters;

(*iii*) Item 301 of Regulation S–K, selected financial data;

(*iv*) Item 302 of Regulation S–K, supplementary financial information;

(*v*) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(*vi*) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure; and

(vii) Item 305 of Regulation S–K (§ 229.305 of this chapter), quantitative and qualitative disclosures about market risk.

(*4*) If the registrant elects, pursuant to paragraph (b)(2)(i)(A)(*2*)(*iii*) of this Item, to provide a copy of its latest quarterly report which was delivered to security holders, financial information equivalent to that required to be presented in Part I of Form 10–Q and Form 10–QSB.

(B) The registrant also may state, if it so chooses, that specifically described portions of its annual or quarterly report to security holders, other than those portions required to be incorporated by reference pursuant to paragraphs (b)(2)(ii)(A) (*3*) and (*4*) of this Item, are not part of the proxy statement. In such case, the description of portions that are not incorporated by reference or that are excluded shall be made with clarity and in reasonable detail.

(3) *Information with respect to registrants other than S–2 or S–3 registrants*. (i) If the registrant does not meet the requirements of Form S–2 or S–3 (*See* Note E of this Schedule), or elects to comply with this paragraph (b)(3) in lieu of paragraph (b)(1) or (b)(2), furnish the following information:

(A) Information required by Item 101 of Regulation S–K (§ 229.101 of this chapter), description of business.

(B) Information required by Item 102 of Regulation S–K (§ 229.102 of this chapter), description of property.

(C) Information required by Item 103 of Regulation S–K (§ 229.103 of this chapter), legal proceedings.

(D) Information required by Item 201 of Regulation S–K (§ 229.201 of this chapter), market price of and dividends on the registrants' common equity and related stockholder matters.

(E) Financial statements meeting the requirements of Regulation S–X, including financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that as to which action is to be taken as described in this proxy statement.

(F) Item 301 of Regulation S–K, selected financial data;

(G) Item 302 of Regulation S–K, supplementary financial information;

(H) Item 303 of Regulation S–K, management's discussion and analysis of financial condition and results of operations;

(I) Item 304 of Regulation S–K, changes in and disagreements with accountants on accounting and financial disclosure; and

(J) Item 305 of Regulation S–K (§229.305 of this chapter), quantitative and qualitative disclosures about market risk.

(ii) If the other person is not subject to the reporting requirements of either section 13(a) or 15(d) of the Exchange Act; or, because of section 12(i) of the Exchange Act, has not furnished an annual report to security holders pursuant to Rule 14a–3 (§240.14a–3 of this chapter) or Rule 14c–3 (§240.14c–3 of this chapter) for its latest fiscal year, furnish:

(A) the financial statements that would have been required to be included in an annual report to security holders pursuant to Rules 14a–3(b)(1) and (b)(2) had the company been required to furnish such a report; *Provided, however,* That the balance sheet for the year preceding the latest full fiscal year and the income statements for the two years preceding the latest full fiscal Year need not be audited if they have not previously been audited. In any case, such financial statements need be audited only to the extent practicable.

(B) The quarterly financial and other information that would have been required had the company been required to file Part I of Form 10–Q and Form 10–QSB (§249.308a) for the most recent quarter for which such a report would have been on file at the time the proxy statement is mailed or for a period ending as of a more recent date.

(C) A brief description of the business done by the company which indicates the general nature and scope of the business;

(D) The information required by paragraphs (b)(3)(i)(D) and (F)–(H) of this Item and the information required by Item 304(b) of Regulation S–K (§229.304 of this chapter).

(E) Schedules required by Rules 12–15, 28 and 29 of Regulation S–X.

(c) *Additional method of incorporation by reference.* In lieu of the provision of information about the registrant and the other person required in paragraph (b) of this Item, the registrant may incorporate by reference into the proxy statement the information required by paragraph (b)(3) of this Item if it is contained in an annual report sent to security holders pursuant to the requirement of Rule 14a–3 (§240.14a–3 of this chapter) with respect to the same meeting or solicitation of consents or authorizations as that to which the proxy statement relates, provided such information substantially meets the requirements of paragraph (b)(3) of this Item or the appropriate portions of paragraph (b)(3) of this Item.

Instructions to Item 14.

1. In order to facilitate compliance with Rule 2–02(a) of Regulation S–X, one copy of the definitive proxy statement filed with the Commission shall include a manually signed copy of the accountant's report. If the financial statements are incorporated by reference, a manually signed copy of the accountant's report shall be filed with the definitive proxy statement.

2. Notwithstanding the provisions of this Item, any or all of the required financial statements and related information which are not material for the exercise of prudent judgement in regard to the matter to be acted upon may be omitted.

3. If the registrant or any of its securities or assets is to be acquired by the other person, the information regarding the other person that is required by this Item, other than information required by paragraphs (a)(1) through (3) and (a)(9) through (11) of this Item, need be provided only to the extent that:(1) The registrant or its security holders who are entitled to vote or give an authorization or consent with regard to the action will become or remain security holders of the other person; or (2) such information is otherwise material to an informed voting decision.

4. If the plan being voted on involves only the registrant and one or more of its totally held subsidiaries and does not involve a liquidation of the registrant or a spin-off, the information required by this Item, other than information required by paragraphs (a)(1) through (4) and (a)(9) through (12) of this Item, may be omitted.

5. Notwithstanding the provisions of Regulation S–X, no schedules other than those prepared in accordance with Rules 12–15, 12–28 and 12–29 (or, for management investment companies, Rules 12–12 through 12–14) of that regulation need be furnished in the proxy statement.

6. Unless registered on a national securities exchange or otherwise required to furnish such information, registered investment companies need not furnish the information required by paragraph (a)(5), (a)(6), (b)(3)(i)(F), (G) or (H) of this Item.

7. If the registrant submits preliminary proxy material incorporating by reference financial statements required by this Item, the registrant should furnish a draft of the financial statements if the document from which they are incorporated has not been filed with or furnished to the Commission.

8. A registered management investment company need not comply with items (A), (D), (F), (G), (H), and (J) of paragraph (b)(3)(i) of this Item 14.

Item 15. Acquisition or disposition of property. If action is to be taken with respect to the acquisition or disposition of any property, furnish the following information:

(a) Describe briefly the general character and location of the property.

(b) State the nature and amount of consideration to be paid or received by the registrant or any subsidiary. To the extent practicable, outline briefly the facts bearing upon the question of the fairness of the consideration.

(c) State the name and address of the transferer or transferee, as the case may be and the nature of any material relationship of such person to the registrant or any affiliate of the registrant.

(d) Outline briefly any other material features of the contract or transaction.

Item 16. Restatement of accounts. If action is to be taken with respect to the restatement of any asset, capital, or surplus account of the registrant furnish the following information:

(a) State the nature of the restatement and the date as of which it is to be effective.

(b) Outline briefly the reasons for the restatement and for the selection of the particular effective date.

(c) State the name and amount of each account (including any reserve accounts) affected by the restatement and the effect of the restatement thereon. Tabular presentation of the amounts shall be made when appropriate, particularly in the case of recapitalizations.

(d) To the extent practicable, state whether and the extent, if any, to which, the restatement will, as of the date thereof, alter the amount available for distribution to the holders of equity securities.

Item 17. Action with respect to reports. If action is to be taken with respect to any report of the registrant or of its directors, officers or committees or any minutes of a meeting of its security holders, furnish the following information:

(a) State whether or not such action is to constitute approval or disapproval of any of the matters referred to in such reports or minutes.

(b) Identify each of such matters which it is intended will be approved or disapproved, and furnish the information required by the appropriate item or items of this schedule with respect to each such matter.

Item 18. Matters not required to be submitted. If action is to be taken with respect to any matter which is not required to be submitted to a vote of security holders, state the nature of such matter, the reasons for submitting it to a vote of security holders and what action is intended to be taken by the registrant in the event of a negative vote on the matter by the security holders.

Item 19. Amendment of character, bylaws or other documents. If action is to be taken with respect to any amendment of the registrant's charter, bylaws or other documents as to which information is not required above, state briefly the reasons for and the general effect of such amendment.

Instructions. 1. Where the matter to be acted upon is the classification of directors, state whether vacancies which occur during the year may be filled by the board of directors to serve only until the next annual meeting or may be so filled for the remainder of the full term.

2. Attention is directed to the discussion of disclosure regarding anti-takeover and similar proposals in Release No. 34–15230 (October 13, 1978).

Item 20. Other proposed action. If action is to be taken on any matter not specifically referred to in this Schedule 14A, describe briefly the substance of each such matter in substantially the same degree of detail as is required by Items 5 to 19, inclusive, of this Schedule, and, with respect to investment companies registered under the Investment Company Act of 1940, Item 22 of this Schedule.

Item 21. Voting procedures. As to each matter which is to be submitted to a vote of security holders, furnish the following information:

(a) State the vote required for approval or election, other than for the approval of auditors.

(b) Disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as registrant charter and by-law provisions.

Item 22. Information required in investment company proxy statement. (a) *General.*

(1) *Definitions.* Unless the context otherwise requires, terms used in this Item that are defined in § 240.14a–1 (with respect to proxy soliciting material), in § 240.14c–1 (with respect to information statements), and in the Investment Company Act of 1940 shall have the same meanings provided therein and the following terms shall also apply:

(i) *Administrator.* The term ''Administrator'' shall mean any person or persons who provide significant administrative or business management services to the Fund and shall include any person that has been or would be identified in response to Item 15(h) of Form N–1A (§ 274.11A of this chapter), Item 9 of Form N–2 (§ 274.11a–1 of this chapter), or Item 6 of Form N–3 (§ 274.11b of this chapter).

(ii) *Affiliated broker.* The term ''Affiliated Broker'' shall mean any broker:

(A) That is an affiliated person of the Fund;

(B) That is an affiliated person of such person; or

(C) An affiliated person of which is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator.

(iii) *Distribution plan.* The term ''Distribution Plan'' shall mean a plan adopted pursuant to Rule 12b–1 under the Investment Company Act of 1940 (§ 270.12b–1 of this chapter).

(iv) *Fund.* The term ''Fund'' shall mean a Registrant or, where the Registrant is a series company, a separate portfolio of the Registrant.

(v) *Fund complex.* The term ''Fund Complex'' shall mean two or more Funds that:

(A) Hold themselves out to investors as related companies for purposes of investment and investor services; or

(B) Have a common investment adviser or have an investment adviser that is an affiliated person of the investment adviser of any of the other Funds.

(vi) *Parent*. The term ''Parent'' shall mean the affiliated person of a specified person who controls the specified person directly or indirectly through one or more intermediaries.

(vii) *Registrant*. The term ''Registrant'' shall mean an investment company registered under the Investment Company Act of 1940.

(viii) *Subsidiary*. The term ''Subsidiary'' shall mean an affiliated person of a specified person who is controlled by the specified person directly, or indirectly through one or more intermediaries.

(2) [Reserved]

(3) *General disclosure*. Furnish the following information in the proxy statement of a Fund or Funds:

(i) State the name and address of the Fund's investment adviser, principal underwriter, and Administrator.

(ii) When a Fund proxy statement solicits a vote on proposals affecting more than one Fund or class of securities of a Fund (unless the proposal or proposals are the same and affect all Fund or class shareholders), present a summary of all of the proposals in tabular form on one of the first three pages of the proxy statement and indicate which Fund or class shareholders are solicited with respect to each proposal.

(iii) Unless the proxy statement is accompanied by a copy of the Fund's most recent annual report, state prominently in the proxy statement that the Fund will furnish, without charge, a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to a shareholder upon request, providing the name, address, and toll-free telephone number of the person to whom such request shall be directed (or, if no toll-free telephone number is provided, a self-addressed postage paid card for requesting the annual report). The Fund should provide a copy of the annual report and the most recent semi-annual report succeeding the annual report, if any, to the requesting shareholder by first class mail, or other means designed to assure prompt delivery, within three business days of the request.

(iv) If the action to be taken would, directly or indirectly, establish a new fee or expense or increase any existing fee or expense to be paid by the Fund or its shareholders, provide a table showing the current and pro forma fees (with the required examples) using the format prescribed in the appropriate registration statement form under the Investment Company Act of 1940 (for open-end management investment companies, Item 3 of Form N–1A (§239.15A); for closed-end management investment companies, Item 3 of Form N–2 (§239.14); and for separate accounts that offer variable annuity contracts, Item 3 of Form N–3 (§239.17a)).

Instructions. 1. Where approval is sought only for a change in asset breakpoints for a pre-existing fee that would not have increased the fee for the previous year (or have the effect of increasing fees or expenses, but for any other reason would not be reflected in a pro forma fee table), describe the likely effect of the change in lieu of providing pro forma fee information.

2. An action would indirectly establish or increase a fee or expense where, for example, the approval of a new investment advisory contract would result in higher custodial or transfer agency fees.

3. The tables should be prepared in a manner designed to facilitate understanding of the impact of any change in fees or expenses.

4. A Fund that offers its shares exclusively to one or more separate accounts and thus is not required to include a fee table in its prospectus (see Item 3 of Form N–1A (§239.15A)) should nonetheless prepare a table showing current and pro forma expenses and disclose that the table does not reflect separate account expenses, including sales load.

(v) If action is to be taken with respect to the election of directors or the approval of an advisory contract, describe any purchases or sales of securities of the investment adviser or its Parents, or Subsidiaries of either, since the beginning of the most recently completed fiscal year by any director or any nominee for election as a director of the Fund.

Instructions. 1. Identify the parties, state the consideration, the terms of payment and describe any arrangement or understanding with respect to the composition of the board of directors of the Fund or of the investment adviser, or with respect to the selection of appointment of any person to any office with either such company.

2. Transactions involving securities in an amount not exceeding one percent of the outstanding securities of any class of the investment adviser or any of its Parents or Subsidiaries may be omitted.

(4) *Electronic filings*. If action is to be taken with respect to any transaction described in Item 11, 12, or 14 of this Schedule 14A and the Fund proxy or information statement is filed electronically, a Financial Data Schedule meeting the requirements of rule 483 of Regulation C (§230.483 of this chapter) shall be included as an exhibit.

(b) *Election of directors*. If action is to be taken with respect to the election of directors of the Fund and the solicitation is made by or on behalf of the Fund or by or on behalf of an investment adviser, furnish the

following information in the proxy statement in addition to the information (and in the format) required by paragraphs (e) through (g) of Item 7 of Schedule 14A.

Instructions. 1. Furnish information with respect to a prospective investment adviser to the extent applicable.

2. If the solicitation is made other than by or on behalf of the Fund or by or on behalf of an investment adviser, provide only information as to nominees of the person making the solicitation.

(1) Identify each director or nominee for election as director who is, or was during the past five years, an officer, employee, director, general partner, or shareholder of the investment adviser. As to any director or nominee who is not a director or general partner of the investment adviser and owns any securities or has, or had during the past five years, any other material direct or indirect interest in the investment adviser or any person controlling, controlled by, or under common control with the investment adviser, describe the nature of such interest.

(2) Identify each director or nominee who has or had during the past five years any material direct or indirect interest in the Fund's principal underwriter or Administrator and describe the nature of such interest.

(3) Describe briefly, and where practicable, state the approximate dollar amount, of any material interest, direct or indirect, of any director or nominee for election as a director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any proposed material transactions, to which the investment adviser, the principal underwriter, the Administrator, any Parent or Subsidiary of such entities (other than another Fund), or any Subsidiary of the Parent of such entities was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate dollar amount of the interest, indicate the approximate dollar amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, or the Administrator, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth, but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(4) Provide in tabular form, to the extent practicable, the information required by Items 401, 404 (a) and (c), and 405 of Regulation S–K (§§ 229.401, 229.404, and 229.405 of this chapter).

Instructions. 1. Indicate by an asterisk any nominee or director who is or would be an ''interested person'' within the meaning of section 2(a)(19) of the Investment Company Act of 1940 and describe the relationships, events, or transactions by reason of which such person is deemed an ''interested person.''

2. Separate accounts registered as management investment companies need not provide any information concerning the officers of the sponsoring insurance company who are not directly or indirectly engaged in activities related to the separate account in response to Item 401 of Regulation S–K.

(5) Describe briefly any material pending legal proceedings, other than ordinary routine litigation incidental to the Fund's business, to which any director or nominee for director or affiliated person of such director or nominee is a party adverse to the Fund or any of its affiliated persons or has a material interest adverse to the Fund or any of its affiliated persons. Include the name of the court where the case is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding, and the relief sought.

(6) For all directors, and for each of the three highest-paid executive officers that have aggregate compensation from the Fund for the most recently completed fiscal year in excess of $60,000 (''Compensated Persons''):

(i) Furnish the information required by the following table for the last fiscal year:

COMPENSATION TABLE

(1) Name of person, position	(2) Aggregate compensation from fund	(3) Pension or retirement benefits accrued as part of fund expenses	(4) Estimated annual benefits upon retirement	(5) Total compensation from fund and fund complex paid to directors

Instructions. 1. For column (1), indicate, if necessary, the capacity in which the remuneration is received. For Compensated Persons that are directors of the Fund, compensation is amounts received for service as a director.

2. If the Fund has not completed its first full year since its organization, furnish the information for the current fiscal year, estimating future payments that would be made pursuant to an existing agreement or understanding. Disclose in a footnote to the Compensation Table the period for which the information is furnished.

3. Include in column (2) amounts deferred at the election of the Compensated Person, whether pursuant to a plan established under Section 401(k) of the Internal Revenue Code [26 U.S.C. 401(k)] or otherwise, for the fiscal year in which earned. Disclose in a footnote to the Compensation Table the total amount of deferred compensation (including interest) payable to or accrued for any Compensated Person.

4. Include in columns (3) and (4) all pension or retirement benefits proposed to be paid under any existing plan in the event of retirement at normal retirement date, directly or indirectly, by the Fund or any of its Subsidiaries, or by other companies in the Fund Complex. Omit column (4) where retirement benefits are not determinable.

5. For any defined benefit or actuarial plan under which benefits are determined primarily by final compensation (or average final compensation) and years of service, provide the information required in column (4) in a separate table showing estimated annual benefits payable upon retirement (including amounts attributable to any defined benefit supplementary or excess pension award plans) in specified compensation and years of service classifications. Also provide the estimated credited years of service for each Compensated Person.

6. Include in column (5) only aggregate compensation paid to a director for service on the board and other boards of investment companies in a Fund Complex specifying the number of such other investment companies.

(ii) Describe briefly the material provisions of any pension, retirement, or other plan or any arrangement other than fee arrangements disclosed in paragraph (i) pursuant to which Compensated Persons are or may be compensated for any services provided, including amounts paid, if any, to the Compensated Person under any such arrangements during the most recently completed fiscal year. Specifically include the criteria used to determine amounts payable under any plan, the length of service or vesting period required by the plan, the retirement age or other event which gives rise to payments under the plan, and whether the payment of benefits is secured or funded by the Fund.

(iii) With respect to each Compensated Person, business development companies shall include the information required by Items 402(b)(2)(iv) and 402(c) of Regulation S–K (§§ 229.402(b)(2)(iv) and 229.402(c) of this chapter).

(c) *Approval of investment advisory contract*. If action is to be taken with respect to an investment advisory contract, include the following information in the proxy statement.

Instruction. Furnish information with respect to a prospective investment adviser to the extent applicable (including the name and address of the prospective investment adviser).

(1) With respect to the existing investment advisory contract:

(i) State the date of the contract and the date on which it was last submitted to a vote of security holders of the Fund, including the purpose of such submission;

(ii) Briefly describe the terms of the contract, including the rate of compensation of the investment adviser;

(iii) State the aggregate amount of the investment adviser's fee and the amount and purpose of any other material payments by the Fund to the investment adviser, or any affiliated person of the investment adviser, during the last fiscal year of the Fund;

(iv) If any person is acting as an investment adviser of the Fund other than pursuant to a written contract that has been approved by the security holders of the company, identify the person and describe the nature of the services and arrangements;

(v) Describe any action taken with respect to the investment advisory contract since the beginning of the Fund's last fiscal year by the board of directors of the Fund (unless described in response to paragraph (c)(1)(vi)) of this Item 22); and

(vi) If an investment advisory contract was terminated or not renewed for any reason, state the date of such termination or non-renewal, identify the parties involved, and describe the circumstances of such termination or non-renewal.

(2) State the name, address and principal occupation of the principal executive officer and each director or general partner of the investment adviser.

Instruction. If the investment adviser is a partnership with more than ten general partners, name:

(i) The general partners with the five largest economic interests in the partnership, and, if different, those general partners comprising the management or executive committee of the partnership or exercising similar authority;

(ii) The general partners with significant management responsibilities relating to the fund.

(3) State the names and addresses of all Parents of the investment adviser and show

the basis of control of the investment adviser and each Parent by its immediate Parent.

Instructions. 1. If any person named is a corporation, include the percentage of its voting securities owned by its immediate Parent.

2. If any person named is a partnership, name the general partners having the three largest partnership interests (computed by whatever method is appropriate in the particular case).

(4) If the investment adviser is a corporation and if, to the knowledge of the persons making the solicitation or the persons on whose behalf the solicitation is made, any person not named in answer to paragraph (c)(3) of this Item 22 owns, of record or beneficially, ten percent or more of the outstanding voting securities of the investment adviser, indicate that fact and state the name and address of each such person.

(5) Name each officer or director of the Fund who is an officer, employee, director, general partner or shareholder of the investment adviser. As to any officer or director who is not a director or general partner of the investment adviser and who owns securities or has any other material direct or indirect interest in the investment adviser or any other person controlling, controlled by or under common control with the investment adviser, describe the nature of such interest.

(6) Describe briefly and state the approximate amount of, where practicable, any material interest, direct or indirect, of any director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which the investment adviser of the Fund, any Parent or Subsidiary of the investment adviser (other than another Fund), or any Subsidiary of the Parent of such entities was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets by or to the investment adviser, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth, but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (c)(6) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(7) Disclose any financial condition of the investment adviser that is reasonably likely to impair the financial ability of the adviser to fulfil its commitment to the fund under the proposed investment advisory contract.

(8) Describe the nature of the action to be taken on the investment advisory contract and the reasons therefor, the terms of the contract to be acted upon, and, if the action is an amendment to, or a replacement of, an investment advisory contract, the material differences between the current and proposed contract.

(9) If a change in the investment advisory fee is sought, state:

(i) The aggregate amount of the investment adviser's fee during the last year;

(ii) The amount that the adviser would have received had the proposed fee been in effect; and

(iii) The difference between the aggregate amounts stated in response to paragraphs (i) and (ii) of this item (c)(9) as a percentage of the amount stated in response to paragraph (i) of this item (c)(9).

(10) If the investment adviser acts as such with respect to any other Fund having a similar investment objective, identify and state the size of such other Fund and the rate of the investment adviser's compensation. Also indicate for any Fund identified whether the investment adviser has waived, reduced, or otherwise agreed to reduce its compensation under any applicable contract.

Instruction. Furnish the information in response to this paragraph (c)(10) of Item 22 in tabular form.

(11) Discuss in reasonable detail the material factors and the conclusions with respect thereto which form the basis for the recommendation of the board of directors that the shareholders approve an investment advisory contract. If applicable, include a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating fund brokerage.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure. The discussion should relate the factors to the specific circumstances of the fund and the investment advisory contract for which approval is sought.

(12) Describe any arrangement or understanding made in connection with the proposed investment advisory contract with respect to the composition of the board of directors of the Fund or the investment adviser or with respect to the selection or appointment of any person to any office with either such company.

(13) For the most recently completed fiscal year, state:

(i) The aggregate amount of commissions paid to any Affiliated Broker; and

(ii) The percentage of the Fund's aggregate brokerage commissions paid to any such Affiliated Broker.

Instruction. Identify each Affiliated Broker and the relationships that cause the broker to be an Affiliated Broker.

(14) Disclose the amount of any fees paid by the Fund to the investment adviser, its affiliated persons or any affiliated person of such person during the most recent fiscal year for services provided to the Fund (other than under the investment advisory contract or for brokerage commissions). State whether these services will continue to be provided after the investment advisory contract is approved.

(d) *Approval of distribution plan.* If action is to be taken with respect to a Distribution Plan, include the following information in the proxy statement.

Instruction. Furnish information on a prospective basis to the extent applicable.

(1) Describe the nature of the action to be taken on the Distribution Plan and the reason therefor, the terms of the Distribution Plan to be acted upon, and, if the action is an amendment to, or a replacement of, a Distribution Plan, the material differences between the current and proposed Distribution Plan.

(2) If the Fund has a Distribution Plan in effect:

(i) Provide the date that the Distribution Plan was adopted and the date of the last amendment, if any;

(ii) Disclose the persons to whom payments may be made under the Distribution Plan, the rate of the distribution fee and the purposes for which such fee may be used;

(iii) Disclose the amount of distribution fees paid by the Fund pursuant to the plan during its most recent fiscal year, both in the aggregate and as a percentage of the Fund's average net assets during the period;

(iv) Disclose the name of, and the amount of any payments made under the Distribution Plan by the Fund during its most recent fiscal year to, any person who is an affiliated person of the Fund, its investment adviser, principal underwriter, or Administrator, an affiliated person of such person, or a person that during the most recent fiscal year received 10% or more of the aggregate amount paid under the Distribution Plan by the Fund;

(v) Describe any action taken with respect to the Distribution Plan since the beginning of the Fund's most recent fiscal year by the board of directors of the Fund; and

(vi) If a Distribution Plan was or is to be terminated or not renewed for any reason, state the date or prospective date of such termination or non-renewal, identify the parties involved, and describe the circumstances of such termination or non-renewal.

(3) Describe briefly and state the approximate amount of, where practicable, any material interest, direct or indirect, of any director or nominee for election as a director of the Fund in any material transactions since the beginning of the most recently completed fiscal year, or in any material proposed transactions, to which any person identified in response to Item 22(d)(2)(iv) was or is to be a party.

Instructions. 1. Include the name of each person whose interest in any transaction is described and the nature of the relationship by reason of which such interest is required to be described. Where it is not practicable to state the approximate amount of the interest, indicate the approximate amount involved in the transaction.

2. As to any transaction involving the purchase or sale of assets, state the cost of the assets to the purchaser and the cost thereof to the seller if acquired by the seller within two years prior to the transaction.

3. If the interest of any person arises from the position of the person as a partner in a partnership, the proportionate interest of such person in transactions to which the partnership is a party need not be set forth but state the amount involved in the transaction with the partnership.

4. No information need be given in response to this paragraph (d)(3) of Item 22 with respect to any transaction that is not related to the business or operations of the Fund and to which neither the Fund nor any of its Parents or Subsidiaries is a party.

(4) Discuss in reasonable detail the material factors and the conclusions with respect thereto which form the basis for the conclusion of the board of directors that there is a reasonable likelihood that the proposed Distribution Plan (or amendment thereto) will benefit the Fund and its shareholders.

Instruction. Conclusory statements or a list of factors will not be considered sufficient disclosure.

[51 FR 42063, Nov. 20, 1986; 51 FR 45576, Dec. 19, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §240.14a–101, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 63 FR 13944, Mar. 23, 1998, § 240.14a–101 was amended by revising the reference ''Item 5'' in paragraph (a)(1)(i) of Item 22 to read ''Item 15(h)'', the reference ''Item 2'' in paragraph (a)(3)(iv) of Item 22 to read ''Item 3'', and the reference ''Item 2(a)(ii)'' in Instruction 4 to paragraph (a)(3)(iv) of Item 22 to read ''Item 3'', effective June 1, 1998.

§ 240.14a–102 [Reserved]

§ 240.14a–103 Notice of Exempt Solicitation. Information to be included in statements submitted by or on behalf of a person pursuant to § 240.14a–6(g)

U.S. Securities and Exchange Commission
Washington, DC 20549

Notice of Exempt Solicitation

1. Name of the Registrant:

_____

2. Name of person relying on exemption:

_____

3. Address of person relying on exemption:

_____

4. Written materials. Attach written material required to be submitted pursuant to Rule 14a–6(g)(1) [§ 240.14a–6(g)(1)].

[57 FR 48294, Oct. 22, 1992]

§ 240.14a–104 Notice of Exempt Preliminary Roll-up Communication. Information regarding ownership interests and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant to § 240.14a–2(b)(4) and § 240.14a–6(n).

United States Securities and Exchange Commission Washington, D.C. 20549

Notice of Exempt Preliminary Roll-Up Communication

1. Name of registrant appearing on Securities Act of 1933 registration statement for the roll-up transaction (or, if registration statement has not been filed, name of entity into which partnerships are to be rolled up):

_____

2. Name of partnership that is the subject of the proposed roll-up transaction:

_____

3. Name of person relying on exemption:

_____

4. Address of person relying on exemption:

_____

5. Ownership interest of security holder in partnership that is the subject of the proposed roll-up transaction:

_____

_____

NOTE: To the extent that the holder owns securities in any other entities involved in this roll-up transaction, disclosure of these interests also should be made.

6. Describe any and all relations of the holder to the parties to the transaction or to the transaction itself:

a. The holder is engaged in the business of buying and selling limited partnership interests in the secondary market would be adversely affected if the roll-up transaction were completed.

_____

_____

b. The holder would suffer direct (or indirect) material financial injury if the roll-up transaction were completed since it is a service provider to an affected limited partnership.

_____

_____

c. The holder is engaged in another transaction that may be competitive with the pending roll-up transaction.

_____

_____

d. Any other relations to the parties involved in the transaction or to the transaction itself, or any benefits enjoyed by the holder not shared on a pro rata basis by all other holders of the same class of securities of the partnership that is the subject of the proposed roll-up transaction.

_____

_____

[59 FR 63685, Dec. 8, 1994]

§ 240.14b–1 Obligation of registered brokers and dealers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a–1 thereunder and, with respect to information statements, as in § 240.14c–1 thereunder. In addition, as used in this section, the term ''registrant'' means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A broker or dealer registered under Section 15 of the Act shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The broker or dealer shall respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with §240.14a–13(a) or §240.14c–7(a) by indicting, by means of a search card or otherwise:

(i) The approximate number of customers of the broker or dealer who are beneficial owners of the registrant's securities that are held of record by the broker, dealer, or its nominee;

(ii) The number of customers of the broker or dealer who are beneficial owners of the registrant's securities who have objected to disclosure of their names, addresses,and securities positions if the registrant has indicated, pursuant to §240.14a–13(a)(1)(ii)(A) or §240.14c–7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to paragraph (b)(3) of this section; and

(iii) The identity of the designated agent of the broker or dealer, if any, acting on its behalf in fulfilling its obligations under paragraph (b)(3) of this section; *Provided, however,* that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraph (b)(1) of this section shall mean receipt by such designated office(s) or department(s).

(2) The broker or dealer shall, upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual reports to security holders, forward such materials to its customers who are beneficial owners of the registrant's securities no later than five business days after receipt of the proxy material, information statement or annual reports.

(3) The broker or dealer shall, through its agent or directly:

(i) Provide the registrant, upon the registrant's request, with the names, addresses, and securities positions, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of its customers who are beneficial owners of the registrant's securities and who have not objected to disclosure of such information; *Provided , however,* that if the broker or dealer has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt shall mean receipt by such designated office(s) or department(s); and

(ii) Transmit the data specified in paragraph (b)(3)(i) of this section to the registrant no later than five business days after the record date or other date specified by the registrant.

NOTE 1: Where a broker or dealer employs a designated agent to act on its behalf in performing the obligations imposed on the broker or dealer by paragraph (b)(3) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraph (b)(3) of this section, a broker or dealer need only supply the registrant with the names, addresses, and securities positions of non-objecting beneficial owners.

NOTE 2: If a broker or dealer receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(c) *Exceptions to dissemination and beneficial owner information requirements.* A broker or dealer registered under section 15 of the Act shall be subject to the following with respect to its dissemination and beneficial owner information requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the broker or dealer shall:

(i) Not include information in its response pursuant to paragraph (b)(1) of this section or forward proxies (or in

lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(2) of this section to such beneficial owners; and

(ii) Not include in its response, pursuant to paragraph (b)(3) of this section, data concerning such beneficial owners.

(2) A broker or dealer need not satisfy:

(i) Its obligations under paragraphs (b)(2) and (b)(3) of this section if a registrant does not provide assurance of reimbursement of the broker's or dealer's reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of this section; or

(ii) Its obligation under paragraph (b)(2) of this section to forward annual reports to non-objecting beneficial owners identified by the broker or dealer, through its agent or directly, pursuant to paragraph (b)(3) of this section if the registrant notifies the broker or dealer pursuant to § 240.14a–13(c) or § 240.14c–7(c) that the registrant will mail the annual report to such non-objecting beneficial owners identified by the broker or dealer and delivered in a list to the registrant pursuant to paragraph (b)(3) of this section.

[57 FR 1099, Jan. 10, 1992]

§ 240.14b–2 Obligation of banks, associations and other entities that exercise fiduciary powers in connection with the prompt forwarding of certain communications to beneficial owners.

(a) *Definitions.* Unless the context otherwise requires, all terms used in this section shall have the same meanings as in the Act and, with respect to proxy soliciting material, as in § 240.14a–1 thereunder and, with respect to information statements, as in § 240.14c–1 thereunder. In addition, as used in this section, the following terms shall apply:

(1) The term *bank* means a bank, association, or other entity that exercises fiduciary powers.

(2) The term *beneficial owner* includes any person who has or shares, pursuant to an instrument, agreement, or otherwise, the power to vote, or to direct the voting of a security.

NOTE 1: If more than one person shares voting power, the provisions of the instrument creating that voting power shall govern with respect to whether consent to disclosure of beneficial owner information has been given.

NOTE 2: If more than one person shares voting power or if the instrument creating that voting power provides that such power shall be exercised by different persons depending on the nature of the corporate action involved, all persons entitled to exercise such power shall be deemed beneficial owners; *Provided, however,* that only one such beneficial owner need be designated among the beneficial owners to receive proxies or requests for voting instructions, other proxy soliciting material, information statements, and/or annual reports to security holders, if the person so designated assumes the obligation to disseminate, in a timely manner, such materials to the other beneficial owners.

(3) The term *registrant* means:

(i) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) *Dissemination and beneficial owner information requirements.* A bank shall comply with the following requirements for disseminating certain communications to beneficial owners and providing beneficial owner information to registrants.

(1) The bank shall:

(i) Respond, by first class mail or other equally prompt means, directly to the registrant, no later than one business day after the date it receives an inquiry made in accordance with § 240.14a–13(a) or § 240.14c–7(a) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any; and

(ii) Respond, by first class mail or other equally prompt means, directly to the registrant no later than seven business days after the date it receives an inquiry made in accordance with § 240.14a–13(a) or § 240.14c–7(a) by indicating, by means of a search card or otherwise:

(A) The approximate number of customers of the bank who are beneficial owners of the registrant's securities

that are held of record by the bank or its nominee;

(B) If the registrant has indicated, pursuant to §240.14a–13(a)(1)(ii)(A) or §240.14c–7(a)(1)(ii)(A), that it will distribute the annual report to security holders to beneficial owners of its securities whose names, addresses, and securities positions are disclosed pursuant to paragraphs (b)(4) (ii) and (iii) of this section:

(*1*) With respect to customer accounts opened on or before December 28, 1986, the number of beneficial owners of the registrant's securities who have affirmatively consented to disclosure of their names, addresses, and securities positions; and

(*2*) With respect to customer accounts opened after December 28, 1986, the number of beneficial owners of the registrant's securities who have not objected to disclosure of their names, addresses, and securities positions; and

(C) The identity of its designated agent, if any, acting on its behalf in fulfilling its obligations under paragraphs (b)(4) (ii) and (iii) of this section;

Provided, however, that, if the bank or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, receipt for purposes of paragraphs (b)(1) (i) and (ii) of this section shall mean receipt by such designated office(s) or department(s).

(2) Where proxies are solicited, the bank shall, within five business days after the record date:

(i) Execute an omnibus proxy, including a power of substitution, in favor of its respondent banks and forward such proxy to the registrant; and

(ii) Furnish a notice to each respondent bank in whose favor an omnibus proxy has been executed that it has executed such a proxy, including a power of substitution, in its favor pursuant to paragraph (b)(2)(i) of this section.

(3) Upon receipt of the proxy, other proxy soliciting material, information statement, and/or annual reports to security holders, the bank shall forward such materials to each beneficial owner on whose behalf it holds securities, no later than five business days after the date it receives such material and, where a proxy is solicited, the bank shall forward, with the other proxy soliciting material and/or the annual report, either:

(i) A properly executed proxy:

(A) Indicating the number of securities held for such beneficial owner;

(B) Bearing the beneficial owner's account number or other form of identification, together with instructions as to the procedures to vote the securities;

(C) Briefly stating which other proxies, if any, are required to permit securities to be voted under the terms of the instrument creating that voting power or applicable state law; and

(D) Being accompanied by an envelope addressed to the registrant or its agent, if not provided by the registrant; or

(ii) A request for voting instructions (for which registrant's form of proxy may be used and which shall be voted by the record holder bank or respondent bank in accordance with the instructions received), together with an envelope addressed to the record holder bank or respondent bank.

(4) The bank shall:

(i) Respond, by first class mail or other equally prompt means, directly to the registrant no later than one business day after the date it receives an inquiry made in accordance with §240.14a–13(b)(1) or §240.14c–7(b)(1) by indicating the name and address of each of its respondent banks that holds the registrant's securities on behalf of beneficial owners, if any;

(ii) Through its agent or directly, provide the registrant, upon the registrant's request, and within the time specified in paragraph (b)(4)(iii) of this section, with the names, addresses, and securities position, compiled as of a date specified in the registrant's request which is no earlier than five business days after the date the registrant's request is received, of:

(A) With respect to customer accounts opened on or before December 28, 1986, beneficial owners of the registrant's securities on whose behalf it holds securities who have consented affirmatively to disclosure of such information, subject to paragraph (b)(5) of this section; and

(B) With respect to customer accounts opened after December 28, 1986,

beneficial owners of the registrant's securities on whose behalf it holds securities who have not objected to disclosure of such information;

Provided, however, that if the record holder bank or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, receipt for purposes of paragraphs (b)(4) (i) and (ii) of this section shall mean receipt by such designated office(s) or department(s); and

(iii) Through its agent or directly, transmit the data specified in paragraph (b)(4)(ii) of this section to the registrant no later than five business days after the date specified by the registrant.

NOTE 1: Where a record holder bank or respondent bank employs a designated agent to act on its behalf in performing the obligations imposed on it by paragraphs (b)(4) (ii) and (iii) of this section, the five business day time period for determining the date as of which the beneficial owner information is to be compiled is calculated from the date the designated agent receives the registrant's request. In complying with the registrant's request for beneficial owner information under paragraphs (b)(4) (ii) and (iii) of this section, a record holder bank or respondent bank need only supply the registrant with the names, addresses and securities positions of affirmatively consenting and non-objecting beneficial owners.

NOTE 2: If a record holder bank or respondent bank receives a registrant's request less than five business days before the requested compilation date, it must provide a list compiled as of a date that is no more than five business days after receipt and transmit the list within five business days after the compilation date.

(5) For customer accounts opened on or before December 28, 1986, unless the bank has made a good faith effort to obtain affirmative consent to disclosure of beneficial owner information pursuant to paragraph (b)(4)(ii) of this section, the bank shall provide such information as to beneficial owners who do not object to disclosure of such information. A good faith effort to obtain affirmative consent to disclosure of beneficial owner information shall include, but shall not be limited to, making an inquiry:

(i) Phrased in neutral language, explaining the purpose of the disclosure and the limitations on the registrant's use thereof;

(ii) Either in at least one mailing separate from other account mailings or in repeated mailings; and

(iii) In a mailing that includes a return card, postage paid enclosure.

(c) *Exceptions to dissemination and beneficial owner information requirements.* The bank shall be subject to the following respect to its dissemination and beneficial owner requirements.

(1) With regard to beneficial owners of exempt employee benefit plan securities, the bank shall not:

(i) Include information in its response pursuant to paragraph (b)(1) of this section; or forward proxies (or in lieu thereof requests for voting instructions), proxy soliciting material, information statements, or annual reports to security holders pursuant to paragraph (b)(3) of this section to such beneficial owners; or

(ii) Include in its response pursuant to paragraphs (b)(4) and (b)(5) of this section data concerning such beneficial owners.

(2) The bank need not satisfy:

(i) Its obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section if a registrant does not provide assurance of reimbursement of its reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2), (b)(3), and (b)(4) of this section; or

(ii) Its obligation under paragraph (b)(3) of this section to forward annual reports to consenting and non-objecting beneficial owners identified pursuant to paragraphs (b)(4) (ii) and (iii) of this section if the registrant notifies the record holder bank or respondent bank, pursuant to § 240.14a–13(c) or § 240.14c–7(c), that the registrant will mail the annual report to beneficial owners whose names addresses and securities positions are disclosed pursuant to paragraphs (b)(4) (ii) and (iii) of this section.

(3) For the purposes of determining the fees which may be charged to registrants pursuant to § 240.14a–13(b)(5), § 240.14c–7(a)(5), and paragraph (c)(2) of this section for performing obligations under paragraphs (b)(2), (b)(3), and (b)(4) of this section, an amount no greater than that permitted to be

charged by brokers or dealers for reimbursement of their reasonable expenses, both direct and indirect, incurred in connection with performing the obligations imposed by paragraphs (b)(2) and (b)(3) of §240.14b–1, shall be deemed to be reasonable.

[57 FR 1100, Jan. 10, 1992]

REGULATION 14C: DISTRIBUTION OF INFORMATION PURSUANT TO SECTION 14(C)

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§240.14c–1 Definitions.

Unless the context otherwise requires, all terms used in this regulation have the same meanings as in the Act or elsewhere in the general rules and regulations thereunder. In addition, the following definitions apply unless the context otherwise requires:

(a) *Associate*. The term ''associate,'' used to indicate a relationship with any person, means:

(1) Any corporation or organization (other than the registrant or a majority owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities;

(2) Any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fidiciary capacity; and

(3) Any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

(b) *Employee benefit plan*. For purposes of §240.14c–7, the term ''employee benefit plan'' means any purchase, savings, option, bonus, appreciation, profit sharing, thrift, incentive, pension or similar plan primarily for employees, directors, trustees or officers.

(c) *Entity that exercises fiduciary powers*. The term ''entity that exercises fiduciary powers'' means any entity that holds securities in nominee name or otherwise on behalf of a beneficial owner but does not include a clearing agency registered pursuant to section 17A of the Act, or a broker or a dealer.

(d) *Exempt employee benefit plan securities*. For purposes of §240.14c–7, the term ''exempt employee benefit plan securities'' means:

(1) Securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by the registrant; or

(2) If notice regarding the current distribution of information statements has been given pursuant to §240.14c–7(a)(1)(ii)(C) or if notice regarding the current request for a list of names, addresses and securities positions of beneficial owners has been given pursuant to §240.14c–7(b)(3), securities of the registrant held by an employee benefit plan, as defined in paragraph (b) of this section, where such plan is established by an affiliate of the registrant.

(e) *Information statement*. The term ''information statement'' means the statement required by §240.14c–2, whether or not contained in a single document.

(f) *Last fiscal year*. The term ''last fiscal year'' of the registrant means the last fiscal year of the registrant ending prior to the date of the meeting with respect to which an information statement is required to be distributed, or if the information statement involves consents or authorizations in lieu of a meeting, the earliest date on which they may be used to effect corporate action.

(g) *Proxy*. The term ''proxy'' includes every proxy, consent or authorization within the meaning of section 14(a) of the Act. The consent or authorization may take the form of failure to object or to dissent.

(h) *Record date*. The term ''record date'' means the date as of which the record holders of securities entitled to

vote at a meeting or by written consent or authorization shall be determined.

(i) *Record holder.* For purposes of § 240.14c–7, the term ''record holder'' means any broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers which holds securities of record in nominee name or otherwise or as a participant in a clearing agency registered pursuant to section 17A of the Act.

(j) *Registrant.* The term ''registrant'' means:

(1) The issuer of a class of securities registered pursuant to section 12 of the Act; or

(2) An investment company registered under the Investment Company Act of 1940 that has made a public offering of its securities.

(k) *Respondent bank.* For purposes of § 240.14c–7, the term ''respondent bank'' means any bank, association or other entity that exercises fiduciary powers which holds securities on behalf of beneficial owners and deposits such securities for safekeeping with another bank, association or other entity that exercises fiduciary powers.

[51 FR 44279, Dec. 9, 1986, as amended at 52 FR 23649, June 24, 1987; 53 FR 16406, May 9, 1988; 57 FR 1101, Jan. 10, 1992]

§ 240.14c–2 Distribution of information statement.

(a) In connection with every annual or other meeting of the holders of the class of securities registered pursuant to section 12 of the Act or of a class of securities issued by an investment company registered under the Investment Company Act of 1940 that has made a public offering of securities, including the taking of corporate action by the written authorization or consent of security holders, the registrant shall transmit a written information statement containing the information specified in Schedule 14C (§ 240.14c–101) or written information statements included in registration statements filed under the Securities Act of 1933 on Form S–4 or F–4 (§ 239.25 or § 239.34 of this chapter) or Form N–14 (§ 239.23 of this chapter), and containing the information specified in such form, to every security holder of the class that is entitled to vote or give an authorization or consent in regard to any matter to be acted upon and from whom proxy authorization or consent is not solicited on behalf of the registrant pursuant to Section 14(a) of the Act, *Provided however,* That:

(1) In the case of a class of securities in unregistered or bearer form, such statements need be transmitted only to those security holders whose names are known to the registrant, and

(2) No such statements need to be transmitted to a security holder if a registrant would be excused from delivery of an annual report or a proxy statement under Rule 14a–3(e)(2) (§ 240.14a–3(e)(2)) if such section were applicable.

(b) The information statement shall be sent or given at least 20 calendar days prior to the meeting date or, in the case of corporate action taken pursuant to the consents or authorizations of security holders, at least 20 calendar days prior to the earliest date on which the corporate action may be taken.

(c) If a transaction is a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and is registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the information statement must be distributed to security holders no later than the lesser of 60 calendar days prior to the date on which the meeting of security holders is held or action is taken, or the maximum number of days permitted for giving notice under applicable state law.

[51 FR 42070, Nov. 20, 1986, as amended at 56 FR 57254, Nov. 8, 1991; 57 FR 1102, Jan. 10, 1992; 57 FR 48295, Oct. 22, 1992]

§ 240.14c–3 Annual report to be furnished security holders.

(a) If the information statement relates to an annual (or special meeting in lieu of the annual) meeting, or written consent in lieu of such meeting, of security holders at which directors of the registrant, other than an investment company registered under the Investment Company Act of 1940, are to be elected, it shall be accompanied or preceded by an annual report to security holders:

(1) The annual report shall contain the information specified in paragraphs

(b)(1) through (b)(11) of Rule 14a–3 (§240.14a–3 of this chapter.)

(2) [Reserved]

NOTE TO SMALL BUSINESS ISSUERS—In responding to the disclosure items under paragraph (b) of Rule 14a–3, (§240.14a–3 of this chapter) a ''small business issuer,'' defined under Rule 12b–2 of the Exchange Act (§240.12b–2), shall refer to the disclosure items in Regulation S–B (§228.10—702 of this chapter) rather than Regulation S–K (§229.10—702 of this chapter). If there is no comparable disclosure item in Regulation S–B, a small business issuer need not provide the information requested. A small business issuer shall provide the information in Item 310(a) of Regulation S–B in lieu of the financial information required by Rule 14a–3(b)(1) (§240.14a–3(b)(1)). Small business issuers using the transitional small business issuers disclosure format in the filing of their most recent annual report on Form 10–KSB (§249.310b of this chapter) need not provide the information required by paragraph (b) of Rule 14a–3. Rather, those small business issuers shall provide only the financial statements required to be filed in their most recent Form 10–KSB. The inclusion of additional information, including information required of non-transitional small business issuers, in the annual report to security holders will not cause the issuer to be ineligible for the transitional disclosure forms.

(b) Seven copies of the report sent to security holders pursuant to this rule shall be mailed to the Commission, solely for its information, not later than the date on which such report is first sent or given to security holders or the date on which preliminary copies, or definitive copies, if preliminary filing was not required, of the information statement are filed with the Commission pursuant to Rule 14c–5, whichever date is later. The report is not deemed to be ''filed'' with the Commission or subject to this regulation otherwise than as provided in this rule, or to the liabilities of section 18 of the Act, except to the extent that the registrant specifically requests that it be treated as a part of the information statement or incorporates it in the information statement or other filed report by reference.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 11, 18, 89 Stat. 117, 118, 119, 121, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78*l*, 78m, 78n, 78*l*(d), 78w(a))

[39 FR 40770, Nov. 20, 1974, as amended at 45 FR 63647, Sept. 25, 1980; 51 FR 42071, Nov. 20, 1986; 52 FR 48984, Dec. 29, 1987; 58 FR 26519, May 4, 1993; 59 FR 52700, Oct. 19, 1994; 59 FR 67765, Dec. 30, 1994]

§240.14c–4 Presentation of information in information statement.

(a) The information included in the information statement shall be clearly presented and the statements made shall be divided into groups according to subject matter and the various groups of statements shall be preceded by appropriate headings. The order of items and sub-items in the schedule need not be followed. Where practicable and appropriate, the information shall be presented in tabular form. All amounts shall be stated in figures. Information required by more than one applicable item need not be repeated. No statement need be made in response to any item or sub-item which is inapplicable.

(b) Any information required to be included in the information statement as to terms of securities or other subject matters which from a standpoint of practical necessity must be determined in the future may be stated in terms of present knowledge and intention. Subject to the foregoing, information which is not known to the registrant and which it is not reasonably within the power of the registrant to ascertain or procure may be omitted, if a brief statement of the circumstances rendering such information unavailable is made.

(c) All printed information statements shall be in roman type at least as large and as legible as 10-point modern type except that to the extent necessary for convenient presentation, financial statements and other tabular data, but not the notes thereto, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.

(d) Where an information statement is delivered through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as type size and font, by

presenting all required information in a format readily communicated to investors.

[31 FR 262, Jan. 8, 1966, as amended at 36 FR 8935, May 15, 1971; 51 FR 42071, Nov. 20, 1986; 61 FR 24657, May 15, 1996]

§ 240.14c–5 Filing requirements.

(a) *Preliminary information statement.* Five preliminary copies of the information statement shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such statement are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period, the filing date of the preliminary copies is to be counted as the first day and the 11th day is the date on which definitive copies of the information statement may be mailed to security holders. A registrant, however, shall not file with the Commission a preliminary information statement if it relates to an annual (or special meeting in lieu of the annual) meeting, of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c–101); and/or

(4) The approval or ratification of a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter) or amendments to such a plan.

This exclusion from filing a preliminary information statement does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its information statement.

NOTE 1: The filing of revised material does not recommence the ten day time period unless the revised material contains material revisions or material new proposal(s) that constitute a fundamental change in the information statement.

NOTE 2: The officials responsible for the preparation of the information statement should make every effort to verify the accuracy and completeness of the information required by the applicable rules. The preliminary statement should be filed with the Commission at the earliest practicable date.

NOTE 3: Solicitation in Opposition—For purposes of the exclusion from filing a preliminary information statement, a ''solicitation in opposition'' includes: (a) Any solicitation opposing a proposal supported by the registrant; and (b) any solicitation supporting a proposal that the registrant does not expressly support, other than a security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c–101 of this chapter). The identification of a security holder proposal in the registrant's information statement does not constitute a ''solicitation in opposition,'' even if the registrant opposes the proposal and/or includes a statement in opposition to the proposal.

NOTE 4: A registrant that is filing an information statement in preliminary form only because the registrant has commented on or referred to an opposing solicitation should indicate that fact in a transmittal letter when filing the preliminary material with the Commission.

(b) *Definitive information statement.* Eight definitive copies of the information statement, in the form in which it is furnished to security holders, shall be filed with, or mailed for filing to, the Commission not later than the date it is first sent or given to any security holders. Three copies thereof shall at the same time be filed with, or mailed for filing to, each national securities exchange upon which any security of the registrant is listed and registered.

NOTE: A registrant that is filing a definitive information statement without payment of a fee should state in the first paragraph of the transmittal letter that no fee is being paid because a fee was paid upon filing of the preliminary information statement.

(c) *Release dates.* All preliminary material filed pursuant to paragraph (a) of this section shall be accompanied by a statement of the date on which copies thereof filed pursuant to paragraph (b) of this section are intended to be released to security holders. All definitive material filed pursuant to paragraph (b) of this section shall be accompanied by a statement of the date on which copies of such material have been released to security holders or, if not released, the date on which copies thereof are intended to be released.

(d)(1) *Public availability of information.* All copies of material filed pursuant to paragraph (a) of this section shall be

clearly marked ''Preliminary Copies,'' and shall be deemed immediately available for public inspection unless confidential treatment is obtained pursuant to paragraph (d)(2) of this section.

(2) *Confidential treatment.* If action is to be taken with respect to any matter specified in Item 14 of Schedule 14A (§240.14a–101), all copies of the preliminary information statement filed pursuant to this section shall be for the information of the Commission only and shall not be deemed available for public inspection until definitive material has been filed with the Commission provided that:

(i) The information statement does not relate to a matter or proposal subject to §240.13e–3 or a roll-up transaction as defined in Item 901(c) of Regulation S–K (§229.901(c) of this chapter); and

(ii) The filed material is marked ''Confidential, For Use of the Commission Only.'' In any and all cases, such material may be disclosed to any department or agency of the United States Government and to the Congress, and the Commission may make such inquiries or investigation in regard to the material as may be necessary for an adequate review thereof by the Commission.

(e) *Revised information statements.* Where any information statement filed pursuant to this section is amended or revised, two of the copies of such amended or revised material filed pursuant to this section shall be marked to indicate clearly and precisely the changes effected therein. If the amendment or revision alters the text of the material, the changes in such text shall be indicated by means of underscoring or in some other appropriate manner.

(f) *Merger material.* Notwithstanding the foregoing provisions of this section, any information statement or other material included in a registration statement filed under the Securities Act of 1933 on Form N–14, S–4, or F–4 (§239.23, §239.25 or §239.34 of this chapter) shall be deemed filed both for the purposes of that Act and for the purposes of this section, but separate copies of such material need not be furnished pursuant to this section, nor shall any fee be required under paragraph (a) of this section. However, any additional material used after the effective date of the registration statement on Form N–14, S–4, or F–4 shall be filed in accordance with this section, unless separate copies of such material are required to be filed as an amendment of such registration statement.

(g) *Fees.* At the time of filing a preliminary information statement regarding an acquisition, merger, spinoff, consolidation or proposed sale or other disposition of substantially all the assets of the company, the registrant shall pay the Commission a fee, no part of which shall be refunded, established in accordance with §240.0–11.

(h) *Cover page.* Each information statement filed with the Commission shall include a cover page in the form set forth in Schedule 14C (§240.14c–101). The cover page required by this paragraph need not be distributed to security holders.

[51 FR 42071, Nov. 20, 1986, as amended at 52 FR 48984, Dec. 29, 1987; 57 FR 48295, Oct. 22, 1992; 58 FR 14684, Mar. 18, 1993; 58 FR 69226, Dec. 30, 1993; 59 FR 67765, Dec. 30, 1994; 61 FR 49960, Sept. 24, 1996]

§240.14c–6 False or misleading statements.

(a) No information statement shall contain any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the same meeting or subject matter which has become false or misleading.

(b) The fact that an information statement has been filed with or examined by the Commission shall not be deemed a finding by the Commission that such material is accurate or complete or not false or misleading, or that the Commission has passed upon the merits of or approved any statement contained therein or any matter to be acted upon by security holders. No representation contrary to the foregoing shall be made.

[31 FR 262, Jan. 8, 1966]

§ 240.14c–7 Providing copies of material for certain beneficial owners.

(a) If the registrant knows that securities of any class entitled to vote at a meeting, or by written authorizations or consents if no meeting is held, are held of record by a broker, dealer, voting trustee, or bank, association, or other entity that exercises fiduciary powers in nominee name or otherwise, the registrant shall:

(1) By first class mail or other equally prompt means:

(i) Inquire of each such record holder:

(A) Whether other persons are the beneficial owners of such securities and, if so, the number of copies of the information statement necessary to supply such material to such beneficial owners;

(B) In the case of an annual (or special meeting in lieu of the annual) meeting, or written consents in lieu of such meeting, at which directors are to be elected, the number of copies of the annual report to security holders, necessary to supply such report to such beneficial owners for whom proxy material has not been and is not to be made available and to whom such reports are to be distributed by such record holder or its nominee and not by the registrant;

(C) If the record holder or respondent bank has an obligation under § 240.14b–1(b)(3) or § 240.14b–2(b)(4) (ii) and (iii), whether an agent has been designated to act on its behalf in fulfilling such obligation, and, if so, the name and address of such agent; and

(D) Whether it holds the registrant's securities on behalf of any respondent bank and, if so, the name and address of each such respondent bank; and

(ii) Indicate to each such record holder:

(A) Whether the registrant pursuant to paragraph (c) of this section, intends to distribute the annual report to security holders to beneficial owners of its securities whose names, addresses and securities positions are disclosed pursuant to § 240.14b–1(b)(3) and § 240.14b–2(b)(4) (ii) and (iii);

(B) The record date; and

(C) At the option of the registrant, any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(2) Upon receipt of a record holder's or respondent bank's response indicating, pursuant to § 240.14b–2(a)(1), the names and addresses of its respondent banks, within one business day after the date such response is received, make an inquiry of and give notification to each such respondent bank in the same manner required by paragraph (a)(1) of this section; *Provided, however,* the inquiry required by paragraphs (a)(1) and (a)(2) of this section shall not cover beneficial owners of exempt employee benefit plan securities;

(3) Make the inquiry required by paragraph (a)(1) of this section on the earlier of:

(i) At least 20 business days prior to the record date of the meeting of security holders or the record date of written consents in lieu of a meeting; or

(ii) At least 20 business days prior to the date the information statement is required to be sent or given pursuant to § 240.14c–2(b);

Provided, however, That, if a record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such inquiries, the inquiry shall be made to such designated office(s) or department(s);

(4) Supply, in a timely manner, each record holder and respondent bank of whom the inquiries required by paragraphs (a)(1) and (a)(2) of this section are made with copies of the information statement and/or the annual report to security holders, in such quantities, assembled in such form and at such place(s), as the record holder or respondent bank may reasonably request in order to send such material to each beneficial owner of securities who is to be furnished with such material by the record holder or respondent bank; and

(5) Upon the request of any record holder or respondent bank that is supplied with information statements and/or annual reports to security holders pursuant to paragraph (a)(3) of this section, pay its reasonable expenses for completing the mailing of such material to beneficial owners.

NOTE 1: If the registrant's list of security holders indicates that some of its securities are registered in the name of a clearing agency registered pursuant to section 17A of the Act (*e.g.*, ''Cede & Co.,'' nominee for the Depository Trust Company), the registrant shall make appropriate inquiry of the clearing agency and thereafter of the participants in such clearing agency who may hold on behalf of a beneficial owner or respondent bank, and shall comply with the above paragraph with respect to any such participant (*see* §240.14c–1 (h)).

NOTE 2: The requirement for sending an annual report to security holders of record having the same address will be satisfied by sending at least one report to a holder of record at that address provided that those holders of record to whom a report is not sent agree thereto in writing. This procedure is not available to registrants, however, where banks, associations, other entities that exercise fiduciary powers, brokers, dealers and other persons hold securities in nominee accounts or ''street names'' on behalf of beneficial owners, and such persons are not relieved of any obligation to obtain or send such annual report to the beneficial owners.

NOTE 3: The attention of registrants is called to the fact that each broker, dealer, bank, association, and other entity that exercises fiduciary powers has an obligation pursuant to §240.14b–1 and §240.14b–2 (except as provided therein with respect to exempt employee benefit plan securities held in nominee name) and, with respect to brokers and dealers, applicable self-regulatory organization requirements to obtain and forward, within the time periods prescribed therein, (a) information statements to beneficial owners on whose behalf it holds securities, and (b) annual reports to security holders to beneficial owners on whose behalf it holds securities, unless the registrant has notified the record holder or respondent bank that it has assumed responsibility to mail such material to beneficial owners whose names, addresses, and securities positions are disclosed pursuant to §240.14b–1(b)(3) and §240.14b–2(b)(4) (ii) and (iii).

NOTE 4: The attention of registrants is called to the fact that registrants have an obligation, pursuant to paragraph (d) of this section, to cause information statements and annual reports to security holders to be furnished, in accordance with §240.14c–2, to beneficial owners of exempt employee benefit plan securities.

(b) Any registrant requesting pursuant to §240.14b–1(b)(3) and §240.14b–2(b)(4) (ii) and (iii) a list of names, addresses and securities positions of beneficial owners of its securities who either have consented or have not objected to disclosure of such information shall:

(1) By first class mail or other equally prompt means, inquire of each record holder and each respondent bank identified to the registrant pursuant to §240.14b–2(e)(1) whether such record holder or respondent bank holds the registrant's securities on behalf of any respondent banks and, if so, the name and address of each such respondent bank;

(2) Request such list be compiled as of a date no earlier than five business days after the date the registant's request is received by the record holder or respondent bank; *Provided, however*, That if the record holder or respondent bank has informed the registrant that a designated office(s) or department(s) is to receive such requests, the request shall be made to such designated office(s) or department(s);

(3) Make such request to the following persons that hold the registrant's securities on behalf of beneficial owners: all brokers, dealers, banks, associations and other entities that exercise fiduciary powers; *Provided, however*, such request shall not cover beneficial owners of exempt employee benefit plan securities as defined in §240.14a–1(d)(1); and, at the option of the registrant, such request may give notice of any employee benefit plan established by an affiliate of the registrant that holds securities of the registrant that the registrant elects to treat as exempt employee benefit plan securities;

(4) Use the information furnished in response to such request exclusively for purposes of corporate communications; and

(5) Upon the request of any record holder or respondent bank to whom such request is made, pay the reasonable expenses, both direct and indirect, of providing beneficial owner information.

NOTE: A registrant will be deemed to have satisfied its obligations under paragraph (b) of this section by requesting consenting and non-objecting beneficial owner lists from a designated agent acting on behalf of the record holder or respondent bank and paying to that designated agent the reasonable expenses of providing the beneficial owner information.

(c) A registrant, at its option, may send by mail or other equally prompt means, its annual report to security holders to the beneficial owners whose identifying information is provided by record holders and respondent banks, pursuant to § 240.14b–1(b)(3) and § 240.14b–2(b)(4) (ii) and (iii), provided that such registrant notifies the record holders and respondent banks at the time it makes the inquiry required by paragraph (a) of this section that the registrant will send the annual report to security holders to the beneficial owners so identified.

(d) If a registrant furnishes information statements to record holders and respondent banks who hold securities on behalf of beneficial owners, the registrant shall cause information statements and annual reports to security holders to be furnished, in accordance with § 240.14c–2, to beneficial owners of exempt employee benefit plan securities.

[51 FR 44280, Dec. 9, 1986, as amended at 52 FR 23649, June 24, 1987; 53 FR 16406, May 9, 1988; 57 FR 1102, Jan. 10, 1992; 61 FR 24657, May 15, 1996]

§ 240.14c–101 Schedule 14C. Information required in information statement.

SCHEDULE 14C INFORMATION

Information Statement Pursuant to Section 14(c) of the Securities Exchange Act of 1934

(Amendment No.)

Check the appropriate box:

[ ] Preliminary Information Statement

[ ] Confidential, for Use of the Commission Only (as permitted by Rule 14c–5(d)(2))

[ ] Definitive Information Statement

_____

(Name of Registrant As Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

[ ] No fee required

[ ] Fee computed on table below per Exchange Act Rules 14c–5(g) and 0–11

(1) Title of each class of securities to which transaction applies:

_____

(2) Aggregate number of securities to which transaction applies:

_____

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0–11 (set forth the amount on which the filing fee is calculated and state how it was determined):

_____

(4) Proposed maximum aggregate value of transaction:

_____

(5) Total fee paid:

_____

[ ] Fee paid previously with preliminary materials.

[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0–11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

_____

(2) Form, Schedule or Registration Statement No.:

_____

(3) Filing Party:

_____

(4) Date Filed:

_____

NOTE

NOTE: Where any item, other than Item 4, calls for information with respect to any matter to be acted upon at the meeting or, if no meeting is being held, by written authorization or consent, such item need be answered only with respect to proposals to be made by the registrant. Registrants and acquirees that meet the definition of ''small business issuer'' under Rule 12b–2 of the Exchange Act (§ 240.12b–2) shall refer to the disclosure items in Regulation S–B (§ 228.10 *et seq.* of this chapter) and not Regulation S–K (§ 229.10 *et seq.* of this chapter). If there is no comparable disclosure item in Regulation S–B, small business issuers need not provide the information requested. Small business issuers shall provide the financial information in Item 310 of Regulation S–B in lieu of any financial statements required by Item 1 of § 240.14c–101.

Item 1. Information required by Items of Schedule 14A (17 CFR 240.14a–101). Furnish the information called for by all of the items of Schedule 14A of Regulation 14A (17 CFR 240.14a–101) (other than Items 1(c). 2, 4 and 5 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting. Notes A, C, D, and E to Schedule 14A are also applicable to Schedule 14C.

Item 2. Statement that proxies are not solicited. The following statement shall be set forth on the first page of the information statement in bold-face type:

WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE REQUESTED NOT TO SEND US A PROXY

Item 3. Interest of certain persons in or opposition to matters to be acted upon. (a) Describe briefly any substantial interest, direct or indirect, by security holdings or otherwise, of each of the following persons in any matter to be acted upon, other than elections to office:

(1) Each person who has been a director or officer of the registrant at any time since the beginning of the last fiscal year;

(2) Each nominee for election as a director of the registrant;

(3) Each associate of any of the foregoing persons.

(b) Give the name of any director of the registrant who has informed the registrant in writing that he intends to oppose any action to be taken by the registrant at the meeting and indicate the action which he intends to oppose.

Item 4. Proposals by security holders. If any security holder entitled to vote at the meeting or by written authorization or consent has submitted to the registrant a reasonable time before the information statement is to be transmitted to security holders a proposal, other than elections to office, which is accompanied by notice of his intention to present the proposal for action at the meeting the registrant shall, if a meeting is held, make a statement to that effect, identify the proposal and indicate the disposition proposed to be made of the proposal by the registrant at the meeting.

Instructions. 1. This item need not be answered as to any proposal submitted with respect to an annual meeting if such proposal is submitted less than 60 days in advance of a day corresponding to the date of mailing a proxy statement or information statement in connection with the last annual meeting of security holders.

2. If the registrant intends to rule a proposal out of order, the Commission shall be so advised 20 calendar days prior to the date the definitive copies of the information statement are filed with the Commission, together with a statement of the reasons why the proposal is not deemed to be a proper subject for action by security holders.

[51 FR 42072, Nov. 20, 1986, as amended at 52 FR 48984, Dec. 29, 1987; 57 FR 36495, Aug. 13, 1992; 58 FR 14684, Mar. 18, 1993; 59 FR 67765, Dec. 30, 1994; 61 FR 49960, Sept. 24, 1996]

REGULATION 14D

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 240.14d–1 Scope of and definitions applicable to Regulations 14D and 14E.

(a) *Scope.* Regulation 14D (§§ 240.14d–1 through 240.14d–101) shall apply to any tender offer which is subject to section 14(d)(1) of the Act, including, but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e–1 and 240.14e–2) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

(b) The requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act, Regulation 14D and Schedules 14D–1 and 14D–9 thereunder, and Rule 14e–1 of Regulation 14E under the Act, shall be deemed satisfied with respect to any tender offer, including any exchange offer, for the securities of an issuer incorporated or organized under the laws of Canada or any Canadian province or territory, if such issuer is a foreign private issuer and is not an investment company registered or required to be registered under the Investment Company Act of 1940, if less than 40 percent of the class of securities outstanding that is the subject of the tender offer is held by U.S. holders, and the tender offer is subject to, and the bidder complies with, the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the offer (unless the bidder has received an exemption(s) from, and the tender offer does not comply with, requirements that otherwise would be prescribed by Regulation 14D or 14E), *provided that:*

(1) In the case of tender offers subject to section 14(d)(1) of the Act, where the consideration for a tender offer subject to this section consists solely of cash, the entire disclosure document or documents required to be furnished to holders of the class of securities to be

acquired shall be filed with the Commission on Schedule 14D–1F (§ 240.14d–102) and disseminated to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies; or

(2) Where the consideration for a tender offer subject to this section includes securities of the bidder to be issued pursuant to the offer, any registration statement and/or prospectus relating thereto shall be filed with the Commission along with the Schedule 14D–1F referred to in paragraph (b)(1) of this section, and shall be disseminated, together with the home jurisdiction document(s) accompanying such Schedule, to shareholders of the subject company residing in the United States in accordance with such Canadian laws, regulations and policies.

NOTES: 1. For purposes of any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Act, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. (''CDN'') over the 12 calendar month period prior to commencement of this offer, or if commenced in response to a prior offer, over the 12 calendar month period prior to the commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN); (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U.S. holders hold 40 percent or more of the outstanding subject class of securities; or (c) the offeror has actual knowledge that the level of U.S. ownership equals or exceeds 40 percent of such securities.

2. Notwithstanding the grant of an exemption from one or more of the applicable Canadian regulatory provisions imposing requirements that otherwise would be prescribed by Regulation 14D or 14E, the tender offer will be eligible to proceed in accordance with the requirements of this section if the Commission by order determines that the applicable Canadian regulatory provisions are adequate to protect the interest of investors.

(c) Notwithstanding paragraph (a) of this section, the requirements imposed by sections 14(d)(1) through 14(d)(7) of the Act [15 U.S.C. 78n(d)(1) through 78n(d)(7)], Regulation 14D promulgated thereunder (§§ 240.14d–1 through 240.14d–10), and §§ 240.14e–1 and 240.14e–2 shall not apply by virtue of the fact that a bidder for the securities of a foreign private issuer, as defined in § 240.3b–4, the subject company of such a tender offer, their representatives, or any other person specified in § 240.14d–9(d), provides any journalist with access to its press conferences held outside of the United States, to meetings with its representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed tender offer is discussed, if:

(1) Access is provided to both U.S. and foreign journalists; and

(2) With respect to any written press-related materials released by the bidder or its representatives that discuss a present or proposed tender offer for equity securities registered under Section 12 of the Act [15 U.S.C. 78*l*], the written press-related materials must state that these written press-related materials are not an extension of a tender offer in the United States for a class of equity securities of the subject company. If the bidder intends to extend the tender offer in the United States at some future time, a statement regarding this intention, and that the procedural and filing requirements of the Williams Act will be satisfied at that time, also must be included in these written press-related materials. No means to tender securities, or coupons that could be returned to indicate interest in the tender offer, may be provided as part of, or attached to, these written press-related materials.

(d) For the purpose of § 240.14d–1(c), a bidder may presume that a target company qualifies as a foreign private issuer if the target company is a foreign issuer and files registration statements or reports on the disclosure forms specifically designated for foreign private issuers, claims the exemption from registration under the Act

pursuant to § 240.12g3–2(b), or is not reporting in the United States.

(e) *Definitions.* Unless the context otherwise requires, all terms used in Regulation 14D and Regulation 14E have the same meaning as in the Act and in Rule 12b–2 (§ 240.12b–2) promulgated thereunder. In addition, for purposes of sections 14(d) and 14(e) of the Act and Regulations 14D and 14E, the following definitions apply:

(1) The term *bidder* means any person who makes a tender offer or on whose behalf a tender offer is made: *Provided, however*, That the term does not include an issuer which makes a tender offer for securities of any class of which it is the issuer;

(2) The term *subject company* means any issuer of securities which are sought by a bidder pursuant to a tender offer;

(3) The term *security holders* means holders of record and beneficial owners of securities which are the subject of a tender offer;

(4) The term *beneficial owner* shall have the same meaning as that set forth in Rule 13d–3: *Provided, however*, That, except with respect to Rule 14d–3, Rule 14d–9(d) and Item 6 of Schedule 14D–1, the term shall not include a person who does not have or share investment power or who is deemed to be a beneficial owner by virtue of Rule 13d–3(d)(1) (§ 240.13d–3(d)(1));

(5) The term *tender offer material* means:

(i) The bidder's formal offer, including all the material terms and conditions of the tender offer and all amendments thereto;

(ii) The related transmittal letter (whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depositary) and all amendments thereto; and

(iii) Press releases, advertisements, letters and other documents published by the bidder or sent or given by the bidder to security holders which, directly or indirectly, solicit, invite or request tenders of the securities being sought in the tender offer;

(6) The term *business day* means any day, other than Saturday, Sunday or a federal holiday, and shall consist of the time period from 12:01 a.m. through 12:00 midnight Eastern time. In computing any time period under section 14(d)(5) or section 14(d)(6) of the Act or under Regulation 14D or Regulation 14E, the date of the event which begins the running of such time period shall be included *except that* if such event occurs on other than a business day such period shall begin to run on and shall include the first business day thereafter; and

(7) The term *security position listing* means, with respect to securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(f) *Signatures.* Where the Act or the rules, forms, reports or schedules thereunder require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

[44 FR 70340, Dec. 6, 1979, as amended at 47 FR 11470, Mar. 16, 1982; 56 FR 30071, July 1, 1991; 60 FR 26622, May 17, 1995; 61 FR 30403, June 14, 1996; 62 FR 53955, Oct. 17, 1997]

§ 240.14d–2 Date of commencement of a tender offer.

(a) *Commencement.* A tender offer shall commence for the purposes of section 14(d) of the Act and the rules promulgated thereunder at 12:01 a.m. on the date when the first of the following events occurs:

(1) The long form publication of the tender offer is first published by the

bidder pursuant to Rule 14d–4 (a)(1) (§ 240.14d–4(a)(1));

(2) The summary advertisement of the tender offer is first published by the bidder pursuant to Rule 14d–4 (a)(2) (§ 240.14d–4(a)(2));

(3) The summary advertisement or the long form publication of the tender offer is first published by the bidder pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3));

(4) Definitive copies of a tender offer, in which the consideration offered by the bidder consists of securities registered pursuant to the Securities Act of 1933, are first published or sent or given by the bidder to security holders; or

(5) The tender offer is first published or sent or given to security holders by the bidder by any means not otherwise referred to in paragraphs (a)(1) through (4) of this section.

(b) *Public announcement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which includes the information in paragraph (c) of this section with respect to a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section *Except,* That such tender offer shall not be deemed to be first published or sent or given to security holders by the bidder under paragraph (a)(5) of this section on the date of such public announcement if within five business days of such public announcement, the bidder either:

(1) Makes a subsequent public announcement stating that the bidder has determined not to continue with such tender offer, in which event paragraph (a)(5) of this section shall not apply to the initial public announcement; or

(2) Complies with Rule 14d–3(a) (§ 240.14d–3(a)) and contemporaneously disseminates the disclosure required by Rule 14d–6 (§ 240.14d–6) to security holders pursuant to Rule 14d–4 (§ 240.14d–4) or otherwise in which event:

(i) The date of commencement of such tender offer under paragraph (a) of this section will be determined by the date the information required by Rule 14d–6 is first published or sent or given to security holders pursuant to Rule 14d–4 or otherwise; and

(ii) Notwithstanding paragraph (b)(2)(i) of this section, section 14(d)(7) of the Act shall be deemed to apply to such tender offer from the date of such public announcement.

(c) *Information.* The information referred to in paragraph (b) of this section is as follows:

(1) The identity of the bidder;

(2) The identity of the subject company; and

(3) The amount and class of securities being sought and the price or range of prices being offered therefor.

(d) *Announcements not resulting in commencement.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which only discloses the information in paragraphs (d)(1) through (3) of this section concerning a tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section.

(1) The identity of the bidder;

(2) The identity of the subject company; and

(3) A statement that the bidder intends to make a tender offer in the future for a class of equity securities of the subject company which statement does not specify the amount of securities of such class to be sought or the consideration to be offered therefor.

(e) *Announcement made pursuant to Rule 135.* A public announcement by a bidder through a press release, newspaper advertisement or public statement which discloses only the information in Rule 135(a)(4) (§ 230.135(a)(4)) concerning a tender offer in which the consideration consists solely or in part of securities to be registered under the Securities Act of 1933 shall not be deemed to constitute the commencement of a tender offer under paragraph (a)(5) of this section: *Provided,* That such bidder files a registration statement with respect to such securities promptly after such public announcement.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))

[44 FR 70340, Dec. 6, 1979]

§ 240.14d–3 Filing and transmission of tender offer statement.

(a) *Filing and transmittal.* No bidder shall make a tender offer if, after consummation thereof, such bidder would be the beneficial owner of more than 5 percent of the class of the subject company's securities for which the tender offer is made, unless as soon as practicable on the date of the commencement of the tender offer such bidder:

(1) Files with the Commission ten copies of a Tender Offer Statement on Schedule 14D–1 (§ 240.14d–100), including all exhibits thereto;

(2) Hand delivers a copy of such Schedule 14D–1, including all exhibits thereto:

(i) To the subject company at its principal executive office; and

(ii) To any other bidder, which has filed a Schedule 14D–1 with the Commission relating to a tender offer which has not yet terminated for the same class of securities of the subject company, at such bidder's principal executive office or at the address of the person authorized to receive notices and communications (which is disclosed on the cover sheet of such other bidder's Schedule 14D–1);

(3) Gives telephonic notice of the information required by Rule 14d–6(e)(2) (i) and (ii) (§ 240.14d–6(e)(2) (i) and (ii)) and mails by means of first class mail a copy of such Schedule 14D–1, including all exhibits thereto:

(i) To each national securities exchange where such class of the subject company's securities is registered and listed for trading (which may be based upon information contained in the subject company's most recent Annual Report on Form 10–K and Form 10–KSB (§ 249.310) filed with the Commission unless the bidder has reason to believe that such information is not current) which telephonic notice shall be made when practicable prior to the opening of each such exchange; and

(ii) To the National Association of Securities Dealers, Inc. (''NASD'') if such class of the subject company's securities is authorized for quotation in the NASDAQ interdealer quotation system.

(b) *Additional materials.* The bidder shall file with the Commission ten copies of any additional tender offer materials as an exhibit to the Schedule 14D–1 required by this section, and if a material change occurs in the information set forth in such Schedule 14D–1, ten copies of an amendment to Schedule 14D–1 (each of which shall include all exhibits other than those required by Item 11(a) of Schedule 14D–1) disclosing such change and shall send a copy of such additional tender offer material or such amendment to the subject company and to any exchange and/or the NASD, as required by paragraph (a) of this section, promptly but not later than the date such additional tender offer material or such change is first published or sent or given to security holders.

(c) *Certain announcements.* Notwithstanding the provisions of paragraph (b) of this section, if the additional tender offer material or an amendment to Schedule 14d–1 discloses only the number of shares deposited to date, and/or announces an extension of the time during which shares may be tendered, then the bidder may file such tender offer material or amendment and send a copy of such tender offer material or amendment to the subject company, any exchange and/or the NASD, as required by paragraph (a) of this section, promptly after the date such tender offer material is first published or sent or given to security holders.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b),

78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))
[44 FR 70341, Dec. 6, 1979]

§ 240.14d–4 Dissemination of certain tender offers.

(a) *Materials deemed published or sent or given.* A tender offer in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933 shall be deemed ''published or sent or given to security holders'' within the meaning of section 14(d)(1) of the Act if the bidder complies with all of the requirements of any one of the following sub-paragraphs: *Provided, however,* That any such tender offers may be published or sent or given to security holders by other methods, but with respect to summary publication, and the use of stockholder lists and security position listings pursuant to Rule 14d–5, paragraphs (a)(2) and (3) of this section are exclusive.

(1) *Long-form publication.* The bidder makes adequate publication in a newspaper or newspapers of long-form publication of the tender offer.

(2) *Summary publication.* (i) If the tender offer is not subject to Rule 13e–3 (§ 240.13e–3), the bidder makes adequate publication in a newspaper or newspapers of a summary advertisement of the tender offer; and

(ii) Mails by first class mail or otherwise furnishes with reasonable promptness the bidder's tender offer materials to any security holder who requests such tender offer materials pursuant to the summary advertisement or otherwise.

(3) *Use of stockholder lists and security position listings.* Any bidder using stockholder lists and security position listings pursuant to Rule 14d–5 shall comply with paragraph (a)(1) or (2) of this section on or prior to the date of the bidder's request for such lists or listing pursuant to Rule 14d–5(a).

(b) *Adequate publication.* Depending on the facts and circumstances involved, adequate publication of a tender offer pursuant to this section may require publication in a newspaper with a national circulation or may only require publication in a newspaper with metropolitan or regional circulation or may require publication in a combination thereof: *Provided, however,* That publication in all editions of a daily newspaper with a national circulation shall be deemed to constitute adequate publication.

(c) *Publication of changes.* If a tender offer has been published or sent or given to security holders by one or more of the methods enumerated in paragraph (a) of this section, a material change in the information published or sent or given to security holders shall be promptly disseminated to security holders in a manner reasonably designed to inform security holders of such change; *Provided, however,* That if the bidder has elected pursuant to rule 14d–5 (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to Rule 14d–5, the bidder shall disseminate material changes in the information published or sent or given to security holders at least pursuant to Rule 14d–5.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57, secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))
[44 FR 70341, Dec. 6, 1979]

§ 240.14d–5 Dissemination of certain tender offers by the use of stockholder lists and security position listings.

(a) *Obligations of the subject company.* Upon receipt by a subject company at its principal executive offices of a bidder's written request, meeting the requirements of paragraph (e) of this section, the subject company shall comply with the following sub-paragraphs.

(1) The subject company shall notify promptly transfer agents and any other person who will assist the subject company in complying with the requirements of this section of the receipt by the subject company of a request by a bidder pursuant to this section.

(2) The subject company shall promptly ascertain whether the most recently prepared stockholder list, written or otherwise, within the access of the subject company was prepared as of a date earlier than ten business days before the date of the bidder's request and, if so, the subject company shall promptly prepare or cause to be prepared a stockholder list as of the most recent practicable date which shall not be more than ten business days before the date of the bidder's request.

(3) The subject company shall make an election to comply and shall comply with all of the provisions of either paragraph (b) or paragraph (c) of this section. The subject company's election once made shall not be modified or revoked during the bidder's tender offer and extensions thereof.

(4) No later than the second business day after the date of the bidder's request, the subject company shall orally notify the bidder, which notification shall be confirmed in writing, of the subject company's election made pursuant to paragraph (a)(3) of this section. Such notification shall indicate (i) the approximate number of security holders of the class of securities being sought by the bidder and, (ii) if the subject company elects to comply with paragraph (b) of this section, appropriate information concerning the location for delivery of the bidder's tender offer materials and the approximate direct costs incidental to the mailing to security holders of the bidder's tender offer materials computed in accordance with paragraph (g)(2) of this section.

(b) *Mailing of tender offer materials by the subject company*. A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following paragraphs.

(1) The subject company shall promptly contact each participant named on the most recent security position listing of any clearing agency within the access of the subject company and make inquiry of each such participant as to the approximate number of beneficial owners of the subject company securities being sought in the tender offer held by each such participant.

(2) No later than the third business day after delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject company shall begin to mail or cause to be mailed by means of first class mail a copy of the bidder's tender offer materials to each person whose name appears as a record holder of the class of securities for which the offer is made on the most recent stockholder list referred to in paragraph (a)(2) of this section. The subject company shall use its best efforts to complete the mailing in a timely manner but in no event shall such mailing be completed in a substantially greater period of time than the subject company would complete a mailing to security holders of its own materials relating to the tender offer.

(3) No later than the third business day after the delivery of the bidder's tender offer materials pursuant to paragraph (g)(1) of this section, the subject company shall begin to transmit or cause to be transmitted a sufficient number of sets of the bidder's tender offer materials to the participants named on the security position listings described in paragraph (b)(1) of this section. The subject company shall use its best efforts to complete the transmittal in a timely manner but in no event shall such transmittal be completed in a substantially greater period of time than the subject company would complete a transmittal to such participants pursuant to security position listings of clearing agencies of its own material relating to the tender offer.

(4) The subject company shall promptly give oral notification to the bidder, which notification shall be confirmed in writing, of the commencement of the mailing pursuant to paragraph (b)(2) of this section and of the transmittal pursuant to paragraph (b)(3) of this section.

(5) During the tender offer and any extension thereof the subject company shall use reasonable efforts to update the stockholder list and shall mail or cause to be mailed promptly following each update a copy of the bidder's tender offer materials (to the extent sufficient sets of such materials have been

furnished by the bidder) to each person who has become a record holder since the later of (i) the date of preparation of the most recent stockholder list referred to in paragraph (a)(2) of this section or (ii) the last preceding update.

(6) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, the subject company, promptly following delivery of each such amendment, shall mail or cause to be mailed a copy of each such amendment to each record holder whose name appears on the shareholder list described in paragraphs (a)(2) and (b)(5) of this section and shall transmit or cause to be transmitted sufficient copies of such amendment to each participant named on security position listings who received sets of the bidder's tender offer materials pursuant to paragraph (b)(3) of this section.

(7) The subject company shall not include any communication other than the bidder's tender offer materials or amendments thereto in the envelopes or other containers furnished by the bidder.

(8) Promptly following the termination of the tender offer, the subject company shall reimburse the bidder the excess, if any, of the amounts advanced pursuant to paragraph (f)(3)(iii) over the direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(c) *Delivery of stockholder lists and security position listings.* A subject company which elects pursuant to paragraph (a)(3) of this section to comply with the provisions of this paragraph shall perform the acts prescribed by the following paragraphs.

(1) No later than the third business day after the date of the bidder's request, the subject company shall furnish to the bidder at the subject company's principal executive office a copy of the names and addresses of the record holders on the most recent stockholder list referred to in paragraph (a)(2) of this section and a copy of the names and addresses of participants identified on the most recent security position listing of any clearing agency which is within the access of the subject company.

(2) If the bidder has elected pursuant to paragraph (f)(1) of this section to require the subject company to disseminate amendments disclosing material changes to the tender offer materials, the subject company shall update the stockholder list by furnishing the bidder with the name and address of each record holder named on the stockholder list, and not previously furnished to the bidder, promptly after such information becomes available to the subject company during the tender offer and any extensions thereof.

(d) *Liability of subject company and others.* Neither the subject company nor any affiliate or agent of the subject company nor any clearing agency shall be:

(1) Deemed to have made a solicitation or recommendation respecting the tender offer within the meaning of section 14(d)(4) based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more requirements of this section;

(2) Liable under any provision of the Federal securities laws to the bidder or to any security holder based solely upon the inaccuracy of the current names or addresses on the stockholder list or security position listing, unless such inaccuracy results from a lack of reasonable care on the part of the subject company or any affiliate or agent of the subject company;

(3) Deemed to be an ''underwriter'' within the meaning of section (2)(11) of the Securities Act of 1933 for any purpose of that Act or any rule or regulation promulgated thereunder based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section;

(4) Liable under any provision of the Federal securities laws for the disclosure in the bidder's tender offer materials, including any amendment thereto, based solely upon the compliance or noncompliance by the subject company or any affiliate or agent of the subject company with one or more of the requirements of this section.

(e) *Content of the bidder's request*. The bidder's written request referred to in paragraph (a) of this section shall include the following:

(1) The identity of the bidder;

(2) The title of the class of securities which is the subject of the bidder's tender offer;

(3) A statement that the bidder is making a request to the subject company pursuant to paragraph (a) of this section for the use of the stockholder list and security position listings for the purpose of disseminating a tender offer to security holders;

(4) A statement that the bidder is aware of and will comply with the provisions of paragraph (f) of this section;

(5) A statement as to whether or not it has elected pursuant to paragraph (f)(1) of this section to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section; and

(6) The name, address and telephone number of the person whom the subject company shall contact pursuant to paragraph (a)(4) of this section.

(f) *Obligations of the bidder*. Any bidder who requests that a subject company comply with the provisions of paragraph (a) of this section shall comply with the following paragraphs.

(1) The bidder shall make an election whether or not to require the subject company to disseminate amendments disclosing material changes to the tender offer materials pursuant to this section, which election shall be included in the request referred to in paragraph (a) of this section and shall not be revocable by the bidder during the tender offer and extensions thereof.

(2) With respect to a tender offer subject to section 14(d)(1) of the Act in which the consideration consists solely of cash and/or securities exempt from registration under section 3 of the Securities Act of 1933, the bidder shall comply with the requirements of Rule 14d–4(a)(3).

(3) If the subject company elects to comply with paragraph (b) of this section,

(i) The bidder shall promptly deliver the tender offer materials after receipt of the notification from the subject company as provided in paragraph (a)(4) of this section;

(ii) The bidder shall promptly notify the subject company of any amendment to the bidder's tender offer materials requiring compliance by the subject company with paragraph (b)(6) of this section and shall promptly deliver such amendment to the subject company pursuant to paragraph (g)(1) of this section;

(iii) The bidder shall advance to the subject company an amount equal to the approximate cost of conducting mailings to security holders computed in accordance with paragraph (g)(2) of this section;

(iv) The bidder shall promptly reimburse the subject company for the direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section which are in excess of the amount advanced pursuant to paragraph (f)(2)(iii) of this section; and

(v) The bidder shall mail be means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials.

(4) If the subject company elects to comply with paragraph (c) of this section,

(i) The bidder shall use the stockholder list and security position listings furnished to the bidder pursuant to paragraph (c) of this section exclusively in the dissemination of tender offer materials to security holders in connection with the bidder's tender offer and extensions thereof;

(ii) The bidder shall return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section promptly after the termination of the bidder's tender offer;

(iii) The bidder shall accept, handle and return the stockholder lists and security position listings furnished to the bidder pursuant to paragraph (c) of this section to the subject company on a confidential basis;

(iv) The bidder shall not retain any stockholder list or security position listing furnished by the subject company pursuant to paragraph (c) of this section, or any copy thereof, nor retain any information derived from any such

list or listing or copy thereof after the termination of the bidder's tender offer;

(v) The bidder shall mail by means of first class mail, at its own expense, a copy of its tender offer materials to each person whose identity appears on the stockholder list as furnished and updated by the subject company pursuant to paragraphs (c)(1) and (2) of this section;

(vi) The bidder shall contact the participants named on the security position listing of any clearing agency, make inquiry of each participant as to the approximate number of sets of tender offer materials required by each such participant, and furnish, at its own expense, sufficient sets of tender offer materials and any amendment thereto to each such participant for subsequent transmission to the beneficial owners of the securities being sought by the bidder;

(vii) The bidder shall mail by means of first class mail or otherwise furnish with reasonable promptness the tender offer materials to any security holder who requests such materials; and

(viii) The bidder shall promptly reimburse the subject company for direct costs incidental to compliance by the subject company and its agents in performing the acts required by this section computed in accordance with paragraph (g)(2) of this section.

(g) *Delivery of materials, computation of direct costs.* (1) Whenever the bidder is required to deliver tender offer materials or amendments to tender offer materials, the bidder shall deliver to the subject company at the location specified by the subject company in its notice given pursuant to paragraph (a)(4) of this section a number of sets of the materials or of the amendment, as the case may be, at least equal to the approximate number of security holders specified by the subject company in such notice, together with appropriate envelopes or other containers therefor: *Provided, however,* That such delivery shall be deemed not to have been made unless the bidder has complied with paragraph (f)(3)(iii) of this section at the time the materials or amendments, as the case may be, are delivered.

(2) The approximate direct cost of mailing the bidder's tender offer materials shall be computed by adding (i) the direct cost incidental to the mailing of the subject company's last annual report to shareholders (excluding employee time), less the costs of preparation and printing of the report, and postage, plus (ii) the amount of first class postage required to mail the bidder's tender offer materials. The approximate direct costs incidental to the mailing of the amendments to the bidder's tender offer materials shall be computed by adding (iii) the estimated direct costs of preparing mailing labels, of updating shareholder lists and of third party handling charges plus (iv) the amount of first class postage required to mail the bidder's amendment. Direct costs incidental to the mailing of the bidder's tender offer materials and amendments thereto when finally computed may include all reasonable charges paid by the subject company to third parties for supplies or services, including costs attendant to preparing shareholder lists, mailing labels, handling the bidder's materials, contacting participants named on security position listings and for postage, but shall exclude indirect costs, such as employee time which is devoted to either contesting or supporting the tender offer on behalf of the subject company. The final billing for direct costs shall be accompanied by an appropriate accounting in reasonable detail.

NOTE TO § 240.14d–5. Reasonably prompt methods of distribution to security holders may be used instead of mailing. If alternative methods are chosen, the approximate direct costs of distribution shall be computed by adding the estimated direct costs of preparing the document for distribution through the chosen medium (including updating of shareholder lists) plus the estimated reasonable cost of distribution through that medium. Direct costs incidental to the distribution of tender offer materials and amendments thereto may include all reasonable charges paid by the subject company to third parties for supplies or services, including costs attendant to preparing shareholder lists, handling the bidder's materials, and contacting participants named on security position listings, but shall not include indirect costs, such as employee time which is devoted to either contesting or

supporting the tender offer on behalf of the subject company.

[44 FR 70342, Dec. 6, 1979, as amended at 61 FR 24657, May 15, 1996]

§ 240.14d–6 Disclosure requirements with respect to tender offers.

(a) *Information required on date of commencement*—(1) *Long-form publication*. If a tender offer is published or sent or given to security holders on the date of commencement by means of long-form publication pursuant to Rule 14d–4(a)(1) (§ 240.14d–4(a)(1)), such long-form publication shall include the information required by paragraph (e)(1) of this section.

(2) *Summary publication*. If a tender offer is published or sent or given to security holders on the date of commencement by means of summary publication pursuant to Rule 14d–4(a)(2) (§ 240.14d–4(a)(2)),

(i) The summary advertisement shall contain and shall be limited to, the information required by paragraph (e)(2) of this section; and

(ii) The tender offer materials furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(3) *Use of stockholder lists and security position listings*. If a tender offer is published or sent or given to security holders on the date of commencement by the use of stockholders lists and security position listings pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3)),

(i) Either (A) the summary advertisement shall contain, and shall be limited to the information required by paragraph (e)(2) of this section, or (B) if long form publication of the tender offer is made, such long form publication shall include the information required by paragraph (e)(1) of this section; and

(ii) The tender offer materials transmitted to security holders pursuant to such lists and security position listings and furnished by the bidder upon the request of any security holder shall include the information required by paragraph (e)(1) of this section.

(4) *Other tender offers*. If a tender offer is published or sent or given to security holders other than pursuant to Rule 14d–4(a) (§ 240.14d–4(a)), the tender offer materials which are published or sent or given to security holders on the date of commencement of such offer shall include the information required by paragraph (e)(1) of this section.

(b) *Information required in summary advertisement made after commencement*. A summary advertisement published subsequent to the date of commencement of the tender offer shall include at least the information specified in paragraphs (e)(1)(i) through (iv) and (e)(2)(iv) of this section.

(c) *Information required in other tender offer materials published after commencement*. Except for summary advertisements described in paragraph (b) of this section and tender offer materials described in paragraphs (a)(2)(ii) and (3)(ii) of this section, additional tender offer materials published, sent or given to security holders subsequent to the date of commencement shall include the information required by paragraphs (e)(1) and may omit any of the information required by paragraphs (e)(1)(v) through (viii) of this section which has been previously furnished by the bidder in connection with the tender offer.

(d) *Material changes*. A material change in the information published or sent or given to security holders shall be promptly disclosed to security holders in additional tender offer materials.

(e) *Information to be included*—(1) *Long-form publication and tender offer materials*. The information required to be disclosed by paragraphs (a)(1), (2)(ii), (3)(i)(B) and (4) of this section shall include the following:

(i) The identity of the bidder;

(ii) The identity of the subject company;

(iii) The amount and class of securities being sought and the type and amount of consideration being offered therefor;

(iv) The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

(v) The exact dates prior to which, and after which, security holders who deposit their securities will have the right to withdraw their securities pursuant to section 14(d)(5) of the Act and Rule 14d–7 (§ 240.14d–7) and the manner

in which shares will be accepted for payment and in which withdrawal may be effected;

(vi) If the tender offer is for less than all the outstanding securities of a class of equity securities and the bidder is not obligated to purchase all of the securities tendered, the period or periods, and in the case of the period from the commencement of the offer, the date of the expiration of such period during which the securities will be taken up pro rata pursuant to section 14(d)(6) of the Act or Rule 14d–8 (§ 240.14d–8), and the present intention or plan of the bidder with respect to the tender offer in the event of an oversubscription by security holders;

(vii) The disclosure required by Items 1(c); 2 (with respect to persons other than the bidder, excluding sub-items (b) and (d)); 3; 4; 5; 6; 7; 8; and 10 of Schedule 14D–1 (§ 240.14d–100) or a fair and adequate summary thereof; *Provided, however*, That negative responses to any such item or sub-item or Schedule 14D–1 (§ 240.14d–100) need not be included; and

(viii) The disclosure required by Item 9 of Schedule 14D–1 or a fair and adequate summary thereof. (Under normal circumstances, the following summary financial information for the period covered by the financial information furnished in response to Item 9 will be a sufficient summary. If the information required by Item 9 is summarized, appropriate instructions shall be included stating how complete financial information can be obtained).

Income Statement:
Net sales and operating revenues and other revenues
Income before extraordinary Items
Net income
Balance sheet (at end of period):
Work capital
Total assets
Total assets less deferred research and development charges and excess cost of assets acquired over book value
Total indebtedness
Shareholders' equity
Per Share[1]
Income per common share before extraordinary items
Extraordinary items
Net income per common share (and common share equivalents, if applicable)
Net income per share on a fully diluted basis

(ix) If the financial statements are prepared according to a comprehensive body of accounting principles other than those generally accepted in the United States, the summary financial information shall be accompanied by a reconciliation to generally accepted accounting principles of the United States.

(2) *Summary publication*. The information required to be disclosed by paragraphs (a)(2)(i) and (3)(i)(A) of this section in a summary advertisement is as follows:

(i) The information required by paragraphs (e)(1) (i) through (vi) of this section;

(ii) If the tender offer is for less than all the outstanding securities of a class of equity securities, a statement as to whether the purpose or one of the purposes of the tender offer is to acquire or influence control of the business of the subject company;

(iii) A statement that the information required by paragraph (e)(1)(vii) of this section is incorporated by reference into the summary advertisement;

(iv) Appropriate instructions as to how security holders may obtain promptly, at the bidder's expense, the bidder's tender offer materials; and

(v) In a tender offer published or sent or given to security holders by the use of stockholder lists and security position listings pursuant to Rule 14d–4(a)(3) (§ 240.14d–4(a)(3)), a statement that a request is being made for such lists and listings and that tender offer materials will be mailed to record holders and will be furnished to brokers, banks and similar persons whose name appears or whose nominee appears on the list of stockholders or, if applicable, who are listed as participants in a clearing agency's security position listing for subsequent transmittal to beneficial owners of such securities.

(3) *No transmittal letter*. Neither the initial summary advertisement nor any subsequent summary advertisement shall include a transmittal letter

[1] Average number of share of common stock outstanding during each period was . . . (as adjusted to given effect to stock dividends or stock splits).

(whereby securities of the subject company which are sought in the tender offer may be transmitted to the bidder or its depository) or any amendment thereto.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))

[44 FR 70344, Dec. 6, 1979, as amended at 47 FR 11470, Mar. 16, 1982; 47 FR 54781, Dec. 6, 1982]

§ 240.14d–7 Additional withdrawal rights.

(a) *Rights*. In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open.

(b) *Notice of withdrawal*. Notice of withdrawal pursuant to this section shall be deemed to be timely upon the receipt by the bidder's depositary of a written notice of withdrawal specifying the name(s) of the tendering stockholder(s), the number or amount of the securities to be withdrawn and the name(s) in which the certificate(s) is (are) registered, if different from that of the tendering security holder(s). A bidder may impose other reasonable requirements, including certificate numbers and a signed request for withdrawal accompained by a signature guarantee, as conditions precedent to the physical release of withdrawn securities.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))

[44 FR 70345, Dec. 6, 1979, as amended at 51 FR 25882, July 17, 1986; 51 FR 32630, Sept. 15, 1986]

§ 240.14d–8 Exemption from statutory pro rata requirements.

Notwithstanding the pro rata provisions of section 14(d)(6) of the Act, if any person makes a tender offer or request or invitation for tenders, for less than all of the outstanding equity securities of a class, and if a greater number of securities are deposited pursuant thereto than such person is bound or willing to take up and pay for, the securities taken up and paid for shall be taken up and paid for as nearly as may be pro rata, disregarding fractions, according to the number of securities deposited by each depositor during the period such offer, request or invitation remains open.

(Sec. 23, 48 Stat. 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; sec. 3, 82 Stat. 455; secs. 3–5, 84 Stat. 1497; sec. 18, 89 Stat. 155; 15 U.S.C. 78n(e), 78w(a))

[47 FR 57680, Dec. 28, 1982]

§ 240.14d–9 Solicitation/recommendation statements with respect to certain tender offers.

(a) *Filing and transmittal of recommendation statement*. No solicitation or recommendation to security holders shall be made by any person described in paragraph (d) of this section with respect to a tender offer for such securities unless as soon as practicable on the date such solicitation or recommendation is first published or sent or given to security holders such person complies with the following subparagraphs.

(1) Such person shall file with the Commission eight copies of a Tender Offer Solicitation/Recommendation Statement on Schedule 14D–9 (§ 240.14d–101), including all exhibits thereto; and

(2) If such person is either the subject company or an affiliate of the subject company,

(i) Such person shall hand deliver a copy of the Schedule 14D–9 to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of

the bidder's Schedule 14D–1 (§ 240.14d–100) filed with the Commission; and

(ii) Such person shall give telephonic notice (which notice to the extent possible shall be given prior to the opening of the market) of the information required by Items 2 and 4(a) of Schedule 14D–9 and shall mail a copy of the Schedule to each national securities exchange where the class of securities is registered and listed for trading and, if the class is authorized for quotation in the NASDAQ interdealer quotation system, to the National Association of Securities Dealers, Inc. (''NASD'').

(3) If such person is neither the subject company nor an affiliate of the subject company,

(i) Such person shall mail a copy of the schedule to the bidder at its principal office or at the address of the person authorized to receive notices and communications (which is set forth on the cover sheet of the bidder's Schedule 14D–1 (§ 240.14d–100) filed with the Commission); and

(ii) Such person shall mail a copy of the Schedule to the subject company at its principal office.

(b) *Amendments*. If any material change occurs in the informaion set forth in the Schedule 14D–9 (§ 240.14d–101) required by this section, the person who filed such Schedule 14D–9 shall:

(1) File with the Commission eight copies of an amendment on Schedule 14D–9 (§ 240.14d–101) disclosing such change promptly, but not later than the date such material is first published, sent or given to security holders; and

(2) Promptly deliver copies and give notice of the amendment in the same manner as that specified in paragraph (a)(2) or (3) of this section, whichever is applicable; and

(3) Promptly disclose and disseminate such change in a manner reasonably designed to inform security holders of such change.

(c) *Information required in solicitation or recommendation*. Any solicitation or recommendation to holders of a class of securities referred to in section 14(d)(1) of the Act with respect to a tender offer for such securities shall include the name of the person making such solicitation or recommendation and the information required by Items 1, 2, 3(b), 4, 6, 7 and 8 of Schedule 14D–9 (§ 240.14d–101) or a fair and adequate summary thereof: *Provided, however*, That such solicitation or recommendation may omit any of such information previously furnished to security holders of such class of securities by such person with respect to such tender offer.

(d) *Applicability*. (1) Except as is provided in paragraphs (d)(2) and (e) of this section, this section shall only apply to the following persons:

(i) The subject company, any director, officer, employee, affiliate or subsidiary of the subject company;

(ii) Any record holder or beneficial owner of any security issued by the subject company, by the bidder, or by any affiliate of either the subject company or the bidder; and

(iii) Any person who makes a solicitation or recommendation to security holders on behalf of any of the foregoing or on behalf of the bidder other than by means of a solicitation or recommendation to security holders which has been filed with the Commission pursuant to this section or Rule 14d–3 (§ 240.14d–3).

(2) Notwithstanding paragraph (d)(1) of this section, shall not apply to the following persons:

(i) A bidder who has filed a Schedule 14D–1 (§ 240.14d–101) pursuant to Rule 14d–3 (§ 240.14d–3);

(ii) Attorneys, banks, brokers, fiduciaries or investment advisers who are not participating in a tender offer in more than a ministerial capacity and who furnish information and/or advice regarding such tender offer to their customers or clients on the unsolicited request of such customers or clients or solely pursuant to a contract or a relationship providing for advice to the customer or client to whom the information and/or advice is given.

(e) *Stop-look-and-listen communication*. This section shall not apply to the subject company with respect to a communication by the subject company to its security holders which only:

(1) Identifies the tender offer by the bidder;

(2) States that such tender offer is under consideration by the subject company's board of directors and/or management;

(3) States that on or before a specified date (which shall be no later than 10 business days from the date of commencement of such tender offer) the subject company will advise such security holders of (i) whether the subject company recommends acceptance or rejection of such tender offer; expresses no opinion and remains neutral toward such tender offer; or is unable to take a position with respect to such tender offer and (ii) the reason(s) for the position taken by the subject company with respect to the tender offer (including the inability to take a position); and

(4) Requests such security holders to defer making a determination whether to accept or reject such tender offer until they have been advised of the subject company's position with respect thereto pursuant to paragraph (e)(3) of this section.

(f) *Statement of management's position.* A statement by the subject company's of its position with respect to a tender offer which is required to be published or sent or given to security holders pursuant to Rule 14e–2 shall be deemed to constitute a solicitation or recommendation within the meaning of this section and section 14(d)(4) of the Act.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))

[44 FR 70345, Dec. 6, 1979]

§ 240.14d–10 Equal treatment of security holders.

(a) No bidder shall make a tender offer unless:

(1) The tender offer is open to all security holders of the class of securities subject to the tender offer; and

(2) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder during such tender offer.

(b) Paragraph (a)(1) of this section shall not:

(1) Affect dissemination under Rule 14d–4 (§ 240.14d–4); or

(2) Prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute.

(c) Paragraph (a)(2) of this section shall not prohibit the offer of more than one type of consideration in a tender offer, *Provided*, That:

(1) Security holders are afforded equal right to elect among each of the types of consideration offered; and

(2) The highest consideration of each type paid to any security holder is paid to any other security holder receiving that type of consideration.

(d) If the offer and sale of securities constituting consideration offered in a tender offer is prohibited by the appropriate authority of a state after a good faith effort by the bidder to register or qualify the offer and sale of such securities in such state:

(1) The bidder may offer security holders in such state an alternative form of consideration; and

(2) Paragraph (c) of this section shall not operate to require the bidder to offer or pay the alternative form of consideration to security holders in any other state.

(e) This section shall not apply to any tender offer with respect to which the Commission, upon written request or upon its own motion, either unconditionally or on specified terms and conditions, determines that compliance with this section is not necessary or appropriate in the public interest or for the protection of investors.

[51 FR 25882, July 17, 1986]

§ 240.14d–100 Schedule 14D–1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission, Washington, DC 20549

Schedule 14D–1

Tender Offer Statement Pursuant to Section 14(d)(1) of the Securities Exchange Act of 1934

(Amendment No. ——)*

(Name of Subject Company [Issuer]

(Bidder)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Bidder)

CALCULATION OF FILING FEE

Transaction valuation*	Amount of filing fee

Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Party: _____
Date Filed: _____

NOTE: The remainder of this cover page is only to be completed if this Schedule 14D–1 (or amendment thereto) is being filed, inter alia, to satisfy the reporting requirements of section 13(d) of the Securities Exchange Act of 1934. See General Instructions D, E and F to Schedule 14D–1.

*The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosure provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be ''filed'' for the purpose of Section 18 of the Securities Exchange Act of 1934 (''Act'') or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

CUSIP No. ————

(1) Names of reporting persons.. I.R.S. Identification Nos. of above persons (entities only)..	
(2) Check the appropriate box if a member of a group	(a)
(see instructions)	(b)
(3) SEC use only.	
(4) Source of funds (see instructions).	
(5) Check if disclosure of legal proceedings is required pursuant to Items 2(e) or 2(f).	
(6) Citizenship or place of organization.	
(7) Aggregate amount beneficially owned by each reporting person.	
(8) Check if the aggregate amount in Row (7) excludes certain shares (see instructions).	
(9) Percent of class represented by amount in Row (7).	
(10) Type of reporting person (see instructions).	

Page—of—Pages

Instructions for Cover Page

(1) *Names and I.R.S. Identification Numbers of Reporting Persons*— Furnish the full legal name of each person for whom the report is filed—i.e., each person required to sign the schedule itself—including each member of a group. Do not include the name of a person required to be identified in the report but who is not a reporting person. Reporting persons that are entities are also requested to furnish their I.R.S. identification numbers, although disclosure of such numbers is voluntary, not mandatory (see ''SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D–1'' below).

(2) If any of the shares beneficially owned by a reporting person are held as a member of a group and such membership is expressly affirmed, please check row 2(a). If the membership in a group is disclaimed or the reporting person describes a relationship with other persons but does not affirm the existence of a group, please check row 2(b) [unless a joint filing pursuant to Rule 13d–1(f)(1) in which case it may not be necessary to check row 2(b)].

(3) The third row is for SEC internal use, please leave blank.

(4) *Source of Funds*— Classify the source of funds or other consideration to be used in making purchases as required to be disclosed pursuant to Item 4 of the schedule and insert the appropriate symbol (or symbols if more than one is necessary) In row (4):

Category of Source	Symbol
Subject Company (company whose securities are being acquired).	SC
Bank	BK
Affiliate (of reporting person)	AF
Working Capital (of reporting person)	WC
Personal Funds (of reporting person)	PF
Other	OO

(5) If disclosure of legal proceedings or actions is required pursuant to either Items 2(e) or 2(f) of Schedule 14d–1, row 5 should be checked.

(6) *Citizenship or Place of Organization*— Furnish citizenship if the named reporting person is a natural person. Otherwise, furnish the place of organization. (See Item 2 of Schedule 14D–1.)

(7), (9) *Aggregate Amount Beneficially Owned by Each Reporting Person, etc.*— Rows (7) and (9) are to be completed in accordance with the Instructions to Item 6 of Schedule 14D–1. All percentages are to be rounded off to nearest tenth (one place after decimal point).

(8) Check if the aggregate amount reported as beneficially owned in row (7) does not include shares as to which beneficial ownership is disclaimed.

(10) *Type of Reporting Person*— Please classify each ''reporting person'' according to the following breakdown and place the appropriate symbol (or symbols, i.e., if more than one is applicable, insert all applicable symbols) on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan, Pension Fund, or Endowment Fund.	EP
Parent Holding Company	HC
Group Member	GM
Corporation	CO
Partnership	PN
Individual	IN
Other	OO

NOTES: Attach as many copies of the second part of the cover page as are needed, one reporting person per page.

Filing persons may, in order to avoid unnecessary duplication, answer items on the schedules (Schedule 13D, 13G or 14D–1) by appropriate cross references to an item or items on the cover page(s). This approach may be used only where the cover page item or items provide all the disclosure required by the schedule item. Moreover, such a use of a cover page item will result in the item becoming a part of the schedule and accordingly being considered as ''filed'' for purposes of Section 18 of the Securities Exchange Act or otherwise subject to the liabilities of that section of the Act.

Reporting persons may comply with their cover page filing requirements by filing either completed copies of the blank forms available from the Commission, printed or typed facsimiles, or computer printed facsimiles, provided the documents filed have identical formats to the forms prescribed in the Commission's regulations and meet existing Securities Exchange Act rules as to such matters as clarity and size (Securities Exchange Act Rule 12b–12).

SPECIAL INSTRUCTIONS FOR COMPLYING WITH SCHEDULE 14D–1

Under section 14(d) and 23 of the Securities Exchange Act of 1934 and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this schedule by certain security holders of certain issuers.

Disclosure of the information specified in this schedule is mandatory, except for I.R.S. identification numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining and disclosing the holdings of certain beneficial owners of certain equity securities. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or

other civil, criminal or regulatory statutes or provisions. I.R.S. identification numbers, if furnished, will assist the Commission in identifying security holders and, therefore, in promptly processing statements of beneficial ownership of securities.

Failure to disclose the information requested by this schedule, except for I.R.S. identification numbers, may result in civil or criminal action against the persons involved for violation of the Federal securities laws and rules promulgated thereunder.

Instructions. 1. Eight copies of this statement, including all exhibits, and two additional copies of this statement, including only the exhibits described in Item 11(a) of this statement, should be filed with the Commission.

2. This statement shall be accompanied by a fee payable to the Commission as required by § 240.0–11.

General Instruction. A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative, so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

C. If the statement is filed by a partnership, limited partnership, syndicate or other group, the information called for by Items 2–7, inclusive, shall be given with respect to: (i) Each partner of such partnership; (ii) each partner who is denominated as a general partner or who functions as a general partner of such limited partnership; (iii) each member of such syndicate or group; and (iv) each person controlling such partner or member. If the statement is filed by a corporation, or if a person referred to in (i), (ii), (iii), or (iv) of this Instruction is a corporation, the information called for by the above mentioned items shall be given with respect to: (a) Each executive officer and director of such corporation; (b) each person controlling such corporation; and (c) each executive officer and director of any corporation ultimately in control of such corporation. A response to an item in the statement is required with respect to the bidder and to all other persons referred to in this instruction unless such item specifies to the contrary.

D. Upon termination of the tender offer, the bidder shall promptly file a final amendment to Schedule 14D–1 [§ 240.14d–100] disclosing all material changes in the items of that Schedule and stating that the tender offer has terminated, the date of such termination and the results of such tender offer.

E. If the bidder, before filing this statement, has filed a Schedule 13D [§ 240.13d–101] with respect to the acquisition of securities of the same class referred to in Item 1(a) of this statement, the bidder shall amend such Schedule 13D [§ 240.13d–101] and may do so by means of this statement and amendments thereto, including the final amendment required to be filed by Instruction D: *Provided*, That the bidder indicates on the cover sheet of this statement that it is amending its Schedule 13D [§ 240.13d–101] by means of this statement.

F. The final amendment required to be filed by Instruction D shall be deemed to satisfy the reporting requirements of section 13(d) of the Act with respect to all securities acquired by the bidder pursuant to the tender offer as reported in such final amendment.

G. For purposes of this statement, the following definitions shall apply:

(i) The term *bidder* means any person on whose behalf a tender offer is made; and

(ii) The term *subject company* means any issuer whose securities are sought by a bidder pursuant to a tender offer.

Item 1. Security and subject company. (a) State the name of the subject company and the address of its principal executive offices;

(b) State the exact title and the number of shares outstanding of the class of equity securities being sought (which may be based upon information contained in the most recently available filing with the Commission by the subject company unless the bidder has reason to believe such information is not current), the exact amount of such securities being sought and the consideration being offered therefor; and

(c) Identify the principal market in which such securities are traded and state the high and low sales prices for such securities in such principal market (or, in the absence thereof, the range of high and low bid quotations) for each quarterly period during the past two years.

Item 2. Identity and background. If the person filing this statement or any person enumerated in Instruction C of this statement is a corporation, partnership, limited partnership, syndicate or other group of persons, state its name, the state or other place of its organization, its principal business, the address of its principal office and the information required by (e) and (f) of this Item. If the person filing this statement or any person enumerated in Instruction C is a natural person, provide the information specified in (a) through (g) of this Item with respect to such person(s).

(a) Name;

(b) Residence or business address;

(c) Present principal occupation or employment and the name, principal business and address of any corporation or other organization in which such employment or occupation is conducted;

(d) Material occupations, positions, offices or employments during the last 5 years, giving the starting and ending dates of each and the name, principal business and address of any business corporation or other organization in which such occupation, position, office or employment was carried on.

Instruction. If a person has held various positions with the same organization, or if a person holds comparable positions with multiple related organizations, each and every position need not be specifically disclosed.

(e) Whether or not, during the last 5 years, such person has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) and, if so, give the dates, nature of conviction, name and location of court, and penalty imposed or other disposition of the case.

Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(f) Whether or not, during the last 5 years, such person was a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceeding was or is subject to a judgment, decree or final order enjoining future violations of, or prohibiting activities subject to, Federal or state securities laws or finding any violation of such laws; and, if so, identify and describe such proceeding and summarize the terms of such judgment, decree or final order.

Instruction. While a negative answer to this sub-item is required in this schedule, it need not be furnished to security holders.

(g) Citizenship(s).

Item 3. Past contacts, transactions or negotiations with the subject company. (a) Briefly state the nature and approximate amount (in dollars) of any transaction, other than those described in Item 3(b) of this schedule, which has occurred since the commencement of the subject company's third full fiscal year preceding the date of this schedule, between the person filing this schedule (including those persons enumerated in Instruction C of this schedule) and;

(1) The subject company or any of its affiliates which are corporations: *Provided, however,* That no disclosure need be made with respect to any transaction if the aggregate amount involved in such transaction was less than one percent of the subject company's consolidated revenues (which may be based upon information contained in the most recently available filing with the Commission by the subject company, unless the bidder has reason to believe otherwise) (i) for the fiscal year in which such transaction occurred or, (ii) for the portion of the current fiscal year which has occurred, if the transaction occurred in such year; and

(2) The executive officers, directors or affiliates of the subject company which are not corporations if the aggregate amount involved in such transaction or in a series of similar transactions, including all periodic installments in the case of any lease or other agreement providing for periodic payments or installments, exceeds $40,000.

(b) Describe any contacts, negotions or transactions which have occurred since the commencement of the subject company's third full fiscal year preceding the date of this schedule between the bidder or its subsidiaries (including those persons enumerated in Instruction C of this schedule) and the subject company or its affiliates concerning: A merger, consolidation or acquisition; a tender offer or other acquisition of securities; an election of directors; or a sale or other transfer of a material amount of assets.

Item 4. Source and amount of funds or other consideration. (a) State the source and the total amount of funds or other consideration for the purchase of the maximum number of securities for which the tender offer is being made.

(b) If all or any part of such funds or other consideration are or are expected to be directly or indirectly, borrowed for the purpose of the tender offer:

(1) Provide a summary of each loan agreement or arrangement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions relative to such loan agreement; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowings, or if no such plans or arrangements have been made, make a statement to that effect.

(c) If the source of all or any part of the funds to be used in the tender offer is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Act, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and

files such request, naming such bank, with the Secretary of the Commission.

Item 5. Purpose of the tender offer and plans or proposals of the bidder. State the purpose or purposes of the tender offer for the subject company's securities. Describe any plans or proposals which relate to or would result in:

(a) An extraordinary corporate transaction, such as a merger, reorganization or liquidation, involving the subject company or any of its subsidiaries;

(b) A sale or transfer of a material amount of assets of the subject company or any of its subsidiaries;

(c) Any change in the present board of directors or management of the subject company including, but not limited to, any plans or proposals to change the number or the term of directors or to fill any existing vacancies on the board;

(d) Any material change in the present capitalization or dividend policy of the subject company;

(e) Any of the material change in the subject company's corporate structure or business, including, if the subject company is a registered closed-end investment company, any plans or proposals to make any changes in its investment policy for which a vote would be required by section 13 of the Investment Company Act of 1940;

(f) Causing a class of securities of the subject company to be delisted from a national securities exchange or to cease to be authorized to be quoted in an inter-dealer quotation system of a registered national securities association; or

(g) A class of equity securities of the subject company becoming eligible for termination of registration pursuant to section 12(g)(4) of the Act.

Item 6. Interest in securities of the subject company. (a) State the aggregate number and percentage of the class represented by such shares (which may be based on the number of shares outstanding as contained in the most recently available filing with the Commission by the subject company unless the bidder has reason to believe such information is not current), beneficially owned (identifying those shares for which there is a right to acquire) by each person named in Item 2 of this schedule and by each associate and majority-owned subsidiary of such person giving the name and address of any such associate or subsidiary.

(b) Describe any transaction in the class of securities reported on that was effected during the past 60 days by the persons named in response to paragraph (a) of this item or by any executive officer, director or subsidiary of such person.

Instructions. 1. The description of a transaction required by Item 6(b) shall include, but not necessarily by limited to: (i) The identity of the person covered by Item 6(b) who effected the transaction; (ii) the date of the transaction; (iii) the amount of securities involved; (iv) the price per share; and (v) where and how the transaction was effected.

2. If the information required by Item 6(b) of this schedule is available to the bidder at the time this statement is initially filed with the Commission pursuant to Rule 14d–3(a)(1) [§ 240.14d–3(a)(1)], such information should be included in such initial filing. However, if such information is not available to the bidder at the time of such initial filing, it shall be filed with the Commission promptly but in no event later than two business days after the date of such filing and, if material, shall be disclosed in a manner reasonably designed to inform security holders. The procedure specified by this instruction is provided for the purpose of maintaining the confidentiality of the tender offer in order to avoid possible misuse of inside information.

Item 7. Contracts, Arrangements, Understandings or Relationships with Respect to the Subject Company's Securities. Describe any contract, arrangement, understanding or relationship (whether or not legally enforceable) between the bidder (including those persons enumerated in Instruction C to this schedule) and any person with respect to any securities of the subject company (including, but not limited to, any contract, arrangement, understanding or relationship concerning the transfer or the voting of any of such securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss, or the giving or withhold of proxies), naming the persons with whom such contracts, arrangements, understandings or relationships have been entered into and giving the material provisions thereof. Include such information for any of such securities that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such securities, except that disclosure of standard default and similar provisions contained in loan agreements need not be included.

Item 8. Persons Retained, Employed or to be Compensated. Identify all persons and classes of persons employed, retained or to be compensated by the bidder, or by any person on the bidder's behalf, to make solicitations or recommendations in connection with the tender offer and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 9. Financial Statements of Certain Bidders. Where the bidder is other than a natural person and the bidder's financial conditon is material to a decision by a security holder of the subject company whether to sell, tender or hold securities being sought in the tender offer, furnish current, adequate financial information concerning the bidder; *Provided,* That if the bidder is controlled by

another entity which is not a natural person and has been formed for the purpose of making the tender offer, furnish current, adequate financial information concerning such parent.

Instructions. 1. The facts and circumstances concerning the tender offer, particularly the terms of the tender offer, may influence a determination as to whether disclosure of financial information is material. However, once the materiality requirement is applicable, the adequacy of the financial information will depend primarily on the nature of the bidder.

In order to provide guidance in making this determination, the following types of financial information will be deemed adequate for purposes of this item for the type of bidder specified: (a) Financial statements prepared in compliance with form 10 as amended (§249.210 of this chapter) for a domestic bidder which is otherwise eligible to use such form; and (b) financial statements prepared in accordance with Item 17 of Form 20–F [§249.200f of this chapter] for a foreign bidder that is otherwise eligible to use such form.

2. If the bidder is subject to the periodic reporting requirements of sections 13(a) or 15(d) of the Act, financial statements contained in any document filed with the Commission may be incorporated by reference in this schedule solely for the purpose of this schedule: *Provided,* That such financial statements substantially meet the requirements of this item; an express statement is made that such financial statements are incorporated by reference; the matter incorporated by reference is clearly identified by page, paragraph, caption or otherwise; and an indication is made where such information may be inspected and copies obtained. Financial statements which are required to be presented in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is required to be given.

3. If the bidder is not subject to the periodic reporting requirements of the Act, the financial statements required by this item need not be audited if such audited financial statements are not available or obtainable without unreasonable cost or expense and a statement is made to that effect disclosing the reasons therefor.

Item 10. Additional information. If material to a decision by a security holder whether to sell, tender or hold securities being sought in the tender offer, furnish information as to the following:

(a) Any present or proposed material contracts, arrangements, understandings or relationships between the bidder or any of its executive officers, directors, controlling persons or subsidiaries and the subject company or any of its executive officers, directors, controlling persons or subsidiaries (other than any contract, arrangement or understanding required to be disclosed pursuant to Items 3 or 7 of this schedule);

(b) To the extent known by the bidder after reasonable investigation, the applicable regulatory requirements which must be complied with or approvals which must be obtained in connection with the tender offer;

(c) The applicability of anti-trust laws;

(d) The applicability of the margin requirements of section 7 of the Act and the regulations promulgated thereunder;

(e) Any material pending legal proceedings relating to the tender offer including the name and location of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto and a brief summary of the proceedings; and

Instruction. In connection with this subitem, a copy of any document relating to a major development (such as pleadings, an answer, complaint, temporary restraining order, injunction, opinion, judgment or order) in a material pending legal proceeding should be promptly furnished to the Commission on a supplemental basis.

(f) Such additional material information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 11. Material to be filed as exhibits. Furnish a copy of: (a) Tender offer material which is published, sent or given to security holders by or on behalf of the bidder in connection with the tender offer;

(b) Any loan agreement referred to in Item 4 of this schedule.

Instruction. The identity of any bank which is a party to a loan agreement need not be disclosed if the person filing the statement has requested that the identity of such bank not be made available to the public pursuant to Item 4 of this schedule;

(c) Any document setting forth the terms of any contracts, arrangements, understandings or relationships referred to in Item 7 or 10(a) of this schedule;

(d) Any written opinion prepared by legal counsel at the bidder's request and communicated to the bidder pertaining to the tax consequences of the tender offer;

(e) In a exchange offer where securities of the bidder have been or are to be registered under the Securities Act of 1933, the prospectus containing the information to be included therein by Rule 432 (§230.432 of this chapter) of that Act;

(f) If any oral solicitation of security holders is to be made by or on behalf of the bidder, any written instruction, form or other material which is furnished to the persons making the actual oral solicitation for their use, directly or indirectly, in connection with the tender offer.

Signature. After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and title)

(Date)

The original statement shall be signed by each person on whose behalf the statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

(Secs. 13(d), 14(d), 14(e), 23, 48 Stat. 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; sec. 10, 78 Stat. 580; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; sec. 18, 89 Stat. 155; 15 U.S.C. 78m(d), 78n(d), 78n(e), 78w) [42 FR 38348, July 28, 1977, as amended at 44 FR 2150, Jan. 9, 1979; 44 FR 11751, Mar. 2, 1979; 44 FR 70346, Dec. 6, 1979; 45 FR 76981, Nov. 21, 1980; 47 FR 11470, Mar. 16, 1982; 47 FR 54781, Dec. 6, 1982; 51 FR 2477, Jan. 17, 1986; 62 FR 35341, July 1, 1997]

§ 240.14d–101 Schedule 14D–9.

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

SCHEDULE 14D–9

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934

(Amendment No. —)

(Name of Subject Company)

(Name of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities)

(Name, address and telephone number of person authorized to receive notice and communications on behalf of the person(s) filing statement)

Instructions: Eight copies of this statement, including all exhibits, should be filed with the Commission.

General Instructions: A. The item numbers and captions of the items shall be included but the text of the items is to be omitted. The answers to the items shall be so prepared as to indicate clearly the coverage of the items without referring to the text of the items. Answer every item. If an item is inapplicable or the answer is in the negative so state.

B. Information contained in exhibits to the statement may be incorporated by reference in answer or partial answer to any item or sub-item of the statement unless it would render such answer misleading, incomplete, unclear or confusing. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement where the information is required. A copy of any information or a copy of the pertinent pages of a document containing such information which is incorporated by reference shall be submitted with this statement as an exhibit and shall be deemed to be filed with the Commission for all purposes of the Act.

Item 1. Security and Subject Company. State the title of the class of equity securities to which this statement relates and the name and the address of the principal executive offices of the subject company.

Item 2. Tender Offer of the Bidder. Identify the tender offer to which this statement relates, the name of the bidder and the address of its principal executive offices or, if the bidder is a natural person, the bidder's residence or business address (which may be based on the bidder's Schedule 14D–1 [§ 240.14d–100] filed with the Commission).

Item 3. Identity and Background. (a) State the name and business address of the person filing this statement.

(b) If material, describe any contract, agreement, arrangement or understanding and any actual or potential conflict of interest between the person filing this statement or its affiliates and: (1) the subject company, its executive officers, directors or affiliates; or (2) the bidder, its executive officers, directors or affiliates.

Instruction: If the person filing this statement is the subject company and if the materiality requirement of Item 3(b) is applicable to any contract, agreement, arrangement or understanding between the subject company or any affiliate of the subject company and any executive officer or director of the subject company, it shall not be necessary to include a description thereof in this statement, or in any solicitation or recommendation published or sent or given to security holders if such information, or information which does not differ materially from such information, has been disclosed in any proxy statement, report or other communication sent within one year of the filing date of this statement by the subject company to the then holders of the securities and has been filed with the Commission: *Provided*, That

this statement and the solicitation or recommendation published or sent or given to security holders shall contain specific reference to such proxy statement, report or other communication and that a copy of the pertinent portion(s) thereof is filed as an exhibit to this statement.

Item 4. The Solicitation or Recommendation. (a) State the nature of the solicitation or the recommendation. If this statement relates to a recommendation, state whether the person filing this statement is advising security holders of the securities being sought by the bidder to accept or reject the tender offer or to take other action with respect to the tender offer and, if so, furnish a description of such other action being recommended. If the person filing this statement is the subject company and a recommendation is not being made, state whether the subject company is either expressing no opinion and is remaining neutral toward the tender offer or is unable to take a position with respect to the tender offer.

(b) State the reason(s) for the position (including the inability to take a position) stated in (a) of this Item.

Instruction: Conclusory statements such as ''The tender offer is in the best interest of shareholders,'' will not be considered sufficient disclosure in response to Item 4(b).

Item 5. Persons Retained, Employed or To Be Compensated. Identify any person or class of persons employed, retained or to be compensated by the person filing this statement or by any person on its behalf, to make solicitations or recommendations to security holders and describe briefly the terms of such employment, retainer or arrangement for compensation.

Item 6. Recent Transactions and Intent With Respect to Securities. (a) Describe any transaction in the securities referred to in Item 1 which was effected during the past 60 days by the person(s) named in response to Item 3(a) and by any executive officer, director, affiliate or subsidiary of such person(s).

(b) To the extent known by the person filing this statement, state whether the persons referred to in Item 6(a) presently intend to tender to the bidder, sell or hold securities of the class of securities being sought by the bidder which are held of record or beneficially owned by such persons.

Item 7. Certain Negotiations and Transactions by the Subject Company. (a) If the person filing this statement is the subject company, state whether or not any negotiation is being undertaken or is underway by the subject company in response to the tender offer which relates to or would result in:

(1) An extraordinary transaction such as a merger or reorganization, involving the subject company or any subsidiary of the subject company;

(2) A purchase, sale or transfer of a material amount of assets by the subject company or any subsidiary of the subject company;

(3) A tender offer for or other acquisition of securities by or of the subject company; or

(4) Any material change in the present capitalization or dividend policy of the subject company.

Instruction: If no agreement in principle has yet been reached, the possible terms of any transaction or the parties thereto need not be disclosed if in the opinion of the Board of Directors of the subject company such disclosure would jeopardize continuation of such negotiations. In such event, disclosure that negotiations are being undertaken or are underway and are in the preliminary stages will be sufficient.

(b) Describe any transaction, board resolution, agreement in principle, or a signed contract in response to the tender offer, other than one described pursuant to Item 3(b) of this statement, which relates to or would result in one or more of the matters referred to in Item 7(a)(1), (2), (3) or (4).

Item 8. Additional Information To Be Furnished. Furnish such additional information, if any, as may be necessary to make the required statements, in light of the circumstances under which they are made, not materially misleading.

Item 9. Material To Be Filed as Exhibits. Furnish a copy of:

(a) Any written solicitation or recommendation which is published or sent or given to security holders in connection with the solicitation or recommendation referred to in Item 4.

(b) If any oral solicitation or recommendation to security holders is to be made by or on behalf of the person filing this statement, any written instruction, or other material which is furnished to the persons making the actual oral soliciation or recommendation for their use, directly or indirectly, in connection with the solicitation or recommendation.

(c) Any contract, agreement, arrangement or understanding described in Item 3(b) or the pertinent portions(s) of any proxy statement, report or other communication referred to in Item 3(b).

Signature. After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____

(Date)

_____

(Signature)

_____

(Name and Title)

Instruction. The original statement shall be signed by each person on whose behalf the

statement is filed or his authorized representative. If the statement is signed on behalf of a person by his authorized representative (other than an executive officer of a corporation or a general partner of a partnership), evidence of the representative's authority to sign on behalf of such person shall be filed with the statement. The name and any title of each person who signs the statement shall be typed or printed beneath his signature.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; sec. 308(a)(2), 90 Stat. 57; secs. 3(b), 10(b), 13, 14, 23(a), 48 Stat. 882, 891, 894, 895, 901; sec. 203(a), 49 Stat. 704; sec. 8, 49 Stat. 1379; secs. 4, 5, 78 Stat. 569, 570; secs. 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 84 Stat. 1497; secs. 3, 10, 18, 89 Stat. 97, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 91 Stat. 1494, 1498, 1499; sec. 20, 49 Stat. 833; sec. 319(a), 53 Stat. 1173; sec. 38(a), 54 Stat. 841; 15 U.S.C. 77g, 77j, 77s(a), 78c(b), 78j(b), 78m, 78n, 78w(a), 79t, 77ttt(a), 80a–37(a))

[44 FR 70347, Dec. 6, 1979]

§ 240.14d–102 Schedule 14D–1F. Tender offer statement pursuant to rule 14d–1(b) under the Securities Exchange Act of 1934.

Securities and Exchange Commission

Washington, DC

Schedule 14D–1F

Tender Offer Statement Pursuant to Rule 14d–1(b) Under the Securities Exchange Act of 1934

[Amendment No. _____]

_____

(Name of Subject Company [Issuer])

_____

(Translation of Subject Company's [Issuer's] name into English (if applicable))

_____

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

_____

(Bidder)

_____

(Title of Class of Securities)

_____

(CUSIP Number of Class of Securities (if applicable))

_____

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of bidder)

_____

(Date tender offer first published, sent or given to securityholders)

Calculation of Filing Fee*

Transaction Valuation

Amount of Filing Fee

*Set forth the amount on which the filing fee is calculated and state how it was determined. See General Instruction II. C. for rules governing the calculation of the filing fee.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____

Registration No.: _____

Filing Party: _____

Form: _____

Date Filed: _____

General Instructions

I. Eligibility Requirements for Use of Schedule 14D–1F

A. Schedule 14D–1F may be used by any person making a cash tender or exchange offer (the ''bidder'') for securities of any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer, where less than 40 percent of the outstanding class of such issuer's securities that is the subject of the offer is held by U.S. holders. The calculation of U.S. holders shall be made as of the end of the subject issuer's last quarter or, if such quarter terminated within 60 days of the filing date, as of the end of such issuer's preceding quarter.

Instructions

1. For purposes of this Schedule, ''foreign private issuer'' shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Schedule, the term ''U. S. holder'' shall mean any person whose address appears on the records of the issuer, any voting trustee, any depositary, any share transfer agent or any person acting in a similar capacity on behalf of the issuer as being located in the United States.

3. With respect to any tender offer, including any exchange offer, otherwise eligible to proceed in accordance with Rule 14d–1(b) under the Securities Exchange Act of 1934 (the ''Exchange Act''), the issuer of the subject securities will be presumed to be a foreign private issuer and U. S. holders will be presumed to hold less than 40 percent of such outstanding securities, unless (a) the aggregate trading volume of that class on national securities exchanges in the United States and on NASDAQ exceeded its aggregate trading volume on securities exchanges in Canada and on the Canadian Dealing Network, Inc. (''CDN'') over the 12 calendar month period prior to commencement of this offer, or

if commenced in response to a prior offer, over the 12 calendar month period prior to commencement of the initial offer (based on volume figures published by such exchanges and NASDAQ and CDN) ; (b) the most recent annual report or annual information form filed or submitted by the issuer with securities regulators of Ontario, Quebec, British Columbia or Alberta (or, if the issuer of the subject securities is not a reporting issuer in any of such provinces, with any other Canadian securities regulator) or with the Commission indicates that U. S. holders hold 40 percent or more of the subject class of securities; or (c) the offeror has actual knowledge that the level of U. S. ownership equals or exceeds 40 percent of such securities.

4. If this Schedule is filed during the pendency of one or more ongoing cash tender or exchange offers for securities of the class subject to this offer that was commenced or was eligible to be commenced on Schedule 13E–4F, Schedule 14D–1F and/or Form F–8 or Form F–80, the date for calculation of U. S. ownership for purposes of this Schedule shall be the same as that date used by the initial bidder or issuer.

5. For purposes of this Schedule, the class of subject securities shall not include any securities that may be converted into or are exchangeable for the subject securities.

B. Any bidder using this Schedule must extend the cash tender or exchange offer to U. S. holders of securities of the subject company upon terms and conditions not less favorable than those extended to any other holder of such securities, and must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to the terms and conditions of the offer.

C. This Schedule shall not be used if the subject company is an investment company registered or required to be registered under the Investment Company Act of 1940.

D. This Schedule shall not be used to comply with the reporting requirements of section 13(d) of the Exchange Act. Persons using this Schedule are reminded of their obligation to file or update a Schedule 13D where required by section 13(d)(1) of the Exchange Act and the Commission's rules and regulations thereunder.

II. Filing Instructions and Fee

A. Five copies of this Schedule and any amendment thereto (see part I, item 1(b)), including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. At the time of filing this Schedule with the Commission, the bidder shall pay to the Commission in accordance with Rule 0–11 of the Exchange Act, a fee in U. S. dollars in the amount prescribed by section 14(g)(3) of the Exchange Act. See also Rule 0–9 under the Exchange Act.

(1) Where the bidder is offering securities or other non-cash consideration for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration shall be based on the market value of the securities to be received by the bidder as established by paragraph 3 of this section.

(2) If there is no market for the securities to be acquired by the bidder, the book value of such securities computed as of the latest practicable date prior to the date of filing the Schedule shall be used, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(3) When the fee is based upon the market value of the securities, such market value shall be calculated upon the basis of either the average of the high and low prices reported in the consolidated reporting system (for exchange traded securities and last sale reported for over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within five business days prior to the date of filing the Schedule.

D. If at any time after the initial payment of the fee the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amended filing.

E. If any part of the document or documents to be sent to shareholders is in a foreign language, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of the Schedule, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

F. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of

pages contained in a numbered original shall be set forth on the first page of the document.

III. COMPLIANCE WITH THE EXCHANGE ACT

A. Pursuant to Rule 14d–1(b) under the Exchange Act, the bidder shall be deemed to comply with the requirements of sections 14(d)(1) through 14(d)(7) of the Exchange Act, Regulation 14D under the Exchange Act and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E of the Exchange Act, in connection with a cash tender or exchange offer for securities that may be made pursuant to this Schedule; *provided that,* if an exemption has been granted from requirements of Canadian federal, provincial, and/or territorial laws, regulations or policies, and the tender offer does not comply with requirements that otherwise would be prescribed by Regulation 14D or 14E, the bidder (absent an order from the Commission) shall comply with the provisions of sections 14(d)(1) through 14(d)(7), Regulation 14D and Schedule 14D–1 thereunder, and Rule 14e–1 under Regulation 14E.

B. Any cash tender or exchange offer made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder, and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed ''filed'' for purposes of section 18 of the Exchange Act.

C. The bidder's attention is directed to Regulation M (§§ 242.100 through 242.105 of this chapter) in the case of an exchange offer, and to Rule 10b–13 under the Exchange Act (§ 240.10b–13) for any exchange or cash tender offer. [*See* Exchange Act Release No. 29355 (June 21, 1991) containing an exemption from Rule 10b–13.]

PART I—INFORMATION REQUIRED TO BE SENT TO SHAREHOLDERS

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction by the bidder pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made by the bidder to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

(c) In an exchange offer where securities of the bidder have been or are to be offered or cancelled in the transaction, such securities shall be registered on forms promulgated by the Commission under the Securities Act of 1933 including, where available, the Commission's Form F–8 or F–80 providing for inclusion in that registration statement of the home jurisdiction prospectus.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home-jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

''This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the country in which the subject company is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

''The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the subject company is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.

''Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer, or of the issuer's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations. ''

In the case of an exchange offer:

''Investors should be aware that the bidder or its affiliates, directly or indirectly, may bid for or make purchases of the issuer's securities subject to the offer or of the issuer's related securities, or of the bidder's securities to be distributed or of the bidder's related securities, during the period of the tender offer, as permitted by applicable Canadian laws or provincial laws or regulations. ''

NOTE TO ITEM 2. If the home-jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required

pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the bidder in connection with the transaction but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the bidder is signed pursuant to a power of attorney, certified copies of the bidder's board of directors authorizing such signature also shall be filed.

PART III—UNDERTAKINGS AND CONSENT TO SERVICE OF PROCESS

1. *Undertakings*

The Schedule shall set forth the following undertakings of the bidder:

a. The bidder undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

b. The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to applicable Canadian federal and/or provincial or territorial laws, regulations or policies, or otherwise discloses, information regarding purchases of the issuer's securities in connection with the cash tender or exchange offer covered by this Schedule. Such information shall be set forth in amendments to this Schedule.

c. In the case of an exchange offer:

The bidder undertakes to disclose in the United States, on the same basis as it is required to make such disclosure pursuant to any applicable Canadian federal and/or provincial or territorial law, regulation or policy, or otherwise discloses, information regarding purchases of the issuer's or bidder's securities in connection with the offer.

2. *Consent to Service of Process*

(a) At the time of filing this Schedule, the bidder (if a non-U. S. person) shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

PART IV—SIGNATURES

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the bidder), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the bidder consents without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with the filing on Schedule 14D–1F or any purchases or sales of any security in connection therewith, may be commenced against it in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

_____

(Signature)

_____

(Name and Title)

_____

(Date)

[56 FR 30071, July 1, 1991; 57 FR 10615, Mar. 27, 1992, as amended at 61 FR 24657, May 15, 1996; 62 FR 544, Jan. 3, 1997]

§ 240.14d–103 Schedule 14D–9F. Solicitation/recommendation statement pursuant to section 14(d)(4) of the Securities Exchange Act of 1934 and rules 14d–1(b) and 14e–2(c) thereunder.

Securities and Exchange Commission Washington, DC 20549

Schedule 14D–9F

Solicitation/Recommendation Statement Pursuant to Section 14(d)(4) of the Securities Exchange Act of 1934 and Rules 14d–1(b) and 14e–2(c) Thereunder

[Amendment No. ____]

_____

(Name of Subject Company [Issuer])

_____

(Translation of Subject Company's [Issuer's] Name into English (if applicable))

_____

(Jurisdiction of Subject Company's [Issuer's] Incorporation or Organization)

_____

(Name(s) of Person(s) Filing Statement)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, address (including zip code) and telephone number (including area code) of person(s) authorized to receive notices and communications on behalf of the person(s) filing statement)

General Instructions

I. ELIGIBILITY REQUIREMENTS FOR USE OF SCHEDULE 14D–9F

A. Schedule 14D–9F is used by any issuer incorporated or organized under the laws of Canada or any Canadian province or territory that is a foreign private issuer (the ''subject company'') , or by any director or officer of such issuer, where the issuer is the subject of a cash tender or exchange offer for a class of its securities filed on Schedule 14D–1F.

For purposes of this Schedule, ''foreign private issuer'' shall be construed in accordance with Rule 405 under the Securities Act.

B. Any person(s) using this Schedule must comply with the requirements of any Canadian federal, provincial and/or territorial law, regulation or policy relating to a recommendation by the subject issuer's board of directors, or any director or officer thereof, with respect to the offer.

II. FILING INSTRUCTIONS

A. Five copies of this Schedule and any amendment thereto (see part I, Item 1.(b)) , including all exhibits and any other paper or document filed as part of the Schedule, shall be filed with the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible. Three additional copies of the Schedule and any amendment thereto, similarly bound, also shall be filed. No exhibits are required to accompany such additional copies.

B. The original and at least one copy of this Schedule and any amendments thereto shall be signed manually by the persons specified herein. Unsigned copies shall be conformed.

C. If any part of the document or documents to be sent to shareholders is in a language other than English, it shall be accompanied by a translation in English. If any other part of this Schedule, or any exhibit or other paper or document filed as part of this Schedule, is in a language other than English, it shall be accompanied by a substantive summary, version or translation in the English language.

D. The manually signed original of the Schedule or any amendment thereto shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

III. COMPLIANCE WITH THE EXCHANGE ACT

A. Pursuant to Rule 14e–2(c) under the Securities Exchange Act of 1934 (the ''Exchange Act''), this Schedule shall be filed by an issuer, a class of the securities of which is the subject of a cash tender or exchange offer filed on Schedule 14D–1F, and may be filed by any director or officer of such issuer.

B. Any recommendation with respect to a cash tender or exchange offer for a class of securities of the subject company made pursuant to this Schedule is not exempt from the antifraud provisions of section 10(b) of the Exchange Act and Rule 10b–5 thereunder and section 14(e) of the Exchange Act and Rule 14e–3 thereunder, and this Schedule shall be deemed ''filed'' with the Commission for purposes of section 18 of the Exchange Act.

Part I—Information Required To Be Sent to Shareholders

Item 1. Home Jurisdiction Documents

(a) This Schedule shall be accompanied by the entire disclosure document or documents required to be delivered to holders of securities to be acquired in the proposed transaction pursuant to the laws, regulations or policies of Canada and/or any of its provinces or territories governing the conduct of the offer. It shall not include any documents incorporated by reference into such disclosure document(s) and not distributed to offerees pursuant to any such law, regulation or policy.

(b) Any amendment made to a home jurisdiction document or documents shall be filed with the Commission under cover of this Schedule, which must indicate on the cover page the number of the amendment.

Item 2. Informational Legends

The following legends, to the extent applicable, shall appear on the outside front cover page of the home jurisdiction document(s) in bold-face roman type at least as high as ten-point modern type and at least two points leaded:

''This tender offer is made for the securities of a foreign issuer and while the offer is subject to disclosure requirements of the

country in which the subject issuer is incorporated or organized, investors should be aware that these requirements are different from those of the United States. Financial statements included herein, if any, have been prepared in accordance with foreign generally accepted accounting principles and thus may not be comparable to financial statements of United States companies.

''The enforcement by investors of civil liabilities under the federal securities laws may be affected adversely by the fact that the issuer is located in a foreign country, and that some or all of its officers and directors are residents of a foreign country.''

NOTE TO ITEM 2. If the home jurisdiction document(s) are delivered through an electronic medium, the issuer may satisfy the legibility requirements for the required legends relating to type size and font by presenting the legend in any manner reasonably calculated to draw security holder attention to it.

Part II—Information Not Required To Be Sent to Shareholders

The exhibits specified below shall be filed as part of the Schedule, but are not required to be sent to shareholders unless so required pursuant to the laws, or regulations or policies of Canada and/or any of its provinces or territories. Exhibits shall be appropriately lettered or numbered for convenient reference.

(1) File any reports or information that, in accordance with the requirements of the home jurisdiction(s), must be made publicly available by the person(s) filing this Schedule in connection with the transaction, but need not be disseminated to shareholders.

(2) File copies of any documents incorporated by reference into the home jurisdiction document(s) .

(3) If any name is signed to the Schedule pursuant to power of attorney, manually signed copies of any such power of attorney shall be filed. If the name of any officer signing on behalf of the issuer is signed pursuant to a power of attorney, certified copies of a resolution of the issuer's board of directors authorizing such signature also shall be filed.

Part III—Undertaking and Consent to Service of Process

1. *Undertaking*

The Schedule shall set forth the following undertaking of the person filing it:

The person(s) filing this Schedule undertakes to make available, in person or by telephone, representatives to respond to inquiries made by the Commission staff, and to furnish promptly, when requested to do so by the Commission staff, information relating to this Schedule or to transactions in said securities.

2. *Consent to Service of Process.*

(a) At the time of filing this Schedule, the person(s) (if a non-U. S. person) so filing shall file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(b) Any change to the name or address of a registrant's agent for service shall be communicated promptly to the Commission by amendment to Form F–X referencing the file number of the registrant.

Part IV—Signatures

A. The Schedule shall be signed by each person on whose behalf the Schedule is filed or its authorized representative. If the Schedule is signed on behalf of a person by his authorized representative (other than an executive officer or general partner of the subject company), evidence of the representative's authority shall be filed with the Schedule.

B. The name and any title of each person who signs the Schedule shall be typed or printed beneath his signature.

C. By signing this Schedule, the persons signing consent without power of revocation that any administrative subpoena may be served, or any administrative proceeding, civil suit or civil action where the cause of action arises out of or relates to or concerns any offering made or purported to be made in connection with filing on this Schedule 14D–9F or any purchases or sales of any security in connection therewith, may be commenced against them in any administrative tribunal or in any appropriate court in any place subject to the jurisdiction of any state or of the United States by service of said subpoena or process upon the registrant's designated agent.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature)

(Name and Title)

(Date)

[56 FR 30073, July 1, 1991, as amended at 61 FR 24657, May 15, 1996]

REGULATION 14E

§ 240.14e–1 Unlawful tender offer practices.

As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, no person who makes a tender offer shall:

(a) Hold such tender offer open for less than twenty business days from

the date such tender offer is first published or sent to security holders; provided, however, that if the tender offer involves a roll-up transaction as defined in Item 901(c) of Regulation S–K (17 CFR 229.901(c)) and the securities being offered are registered (or authorized to be registered) on Form S–4 (17 CFR 229.25) or Form F–4 (17 CFR 229.34), the offer shall not be open for less than sixty calendar days from the date the tender offer is first published or sent to security holders;

(b) Increase or decrease the percentage of the class of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender offer remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders.

Provided, however, That, for purposes of this paragraph, the acceptance for payment of an additional amount of securities not to exceed two percent of the class of securities that is the subject of the tender offer shall not be deemed to be an increase. For purposes of this paragraph, the percentage of a class of securities shall be calculated in accordance with section 14(d)(3) of the Act.

(c) Fail to pay the consideration offered or return the securities deposited by or on behalf of security holders promptly after the termination or withdrawal of a tender offer;

(d) Extend the length of a tender offer without issuing a notice of such extension by press release or other public announcement, which notice shall include disclosure of the approximate number of securities deposited to date and shall be issued no later than the earlier of: (i) 9:00 a.m. Eastern time, on the next business day after the scheduled expiration date of the offer or (ii), if the class of securities which is the subject of the tender offer is registered on one or more national securities exchanges, the first opening of any one of such exchanges on the next business day after the scheduled expiration date of the offer.

(e) The periods of time required by paragraphs (a) and (b) of this section shall be tolled for any period during which the bidder has failed to file in electronic format, absent a hardship exemption (§§ 232.201 and 232.202 of this chapter), the Schedule 14D–1 Tender Offer Statement (§ 240.14d–100 of this chapter), any tender offer material specified in paragraph (a) of Item 11 of that Schedule, and any amendments thereto. If such documents were filed in paper pursuant to a hardship exemption (*see* § 232.201 and § 232.202(d) of this chapter), the minimum offering periods shall be tolled for any period during which a required confirming electronic copy of such Schedule and tender offer material is delinquent.

[44 FR 70348, Dec. 6, 1979, as amended at 51 FR 3035, Jan. 23, 1986; 51 FR 25883, July 17, 1986; 51 FR 32630, Sept. 15, 1986; 56 FR 57255, Nov. 8, 1991; 58 FR 14682, 14685, Mar. 18, 1993; 59 FR 67765, Dec. 30, 1994; 62 FR 36459, July 8, 1997]

§ 240.14e–2 Position of subject company with respect to a tender offer.

(a) *Position of subject company.* As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices withing the meaning of section 14(e) of the Act, the subject company, no later than 10 business days from the date the tender offer is first published or sent or given, shall publish, send or give to security holders a statement disclosing that the subject company:

(1) Recommends acceptance or rejection of the bidder's tender offer;

(2) Expresses no opinion and is remaining neutral toward the bidder's tender offer; or

(3) Is unable to take a position with respect to the bidder's tender offer. Such statement shall also include the reason(s) for the position (including the inability to take a position) disclosed therein.

(b) *Material change.* If any material change occurs in the disclosure required by paragraph (a) of this section, the subject company shall promptly publish or send or give a statement disclosing such material change to security holders.

(c) Any issuer, a class of the securities of which is the subject of a tender offer filed with the Commission on Schedule 14D–1F and conducted in reliance upon and in conformity with Rule 14d–1(b) under the Act, and any director or officer of such issuer where so

required by the laws, regulations and policies of Canada and/or any of its provinces or territories, in lieu of the statements called for by paragraph (a) of this section and Rule 14d–9 under the Act, shall file with the Commission on Schedule 14D–9F the entire disclosure document(s) required to be furnished to holders of securities of the subject issuer by the laws, regulations and policies of Canada and/or any of its provinces or territories governing the conduct of the tender offer, and shall disseminate such document(s) in the United States in accordance with such laws, regulations and policies.

[44 FR 70348, Dec. 6, 1979, as amended at 56 FR 30075, July 1, 1991]

§ 240.14e–3 Transactions in securities on the basis of material, nonpublic information in the context of tender offers.

(a) If any person has taken a substantial step or steps to commence, or has commenced, a tender offer (the ''offering person''), it shall constitute a fraudulent, deceptive or manipulative act or practice within the meaning of section 14(e) of the Act for any other person who is in possession of material information relating to such tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from:

(1) The offering person,

(2) The issuer of the securities sought or to be sought by such tender offer, or

(3) Any officer, director, partner or employee or any other person acting on behalf of the offering person or such issuer, to purchase or sell or cause to be purchased or sold any of such securities or any securities convertible into or exchangeable for any such securities or any option or right to obtain or to dispose of any of the foregoing securities, unless within a reasonable time prior to any purchase or sale such information and its source are publicly disclosed by press release or otherwise.

(b) A person other than a natural person shall not violate paragraph (a) of this section if such person shows that:

(1) The individual(s) making the investment decision on behalf of such person to purchase or sell any security described in paragraph (a) of this section or to cause any such security to be purchased or sold by or on behalf of others did not know the material, nonpublic information; and

(2) Such person had implemented one or a combination of policies and procedures, reasonable under the circumstances, taking into consideration the nature of the person's business, to ensure that individual(s) making investment decision(s) would not violate paragraph (a) of this section, which policies and procedures may include, but are not limited to, (i) those which restrict any purchase, sale and causing any purchase and sale of any such security or (ii) those which prevent such individual(s) from knowing such information.

(c) Notwithstanding anything in paragraph (a) of this section to contrary, the following transactions shall not be violations of paragraph (a) of this section:

(1) Purchase(s) of any security described in paragraph (a) of this section by a broker or by another agent on behalf of an offering person; or

(2) Sale(s) by any person of any security described in paragraph (a) of this section to the offering person.

(d)(1) As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices within the meaning of section 14(e) of the Act, it shall be unlawful for any person described in paragraph (d)(2) of this section to communicate material, nonpublic information relating to a tender offer to any other person under circumstances in which it is reasonably foreseeable that such communication is likely to result in a violation of this section *except* that this paragraph shall not apply to a communication made in good faith,

(i) To the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) To the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons, involved in the planning, financing, preparation or execution of

the activities of the issuer with respect to such tender offer; or

(iii) To any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

(2) The persons referred to in paragraph (d)(1) of this section are:

(i) The offering person or its officers, directors, partners, employees or advisors;

(ii) The issuer of the securities sought or to be sought by such tender offer or its officers, directors, partners, employees or advisors;

(iii) Anyone acting on behalf of the persons in paragraph (d)(2)(i) of this section or the issuer or persons in paragraph (d)(2)(ii) of this section; and

(iv) Any person in possession of material information relating to a tender offer which information he knows or has reason to know is nonpublic and which he knows or has reason to know has been acquired directly or indirectly from any of the above.

[45 FR 60418, Sept. 12, 1980]

§ 240.14e–4 Prohibited transactions in connection with partial tender offers.

(a) *Definitions.* For purposes of this section:

(1) The amount of a person's ''net long position'' in a subject security shall equal the excess, if any, of such person's ''long position'' over such person's ''short position.'' For the purposes of determining the net long position as of the end of the proration period and for tendering concurrently to two or more partial tender offers, securities that have been tendered in accordance with the rule and not withdrawn are deemed to be part of the person's long position.

(i) Such person's *long position* is the amount of subject securities that such person:

(A) Or his agent has title to or would have title to but for having lent such securities; or

(B) Has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase but has not yet received; or

(C) Has exercised a standardized call option for; or

(D) Has converted, exchanged, or exercised an equivalent security for; or

(E) Is entitled to receive upon conversion, exchange, or exercise of an equivalent security.

(ii) Such person's *short position*, is the amount of subject securities or subject securities underlying equivalent securities that such person:

(A) Has sold, or has entered into an unconditional contract, binding on both parties thereto, to sell; or

(B) Has borrowed; or

(C) Has written a non-standardized call option, or granted any other right pursuant to which his shares may be tendered by another person; or

(D) Is obligated to deliver upon exercise of a standardized call option sold on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. For the purpose of this paragraph, if one or more tender offers for the same security are ongoing on such date, the announcement date shall be that of the first announced offer.

(2) The term *equivalent security* means:

(i) Any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for, a subject security, or

(ii) Any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

(3) The term *subject security* means a security that is the subject of any tender offer or request or invitation for tenders.

(4) For purposes of this rule, a person shall be deemed to ''tender'' a security if he:

(i) Delivers a subject security pursuant to an offer,

(ii) Causes such delivery to be made,

(iii) Guarantees delivery of a subject security pursuant to a tender offer,

(iv) Causes a guarantee of such delivery to be given by another person, or

(v) Uses any other method by which acceptance of a tender offer may be made.

(5) The term *partial tender offer* means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a *pro rata* basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a *pro rata* basis for a specified period.

(6) The term *standardized call option* means any call option that is traded on an exchange, or for which quotation information is disseminated in an electronic interdealer quotation system of a registered national securities association.

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:

(1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in:

(i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer; or

(ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or

(2) For the account of another person unless the person making the tender:

(i) Possesses the subject security or an equivalent security, or

(ii) Has a reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.

[49 FR 13870, Apr. 9, 1984, as amended at 50 FR 8102, Feb. 28, 1985. Redesignated and amended at 55 FR 50320, Dec. 6, 1990]

§ 240.14e–6 Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e–1 and 240.14e–2 shall not apply to any offer by a closed-end management investment company to repurchase equity securities of which it is the issuer pursuant to § 270.23c–3 of this chapter.

[58 FR 19343, Apr. 14, 1993]

§ 240.14e–7 Unlawful tender offer practices in connection with roll-ups.

In order to implement section 14(h) of the Act (15 U.S.C. 78n(h)):

(a)(1) It shall be unlawful for any person to receive compensation for soliciting tenders directly from security holders in connection with a roll-up transaction as provided in paragraph (a)(2) of this section, if the compensation is:

(i) Based on whether the solicited person participates in the tender offer; or

(ii) Contingent on the success of the tender offer.

(2) Paragraph (a)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), structured as a tender offer, except for a transaction involving only:

(i) Finite-life entities that are not limited partnerships;

(ii) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17,

1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1); or

(iii) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1).

(b)(1) It shall be unlawful for any finite-life entity that is the subject of a roll-up transaction as provided in paragraph (b)(2) of this section to fail to provide a security holder list or mail communications related to a tender offer that is in furtherance of the roll-up transaction, at the option of a requesting security holder, pursuant to the procedures set forth in § 240.14a–7.

(2) Paragraph (b)(1) of this section is applicable to a roll-up transaction as defined in Item 901(c) of Regulation S–K (§ 229.901(c) of this chapter), structured as a tender offer, that involves:

(i) An entity with securities registered pursuant to section 12 of the Act (15 U.S.C. 78*l*); or

(ii) A limited partnership, unless the transaction involves only:

(A) Partnerships whose investors will receive new securities or securities in another entity that are not reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1); or

(B) Partnerships whose investors' securities are reported under a transaction reporting plan declared effective before December 17, 1993 by the Commission under section 11A of the Act (15 U.S.C. 78k–1).

[59 FR 63685, Dec. 8, 1994]

§ 240.14f–1 Change in majority of directors.

If, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to section 13(d) or 14(d) of the Act, any persons are to be elected or designated as directors of the issuer, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, then, not less than 10 days prior to the date any such person take office as a director, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor, the issuer shall file with the Commission and transmit to all holders of record of securities of the issuer who would be entitled to vote at a meeting for election of directors, information substantially equivalent to the information which would be required by Items 6 (a), (d) and (e), 7 and 8 of Schedule 14A of Regulation 14A (§ 240.14a–101 of this chapter) to be transmitted if such person or persons were nominees for election as directors at a meeting of such security holders. Eight copies of such information shall be filed with the Commission.

[33 FR 11017, Aug. 2, 1968, as amended at 34 FR 6101, Apr. 4, 1969; 51 FR 42072, Nov. 20, 1986]

EXEMPTION OF CERTAIN SECURITIES FROM SECTION 15(a)

§ 240.15a–2 Exemption of certain securities of cooperative apartment houses from section 15(a).

Shares of a corporation which represent ownership, or entitle the holders thereof to possession and occupancy, of specific apartment units in property owned by such corporations and organized and operated on a cooperative basis are hereby exempted from the operation of section 15(a) of the Securities Exchange Act of 1934, when such shares are sold by or through a real estate broker licensed under the laws of the political subdivision in which the property is located.

(Secs. 3, 48 Stat. 882, as amended, 895, as amended; 15 U.S.C. 78c, 78o)

[13 FR 8204, Dec. 22, 1948]

§ 240.15a–3 [Reserved]

§ 240.15a–4 Forty-five day exemption from registration for certain members of national securities exchanges.

(a) A natural person who is a member of a national securities exchange shall, upon termination of his association with a registered broker-dealer, be exempt, for a period of forty-five days after such termination, from the registration requirement of section 15(a) of the Act solely for the purpose of continuing to effect transactions on the floor of such exchange if (1) such person has filed with the Commission an

application for registration as a broker-dealer and such person complies in all material respects with rules of the Commission applicable to registered brokers and dealers and (2) such exchange has filed with the Commission a statement that it has reviewed such application and that there do not appear to be grounds for its denial.

(b) The exemption from registration provided by this rule shall not be available to any person while there is pending before the Commission any proceeding involving any such person pursuant to section 15(b)(1)(B) of the Act.

[41 FR 18290, May 3, 1976]

§ 240.15a–5 Exemption of certain nonbank lenders.

A lender approved under the rules and regulations of the Small Business Administration shall be exempt from the registration requirement of section 15(a) (1) of the Act if it does not engage in the business of effecting transactions in securities or of buying and selling securities for its own account except in respect of receiving notes evidencing loans to small business concerns and selling the portion of such notes guaranteed by the Small Business Administration through or to a registered broker or dealer or to a bank, a savings institution, an insurance company, or an account over which an investment adviser registered pursuant to the Investment Advisers Act of 1940 exercises investment discretion.

[41 FR 50645, Nov. 17, 1976]

REGISTRATION OF BROKERS AND DEALERS

§ 240.15a–6 Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15B(a)(1) of the Act to the extent that the foreign broker or dealer:

(1) Effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or

(2) Furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

(i) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security;

(ii) The foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;

(iii) If the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this section, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3) of this section; and

(iv) The foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer; or

(3) Induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that:

(i) The foreign broker or dealer:

(A) Effects any resulting transactions with or for the U.S. institutional investor or the major U.S. institutional investor through a registered broker or dealer in the manner described by paragraph (a)(3)(iii) of this section; and

(B) Provides the Commission (upon request or pursuant to agreements reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(50) of the Act, and the Commission or the U.S. Government) with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3)

of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(i)(B) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section;

(ii) The foreign associated person of the foreign broker or dealer effecting transactions with the U.S. institutional investor or the major U.S. institutional investor:

(A) Conducts all securities activities from outside the U.S., except that the foreign associated persons may conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that:

(*1*) The foreign associated person is accompanied on these visits by an associated person of a registered broker or dealer that accepts responsibility for the foreign associated person's communications with the U.S. institutional investor or the major U.S institutional investor; and

(*2*) Transactions in any securities discussed during the visit by the foreign associated person are effected only through the registered broker or dealer, pursuant to paragraph (a)(3) of this section; and

(B) Is determined by the registered broker or dealer to:

(*1*) Not be subject to a statutory disqualification specified in section 3(a)(39) of the Act, or any substantially equivalent foreign

(*i*) Expulsion or suspension from membership,

(*ii*) Bar or suspension from association,

(*iii*) Denial of trading privileges,

(*iv*) Order denying, suspending, or revoking registration or barring or suspending association, or

(*v*) Finding with respect to causing any such effective foreign suspension, expulsion, or order;

(*2*) Not to have been convicted of any foreign offense, enjoined from any foreign act, conduct, or practice, or found to have committed any foreign act substantially equivalent to any of those listed in sections 15(b)(4) (B), (C), (D), or (E) of the Act; and

(*3*) Not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 3(a)(39)(E) of the Act; and

(iii) The registered broker or dealer through which the transaction with the U.S. institutional investor or the major U.S. institutional investor is effected:

(A) Is responsible for:

(*1*) Effecting the transactions conducted under paragraph (a)(3) of this section, other than negotiating their terms;

(*2*) Issuing all required confirmations and statements to the U.S. institutional investor or the major U.S. institutional investor;

(*3*) As between the foreign broker or dealer and the registered broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor or the major U.S. institutional investor in connection with the transactions;

(*4*) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 and 17a–4 under the Act (17 CFR 2410.17a–3 and 17a–4);

(*5*) Complying with Rule 15c3–1 under the Act (17 CFR 240.15c3–1) with respect to the transactions; and

(*6*) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or the major U.S. institutional investor in compliance with Rule 15c3–3 under the Act (17 CFR 240.15c3–3);

(B) Participates through an associated person in all oral communications between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor;

(C) Has obtained from the foreign broker or dealer, with respect to each

foreign associated person, the types of information specified in Rule 17a–3(a)(12) under the Act (17 CFR 240.17a–3(a)(12)), provided that the information required by paragraph (a)(12)(d) of that Rule shall include sanctions imposed by foreign securities authorities, exchanges, or associations, including without limitation those described in paragraph (a)(3)(ii)(B) of this section;

(D) Has obtained from the foreign broker or dealer and each foreign associated person written consent to service of process for any civil action brought by or proceeding before the Commission or a self-regulatory organization (as defined in section 3(a)(26) of the Act), providing that process may be served on them by service on the registered broker or dealer in the manner set forth on the registered broker's or dealer's current Form BD; and

(E) Maintains a written record of the information and consents required by paragraphs (a)(3)(iii) (C) and (D) of this section, and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer conducted under paragraph (a)(3) of this section, in an office of the registered broker or dealer located in the United States (with respect to nonresident registered brokers or dealers, pursuant to Rule 17a–7(a) under the Act (17 CFR 240.17a–7(a))), and makes these records available to the Commission upon request; or

(4) Effects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by:

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting in a broker or dealer capacity as permitted by U.S. law;

(ii) The African Development Bank, the Asian Development Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development, the International Monetary Fund, the United Nations, and their agencies, affiliates, and pension funds;

(iii) A foreign person temporarily present in the United States, with whom the foreign broker or dealer had a bona fide, pre-existing relationship before the foreign person entered the United States;

(iv) Any agency or branch of a U.S. person permanently located outside the United States, provided that the transactions occur outside the United States; or

(v) U.S. citizens resident outside the United States, provided that the transactions occur outside the United States, and that the foreign broker or dealer does not direct its selling efforts toward identifiable groups of U.S. citizens resident abroad.

(b) When used in this rule,

(1) The term *family of investment companies* shall mean:

(i) Except for insurance company separate accounts, any two or more separately registered investment companies under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and hold themselves out to investors as related companies for purposes of investment and investor services; and

(ii) With respect to insurance company separate accounts, any two or more separately registered separate accounts under the Investment Company Act of 1940 that share the same investment adviser or principal underwriter and function under operational or accounting or control systems that are substantially similar.

(2) The term *foreign associated person* shall mean any natural person domiciled outside the United States who is an associated person, as defined in section 3(a)(18) of the Act, of the foreign broker or dealer, and who participates in the solicitation of a U.S. institutional investor or a major U.S. institutional investor under paragraph (a)(3) of this section.

(3) The term *foreign broker or dealer* shall mean any non-U.S. resident person (including any U.S. person engaged in business as a broker or dealer entirely outside the United States, except as otherwise permitted by this rule) that is not an office or branch of, or a natural person associated with, a registered broker or dealer, whose securities activities, if conducted in the United States, would be described by

the definition of ''broker'' or ''dealer'' in sections 3(a)(4) or 3(a)(5) of the Act.

(4) The term *major U.S. institutional investor* shall mean a person that is:

(i) A U.S. institutional investor that has, or has under management, total assets in excess of $100 million; provided, however, that for purposes of determining the total assets of an investment company under this rule, the investment company may include the assets of any family of investment companies of which it is a part; or

(ii) An investment adviser registered with the Commission under section 203 of the Investment Advisers Act of 1940 that has total assets under management in excess of $100 million.

(5) The term *registered broker or dealer* shall mean a person that is registered with the Commission under sections 15(b), 15B(a)(2), or 15C(a)(2) of the Act.

(6) The term *United States* shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) The term *U.S. institutional investor* shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940; or

(ii) A bank, savings and loan association, insurance company, business development company, small business investment company, or employee benefit plan defined in Rule 501(a)(1) of Regulation D under the Securities Act of 1933 (17 CFR 230.501(a)(1)); a private business development company defined in Rule 501(a)(2) (17 CFR 230.501(a)(2)); an organization described in section 501(c)(3) of the Internal Revenue Code, as defined in Rule 501(a)(3) (17 CFR 230.501(a)(3)); or a trust defined in Rule 501(a)(7) (17 CFR 230.501(a)(7)).

(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one of a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of other persons, wherever located, related to activities exempted by paragraph (a)(3) of this section.

[54 FR 30031, July 18, 1989]

§ 240.15b1–1 Application for registration of brokers or dealers.

(a) An application for registration of a broker or dealer filed pursuant to section 15(b) shall be filed on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein.

(b) Every application for registration of a broker or dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository operated by the National Association of Securities Dealers, Inc.

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered filed with the Commission for purposes of Section 15(b) of the Act.

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

[19 FR 1041, Feb. 24, 1954. Redesignated at 30 FR 11851, Sept. 16, 1965, and amended at 58 FR 14, Jan. 4, 1993]

§ 240.15b1–2 [Reserved]

§ 240.15b1–3 Registration of successor to registered broker or dealer.

(a) In the event that a broker or dealer succeeds to and continues the business of a broker or dealer registered pursuant to section 15(b) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor broker or dealer will cease to be effective as the registration of the successor broker or dealer 45 days after the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a broker or dealer succeeds to and continues the business of a registered predecessor broker or dealer, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

[58 FR 10, Jan. 4, 1993]

§ 240.15b1–4 Registration of fiduciaries.

The registration of a broker or dealer shall be deemed to be the registration 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. 78*o*, 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 commended 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 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 unincoprorated 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 unincoporated 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 self-regulatory organization pursuant to this section; or (3) an inspection of the member has already been conducted by the Commission pursuant to section 15(b)(2)(C) of the Act.

[47 FR 11269, Mar. 16, 1982, as amended at 52 FR 16838, May 6, 1987; 53 FR 4121, Feb. 12, 1988]

§ 240.15b3–1 Amendments to application.

(a) If the information contained in any application for registration as a broker or dealer, or in any amendment thereto, is or becomes inaccurate for any reason, the broker or dealer shall promptly file with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) an amendment on Form BD correcting such information.

(b) *Temporary filing instructions.* (1) Every registered broker or dealer who is not a member of the National Association of Securities Dealers, Inc. shall file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended), and any subsequent amendments thereto pursuant to paragraph (a) of this section, with the Central Registration Depository during:

(i) The week of January 25, 1993, in the case of a broker-dealer whose Designated Examining Authority (DEA) is the Boston Stock Exchange, the Cincinnati Stock Exchange, the Midwest Stock Exchange, or the Philadelphia Stock Exchange;

(ii) The week of February 1, 1993, in the case of a broker-dealer whose DEA is the Pacific Stock Exchange;

(iii) The week of May 3, 1993, in the case of a broker-dealer whose DEA is the New York Stock Exchange;

(iv) The week of June 1, 1993, in the case of a broker-dealer whose DEA is the American Stock Exchange;

(v) The week of July 6, 1993, in the case of a broker-dealer whose DEA is the Chicago Board Options Exchange and whose SEC registration number is between 8–18117 and 8–34181;

(vi) The week of August 2, 1993, in the case of a broker-dealer whose DEA is the Chicago Board Options Exchange and whose SEC registration number is 8–34182 or above; and

(vii) The week of September 7, 1993, in the case of all other broker-dealers.

(2) Notwithstanding paragraph (b)(1) of this section, if the information contained in any application for registration as a broker or dealer filed by a broker or dealer who is not a member of the National Association of Securities Dealers, Inc. is or becomes inaccurate for any reason prior to the applicable date set forth in paragraph (b)(1) of this section, the broker or dealer shall promptly file as an amendment to its application a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository.

(c) Every amendment filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of sections 15(b), 17, 18, 32(a), and other applicable provisions of the Act.

[58 FR 14, Jan. 4, 1993]

§ 240.15b5–1 Extension of registration for purposes of the Securities Investor Protection Act of 1970 after cancellation or revocation.

Commission revocation or cancellation of the registration of a broker or dealer pursuant to section 15(b) of the Act: (i) shall be effective for all purposes, except as hereinafter provided, on the date of the order of revocation or cancellation or, if such order is stayed, on the date the stay is terminated; and (ii) shall be effective six

months after the date of the order of revocation or cancellation (or, if such order is stayed, the date the stay is terminated) with respect to a broker's or dealer's registration status as a member within the meaning of Section 3(a)(2) of the Securities Investor Protection Act of 1970 for purposes of the application of sections 5, 6, and 7 thereof to customer claims arising prior to the date of the order of revocation or cancellation (or, if such order is stayed, the date the stay is terminated).

[39 FR 37485, Oct. 22, 1974]

§ 240.15b6–1 Withdrawal from registration.

(a) Notice of withdrawal from registration as a broker or dealer pursuant to section 15(b) shall be filed on Form BDW [17 CFR 249.501a] in accordance with the instructions contained therein.

(b) Every notice of withdrawal from registration as a broker or dealer that is filed on or after January 25, 1993, by a broker or dealer who has previously filed an application for registration with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) Except as hereinafter provided, a notice to withdraw from registration filed by a broker or dealer pursuant to section 15(b) shall become effective for all matters (except as provided in paragraph (c) of this section) on the 60th day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15(b) to censure, suspend or revoke the registration of such broker or dealer, or if, prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except as such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) With respect to a broker's or dealer's registration status as a member within the meaning of section 3(a)(2) of the Securities Investor Protection Act of 1970 for purposes of the application of sections 5, 6 and 7 thereof to customer claims arising prior to the effective date of withdrawal pursuant to paragraph (b) of this section, the effective date of a broker's or dealer's withdrawal from registration pursuant to this paragraph (c) shall be six months after the effective date of withdrawal pursuant to paragraph (b) of this section or such shorter period of time as the Commission may determine.

(e) Every notice of withdrawal filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of sections 15(b), 17(a), and other applicable provisions of the Act.

[39 FR 37485, Oct. 22, 1974, as amended at 58 FR 14, Jan. 4, 1993]

§ 240.15b7–1 Compliance with qualification requirements of self-regulatory organizations.

No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities Rulemaking Board (if it is subject to the rules of that organization).

[58 FR 27658, May 11, 1993]

§ 240.15b9–1 Exemption for certain exchange members.

(a) Any broker or dealer required by section 15(b)(8) of the Act to become a member of a registered national securities association shall be exempt from such requirement if it: (1) Is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than $1,000.

(b) The gross income limitation contained in paragraph (a) of this section, shall not apply to income derived from transactions (1) for the dealer's own account with or through another registered broker or dealer or (2) through the Intermarket Trading System.

(c) For purposes of this section, the term *Intermarket Trading System* shall mean the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission pursuant to § 240.11Aa3–2 (Rule 11Aa3–2 under the Act).

(15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))
[48 FR 53691, Nov. 29, 1983]

RULES RELATING TO OVER-THE-COUNTER MARKETS

§ 240.15c1–1 Definitions.

As used in any rule adopted pursuant to section 15(c)(1) of the Act:

(a) The term *customer* shall not include a broker or dealer or a municipal securities dealer; provided, however, that the term ''customer'' shall include a municipal securities dealer (other than a broker or dealer) with respect to transactions in securities other than municipal securities.

(b) The term *the completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer, except as provided in paragraph (b)(2) of this section, the time when such customer pays the broker, dealer or municipal securities dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker, dealer or municipal securities dealer for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker, dealer or municipal securities dealer delivers the security to or into the account of such customer;

(3) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer except as provided in paragraph (b)(4) of this section, if the security is not in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the security is delivered to the broker, dealer or municipal securities dealer, and if the security is in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the broker, dealer or municipal securities dealer transfers the security from the account of such customer;

(4) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer and who delivers such security to such broker, dealer or municipal securities dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker, dealer or municipal securities dealer makes payment to or into the account of such customer.

[41 FR 22825, June 7, 1976]

§ 240.15c1–2 Fraud and misrepresentation.

(a) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act (section 2, 52 Stat. 1075; 15 U.S.C. 78*o*(c)(1), is hereby defined to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any untrue

statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading.

(c) The scope of this section shall not be limited by any specific definitions of the term ''manipulative, deceptive, or other fraudulent device or contrivance'' contained in other rules adopted pursuant to section 15(c)(1) of the act.

(Sec. 2, 52 Stat. 1075; 15 U.S.C. 78*o*)
[13 FR 8205, Dec. 22, 1948]

CROSS REFERENCE: For regulation prohibiting employment of manipulative and deceptive devices as such term is used in section 15 of the Act, by any broker or dealer, see § 240.10b–3.

§ 240.15c1–3 Misrepresentation by brokers, dealers and municipal securities dealers as to registration.

The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any representation by a broker, dealer or municipal securities dealer that the registration of a broker or dealer, pursuant to section 15(b) of the Act, or the registration of a municipal securities dealer pursuant to section 15B(a) of the Act, or the failure of the Commission to deny or revoke such registration, indicates in any way that the Commission has passed upon or approved the financial standing, business, or conduct of such registered broker, dealer or municipal securities dealer or the merits of any security or any transaction or transactions therein.

[41 FR 22825, June 7, 1976]

§ 240.15c1–4 [Reserved]

§ 240.15c1–5 Disclosure of control.

The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security unless such broker, dealer or municipal securities dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written disclosure at or before the completion of the transaction.

[41 FR 22825, June 7, 1976]

§ 240.15c1–6 Disclosure of interest in distribution.

The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any act of any broker who is acting for a customer or for both such customer and some other person, or of any dealer or municipal securities dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker, dealer or municipal securities dealer is participating or is otherwise financially interested unless such broker, dealer or municipal securities dealer, at or before the completion of each such transaction gives or sends to such customer written notification of the existence of such participation or interest.

[41 FR 22826, June 7, 1976]

§ 240.15c1–7 Discretionary accounts.

(a) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or employee is vested with any discretionary power any transactions or purchase or sale which are excessive in

size or frequency in view of the financial resources and character of such account.

(b) The term *manipulative, deceptive, or other fraudulent device or contrivance,* as used in section 15(c)(1) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker, dealer or municipal securities dealer makes a record of such transaction which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place.

[41 FR 22826, June 7, 1976]

§ 240.15c1–8 Sales at the market.

The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any representation made to a customer by a broker, dealer or municipal securities dealer who is participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange that such security is being offered to such customer ''at the market'' or at a price related to the market price unless such broker, dealer or municipal securities dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with him.

[41 FR 22826, June 7, 1976]

§ 240.15c1–9 Use of pro forma balance sheets.

The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

(Sec. 2, 52 Stat. 1075; 15 U.S.C. 78*o*)

[13 FR 8205, Dec. 22, 1948]

§ 240.15c2–1 Hypothecation of customers' securities.

(a) *General provisions.* The term *fraudulent, deceptive, or manipulative act or practice*, as used in section 15(c) (2) of the Act, is hereby defined to include the direct or indirect hypothecation by a broker or dealer, or his arranging for or permitting, directly or indirectly, the continued hypothecation of any securities carried for the account of any customer under circumstances:

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to such broker or dealer; or

(3) That will permit securities carried for the account of customers to be hypothecated, or subjected to any lien or liens or claims or claims of the pledgee or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day, provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subject as promptly as practicable after such reduction occurs, but before

the lapse of one half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker or dealer are payable and, in any event, before such broker or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(b) *Definitions.* For the purposes of this section:

(1) The term *customer* shall not be deemed to include any general or special partner or any director or officer of such broker or dealer, or any participant, as such, in any joint, group or syndicate account with such broker or dealer or with any partner, officer or director thereof;

(2) The term *securities carried for the account of any customer* shall be deemed to mean:

(i) Securities received by or on behalf of such broker or dealer for the account of any customer;

(ii) Securities sold and appropriated by such broker or dealer to a customer, except that if such securities were subject to a lien when appropriated to a customer they shall not be deemed to be ''securities carried for the account of any customer'' pending their release from such lien as promptly as practicable;

(iii) Securities sold, but not appropriated, by such broker or dealer to a customer who has made any payment therefor, to the extent that such broker or dealer owns and has received delivery of securities of like kind, except that if such securities were subject to a lien when such payment was made they shall not be deemed to be ''securities carried for the account of any customer'' pending their release from such lien as promptly as practicable;

(3) *Aggregate indebtedness* shall not be deemed to be reduced by reason of uncollected items. In computing aggregate indebtedness, related guaranteed and guarantor accounts shall be treated as a single account and considered on a consolidated basis, and balances in accounts carrying both long and short positions shall be adjusted by treating the market value of the securities required to cover such short positions as though such market value were a debit; and

(4) In computing the sum of the liens or claims to which securities carried for the account of customers of a broker or dealer are subject, any rehypothecation of such securities by another broker or dealer who is subject to this section or to § 240.8c–1 shall be disregarded.

(c) *Exemption for cash accounts.* The provisions of paragraph (a)(1) of this section shall not apply to any hypothecation of securities carried for the account of a customer in a special cash account within the meaning of 12 CFR 220.4(c): *Provided,* That at or before the completion of the transaction of purchase of such securities for, or of sale of such securities to, such customer, written notice is given or sent to such customer disclosing that such securities are or may be hypothecated under circumstances which will permit the commingling thereof with securities carried for the account of other customers. The term *the completion of the transaction* shall have the meaning given to such term by § 240.15c1–1(b).

(d) *Exemption for clearing house liens.* The provisions of paragraphs (a)(2), (a)(3), and (f) of this section shall not apply to any lien or claim of the clearing corporation, or similar department or association, of a national securities exchange or a registered national securities association, for a loan made and to be repaid on the same calendar day, which is incidental to the clearing of transactions in securities or loans through such corporation, department, or association: *Provided, however,* That for the purpose of paragraph (a)(3) of this section, ''aggregate indebtedness of all customers in respect of securities carried for their accounts'' shall not include indebtedness in respect of any securities subject to any lien or claim exempted by this paragraph.

(e) *Exemption for certain liens on securities of noncustomers.* The provisions of paragraph (a)(2) of this section shall not be deemed to prevent such broker or dealer from permitting securities not carried for the account of a customer to be subjected (1) to a lien for a loan made against securities carried for the account of customers, or (2) to a lien for a loan made and to be repaid

on the same calendar day. For the purpose of this exemption, a loan shall be deemed to be ''made against securities carried for the account of customers'' if only securities carried for the account of customers are used to obtain or to increase such loan or as substitutes for other securities carried for the account of customers.

(f) *Notice and certification requirements.* No person subject to this section shall hypothecate any security carried for the account of a customer unless, at or prior to the time of each such hypothecation, he gives written notice to the pledgee that the security pledged is carried for the account of a customer and that such hypothecation does not contravene any provision of this section, except that in the case of an omnibus account the broker or dealer for whom such account is carried may furnish a signed statement to the person carrying such account that all securities carried therein by such broker or dealer will be securities carried for the account of his customers and that the hypothecation thereof by such broker or dealer will not contravene any provision of this section. The provisions of this paragraph shall not apply to any hypothecation of securities under any lien or claim of a pledgee securing a loan made and to be repaid on the same calendar day.

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by paragraph (a)(1) or (a)(2) of this section, whenever a participating member, broker or dealer hypothecates securities in accordance with such system: *Provided, however,* That (1) any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse or refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure or similar notice, or order or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face affects such securities; (2) such systems shall have safeguards in the handling, transfer and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and (3) the provisions of this paragraph (g) shall not be effective with respect to any particular system unless the agreement required by paragraph (g)(1) of this section and the safeguards and provisions required by paragraph (g)(2) of this section shall have been deemed adequate by the Commission for the protection of investors, and unless any subsequent amendments to such agreement, safeguards or provisions shall have been deemed adequate by the Commission for the protection of investors.

(Secs. 8, 15, 48 Stat. 888, 895, sec. 2, 52 Stat. 1075; 15 U.S.C. 78b. 78*o*)

[13 FR 8205, Dec. 22, 1948, as amended at 31 FR 7741, June 1, 1966; 37 FR 73, Jan. 5, 1972]

CROSS REFERENCE: For interpretative releases applicable to § 240.15c2–1, see Nos. 2690 and 2822 in tabulation, part 241 of this chapter.

§ 240.15c2–3 [Reserved]

§ 240.15c2–4 Transmission or maintenance of payments received in connection with underwritings.

It shall constitute a ''fraudulent, deceptive, or manipulative act or practice'' as used in section 15(c)(2) of the

Act, for any broker, dealer or municipal securities dealer participating in any distribution of securities, other than a firm-commitment underwriting, to accept any part of the sale price of any security being distributed unless:

(a) The money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) If the distribution is being made on an ''all-or-none'' basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (1) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interests therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

[41 FR 22826, June 7, 1976]

§ 240.15c2–5 Disclosure and other requirements when extending or arranging credit in certain transactions.

(a) It shall constitute a ''fraudulent, deceptive, or manipulative act or practice'' as used in section 15(c)(2) of the Act for any broker or dealer to offer or sell any security to, or to attempt to induce the purchase of any security by, any person, in connection with which such broker or dealer directly or indirectly offers to extend any credit to or to arrange any loan for such person, or extends to or participates in arranging any loan for such person, unless such broker or dealer, before any purchase, loan or other related element of the transaction is entered into:

(1) Delivers to such person a written statement setting forth the exact nature and extent of (i) such person's obligations under the particular loan arrangement, including among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended, (ii) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement, (iii) all commissions, discounts, and other remuneration received and to be received in connection with the entire transaction including the loan arrangment, by the broker or dealer, by any person controlling, controlled by, or under common control with the broker or dealer, and by any other person participating in the transaction; *Provided, however,* That the broker or dealer shall be deemed to be in compliance with this paragraph if the customer, before any purchase, loan, or other related element of the transaction is entered into in a manner legally binding upon the customer, receives a statement from the lender, or receives a prospectus or offering circular from the broker or dealer, which statement, prospectus or offering circular contains the information required by this paragraph; and

(2) Obtains from such person information concerning his financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person, and retains in his files a written statement setting forth the basis upon which the broker or dealer made such determination; *Provided, however,* That the written statement referred to in this paragraph must be made available to the customer on request.

(b) This section shall not apply to any credit extended or any loan arranged by any broker or dealer subject to the provisions of Regulation T (12 CFR part 220) if such credit is extended or such loan is arranged, in compliance with the requirements of such regulation, only for the purpose of purchasing or carrying the security offered or sold: *Provided, however,* That notwithstanding this paragraph, the provisions of paragraph (a) shall apply in full force with respect to any transaction involving the extension of or arrangement for credit by a broker or dealer (i) in a special insurance premium funding account within the meaning of section 4(k) of Regulation T (12 CFR 220.4(k))

or (ii) in compliance with the terms of § 240.3a12–5 of this chapter.

(c) This section shall not apply to any offer to extend credit or arrange any loan, or to any credit extended or loan arranged, in connection with any offer or sale, or attempt to induce the purchase, of any municipal security.

(Sec. 3(a)(12), 48 Stat. 882, as amended, 84 Stat. 718, 1435, 1499 (15 U.S.C. 78c(12)); sec. 7(c), 48 Stat. 886, as amended, 82 Stat. 452 (15 U.S.C. 78g(c)); sec. 11(d)(1), 48 Stat. 891 as amended, 68 Stat. 686 (15 U.S.C. 78k(d)(1)); sec. 15(c), 48 Stat. 895, as amended, 52 Stat. 1075, 84 Stat. 1653 (15 U.S.C. 78*o*(c)); sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 704, 1379 (15 U.S.C. 78w(a))

[40 FR 6646, Feb. 13, 1975, as amended at 41 FR 22826, June 7, 1976]

§ 240.15c2–6 [Reserved]

§ 240.15c2–7 Identification of quotations.

(a) It shall constitute an attempt to induce the purchase or sale of a security by making a ''fictitious quotation'' within the meaning of section 15(c)(2) of the Act, for any broker or dealer to furnish or submit, directly or indirectly, any quotation for a security (other than a municipal security) to an inter-dealer quotation system unless:

(1) The inter-dealer-quotation-system is informed, if such is the case, that the quotation is furnished or submitted;

(i) By a correspondent broker or dealer for the account or in behalf of another broker or dealer, and if so, the identity of such other broker or dealer; and/or

(ii) In furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) between or among brokers or dealers, and if so, the identity of each broker or dealer participating in any such arrangement or arrangements: *Provided, however,* That the provisions of this subparagraph shall not apply if only one of the brokers or dealers participating in any such arrangment or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation-system.

(2) The inter-dealer-quotation-system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories (paragraph (a)(1)(i) and/or (ii) of this section) in furtherance of which the quotation is submitted, and the identities of all other brokers and dealers referred to in paragraph (a)(1) of this section where such information is supplied to the inter-dealer-quotation-system under the provisions of paragraph (a)(1) of this section.

(b) It shall constitute an attempt to induce the purchase or sale of a security by making a ''fictitious quotation,'' within the meaning of section 15(c)(2) of the Act, for a broker or dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more brokers or dealers furnish or submit quotations with respect to a particular security unless such broker or dealer informs all brokers or dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangments, and the identity of the parties thereto.

(c) For purposes of this section:

(1) The term *inter-dealer-quotation-system* shall mean any system of general circulation to brokers and dealers which regularly disseminates quotations of identified brokers or dealers but shall not include a quotation sheet prepared and distributed by a broker or dealer in the regular course of his business and containing only quotations of such broker or dealer.

(2) The term *quotation* shall mean any bid or offer, or any indication of interest (such as OW or BW) in any bid or offer.

(3) The term *correspondent* shall mean a broker or dealer who has a direct line of communication to another broker or dealer located in a different city or geographic area.

(Sec. 15, 48 Stat. 895, as amended; 15 U.S.C. 78o)
[29 FR 11530, Aug. 12, 1964, as amended at 41 FR 22826, June 7, 1976]

§ 240.15c2–8 Delivery of prospectus.

(a) It shall constitute a deceptive act or practice, as those terms are used in section 15(c)(2) of the Act, for a broker or dealer to participate in a distribution of securities with respect to which a registration statement has been filed under the Securities Act of 1933 unless he complies with the requirements set forth in paragraphs (b) through (g) of this section. For the purposes of this section, a broker or dealer participating in the distribution shall mean any underwriter and any member or proposed member of the selling group.

(b) In connection with an issue of securities, the issuer of which has not previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, unless such issuer has been exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act, such broker or dealer shall deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation.

(c) Such broker or dealer shall take reasonable steps to furnish to any person who makes written request for a preliminary prospectus between the filing date and a reasonable time prior to the effective date of the registration statement to which such prospectus relates, a copy of the latest preliminary prospectus on file with the Commission. Reasonable steps shall include receiving an undertaking by the managing underwriter or underwriters to send such copy to the address given in the requests.

(d) Such broker or dealer shall take reasonable steps to comply promptly with the written request of any person for a copy of the final prospectus relating to such securities during the period between the effective date of the registration statement and the later of either the termination of such distribution, or the expiration of the applicable 40- or 90-day period under section 4(3) of the Securities Act of 1933. Reasonable steps shall include receiving an undertaking by the managing underwriter or underwriters to send such copy to the address given in the requests. (The 40-day and 90-day periods referred to above shall be deemed to apply for purposes of this rule irrespective of the provisions of paragraphs (b) and (d) of § 230.174 of this chapter).

(e) Such broker or dealer shall take reasonable steps (1) to make available a copy of the preliminary prospectus relating to such securities to each of his associated persons who is expected, prior to the effective date, to solicit customers' order for such securities before the making of any such solicitation by such associated persons and (2) to make available to each such associated person a copy of any amended preliminary prospectus promptly after the filing thereof.

(f) Such broker or dealer shall take reasonable steps to make available a copy of the final prospectus relating to such securities to each of his associated persons who is expected, after the effective date, to solicit customers orders for such securities prior to the making of any such solicitation by such associated persons, unless a preliminary prospectus which is substantially the same as the final prospectus except for matters relating to the price of the stocks, has been so made available.

(g) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see to it that all other brokers or dealers participating in such distribution are promptly furnished with sufficient copies, as requested by them, of each preliminary prospectus, each amended preliminary prospectus and the final prospectus to enable them to comply with paragraphs (b), (c), (d), and (e) of this section.

(h) If the broker or dealer is a managing underwriter of such distribution, he shall take reasonable steps to see that any broker or dealer participating in the distribution or trading in the registered security is furnished reasonable quantities of the final prospectus relating to such securities, as requested by him, in order to enable him to comply

with the prospectus delivery requirements of section 5(b) (1) and (2) of the Securities Act of 1933.

(i) This section shall not require the furnishing of prospectuses in any state where such furnishing would be unlawful under the laws of such state: *Provided, however,* That this provision is not to be construed to relieve a broker or dealer from complying with the requirements of section 5(b)(1) and (2) of the Securities Act of 1933.

(j) For purposes of this section, the term *preliminary prospectus* shall include the term *prospectus subject to completion* as used in 17 CFR 230.434(a), and the term *final prospectus* shall include the term *Section 10(a) prospectus* as used in 17 CFR 230.434(a).

[35 FR 18457, Dec. 4, 1970, as amended at 47 FR 11470, Mar. 16, 1982; 53 FR 11845, Apr. 11, 1988; 60 FR 26622, May 17, 1995]

§ 240.15c2–11 Initiation or resumption of quotations without specific information.

PRELIMINARY NOTE:

Brokers and dealers may wish to refer to Securities Exchange Act Release No. 29094 (April 17, 1991), for a discussion of procedures for gathering and reviewing the information required by this rule and the requirement that a broker or dealer have a reasonable basis for believing that the information is accurate and obtained from reliable sources.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless such broker or dealer has in its records the documents and information required by this paragraph (for purposes of this section, ''paragraph (a) information''), and, based upon a review of the paragraph (a) information together with any other documents and information required by paragraph (b) of this section, has a reasonable basis under the circumstances for believing that the paragraph (a) information is accurate in all material respects, and that the sources of the paragraph (a) information are reliable. The information required pursuant to this paragraph is:

(1) A copy of the prospectus specified by section 10(a) of the Securities Act of 1933 for an issuer that has filed a registration statement under the Securities Act of 1933, other than a registration statement on Form F–6, which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided* That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted; or

(2) A copy of the offering circular provided for under Regulation A under the Securities Act of 1933 for an issuer that has filed a notification under Regulation A and was authorized to commence the offering less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium, *Provided* That the offering circular provided for under Regulation A has not thereafter become the subject of a suspension order which is still in effect when the quotation is published or submitted; or

(3) A copy of the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act or a copy of the annual statement referred to in section 12(g)(2)(G)(i) of the Act, in the case of an issuer required to file reports pursuant to section 13 or 15(d) of the Act or an issuer of a security covered by section 12(g)(2)(B) or (G) of the Act, together with any quarterly and current reports that have been filed under the provisions of the Act by the issuer after such annual report or annual statement; *Provided, however,* That until such issuer has filed its first annual report pursuant to section 13 or 15(d) of the Act or annual statement referred to in section 12(g)(2)(G)(i) of the Act, the broker or dealer has in its records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933 included in a registration statement filed by the issuer under the Securities Act of 1933, other than a registration statement on Form F–6, that became effective within the prior 16 months, or a copy of any registration statement filed by the issuer under section 12 of the Act that became effective

within the prior 16 months, together with any quarterly and current reports filed thereafter under section 13 or 15(d) of the Act; and *Provided further*, That the broker or dealer has a reasonable basis under the circumstances for believing that the issuer is current in filing annual, quarterly, and current reports filed pursuant to section 13 or 15(d) of the Act, or, in the case of an insurance company exempted from section 12(g) of the Act by reason of section 12(g)(2)(G) thereof, the annual statement referred to in section 12(g)(2)(G)(i) of the Act; or

(4) The information furnished to the Commission pursuant to § 240.12g3–2(b) since the beginning of the issuer's last fiscal year, in the case of an issuer exempt from section 12(g) of the Act by reason of compliance with the provisions of § 240.12g3–2(b), which information the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer; or

(5) The following information, which shall be reasonably current in relation to the day the quotation is submitted and which the broker or dealer shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer:

(i) The exact name of the issuer and its predecessor (if any);

(ii) The address of its principal executive offices;

(iii) The state of incorporation, if it is a corporation;

(iv) The exact title and class of the security;

(v) The par or stated value of the security;

(vi) The number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year;

(vii) The name and address of the transfer agent;

(viii) The nature of the issuer's business;

(ix) The nature of products or services offered;

(x) The nature and extent of the issuer's facilities;

(xi) The name of the chief executive officer and members of the board of directors;

(xii) The issuer's most recent balance sheet and profit and loss and retained earnings statements;

(xiii) Similar financial information for such part of the 2 preceding fiscal years as the issuer or its predecessor has been in existence;

(xiv) Whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer;

(xv) Whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer; and

(xvi) Whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person.

If such information is made available to others upon request pursuant to this paragraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is accurate, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable. This paragraph (a)(5) shall not apply to any security of an issuer included in paragraph (a)(3) of this section unless a report or statement of such issuer described in paragraph (a)(3) of this section is not reasonably available to the broker or dealer. A report or statement of an issuer described in paragraph (a)(3) of this section shall be ''reasonably available'' when such report or statement is filed with the Commission.

(b) With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation shall have in its records the following documents and information:

(1) A record of the circumstances involved in the submission of publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transactions provided to the broker or dealer by such person or persons;

(2) A copy of any trading suspension order issued by the Commission pursuant to section 12(k) of the Act respecting any securities of the issuer or its predecessor (if any) during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order; and

(3) A copy or a written record of any other material information (including adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of the quotation.

(c) The broker or dealer shall preserve the documents and information required under paragraphs (a) and (b) of this section for a period of not less than three years, the first two years in an easily accessible place.

(d)(1) For any security of an issuer included in paragraph (a)(5) of this section, the broker or dealer submitting the quotation shall furnish to the interdealer quotation system (as defined in paragraph (e)(2) of this section), in such form as such system shall prescribe, at least 3 business days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain pursuant to said paragraph (a)(5) of this section.

(2) For any security of an issuer included in paragraph (a)(3) of this section,

(i) A broker-dealer shall be in compliance with the requirement to obtain current reports filed by the issuer if the broker-dealer obtains all current reports filed with the Commission by the issuer as of a date up to five business days in advance of the earlier of the date of submission of the quotation to the quotation medium and the date of submission of the paragraph (a) information pursuant to Schedule H of the By-Laws of the National Association of Securities Dealers, Inc.; and

(ii) A broker-dealer shall be in compliance with the requirement to obtain the annual, quarterly, and current reports filed by the issuer, if the broker-dealer has made arrangements to receive all such reports when filed by the issuer and it has regularly received reports from the issuer on a timely basis, unless the broker-dealer has a reasonable basis under the circumstances for believing that the issuer has failed to file a required report or has filed a report but has not sent it to the broker-dealer.

(e) For purposes of this section:

(1) *Quotation medium* shall mean any ''interdealer quotation system'' or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(2) *Interdealer quotation system* shall mean any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

(3) Except as otherwise specified in this rule, *quotation* shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bids or offers from others for a security, or any indication by a broker or dealer that he wishes to advertise his general interest in buying or selling a particular security.

(4) *Issuer*, in the case of quotations for American Depositary Receipts, shall mean the issuer of the deposited shares represented by such American Depositary Receipts.

(f) The provisions of this section shall not apply to:

(1) The publication or submission of a quotation respecting a security admitted to trading on a national securities

exchange and which is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.

(2) The publication or submission by a broker or dealer, solely on behalf of a customer (other than a person acting as or for a dealer), of a quotation that represents the customer's indication of interest and does not involve the solicitation of the customer's interest; *Provided, however,* That this paragraph (f)(2) shall not apply to a quotation consisting of both a bid and an offer, each of which is at a specified price, unless the quotation medium specifically identifies the quotation as representing such an unsolicited customer interest.

(3)(i) The publication or submission, in an interdealer quotation system that specifically identifies as such unsolicited customer indications of interest of the kind described in paragraph (f)(2) of this section, of a quotation respecting a security which has been the subject of quotations (exclusive of any identified customer interests) in such a system on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without a quotation; or

(ii) The publication or submission, in an interdealer quotation system that does not so identify any such unsolicited customer indications of interest, of a quotation respecting a security which has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation;

(iii) A dealer acting in the capacity of market maker, as defined in section 3(a)(38) of the Act, that has published or submitted a quotation respecting a security in an interdealer quotation system and such quotation has qualified for an exception provided in this paragraph (f)(3), may continue to publish or submit quotations for such security in the interdealer quotation system without compliance with this section unless and until such dealer ceases to submit or publish a quotation or ceases to act in the capacity of market maker respecting such security.

(4) The publication or submission of a quotation respecting a municipal security.

(5) The publication or submission of a quotation respecting a security that is authorized for quotation in the NASDAQ system (as defined in § 240.11Ac1–2(a)(3) of this chapter), and such authorization is not suspended, terminated, or prohibited.

(g) The requirement in paragraph (a)(5) of this section that the information with respect to the issuer be ''reasonably current'' will be presumed to be satisfied, unless the broker or dealer has information to the contrary, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (a)(5) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(h) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

[36 FR 18641, Sept. 18, 1971, as amended at 41 FR 22826, June 7, 1976; 49 FR 45123, Nov. 15, 1984; 56 FR 19156, Apr. 25, 1991]

§ 240.15c2–12 Municipal securities disclosure.

PRELIMINARY NOTE: For a discussion of disclosure obligations relating to municipal securities, issuers, brokers, dealers, and municipal securities dealers should refer to Securities Act Release No. 7049, Securities Exchange Act Release No. 33741, FR–42 (March 9, 1994). For a discussion of the obligations of underwriters to have a reasonable basis for recommending municipal securities, brokers, dealers, and municipal securities dealers should refer to Securities Exchange Act Release No. 26100 (Sept. 22, 1988) and Securities Exchange Act Release No. 26985 (June 28, 1989).

(a) *General*. As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer (a ''Participating Underwriter'' when used in connection with an Offering) to act as an underwriter in a primary offering of municipal securities with an aggregate principal amount of $1,000,000 or more (an ''Offering'') unless the Participating Underwriter complies with the requirements of this section or is exempted from the provisions of this section.

(b) *Requirements*. (1) Prior to the time the Participating Underwriter bids for, purchases, offers, or sells municipal securities in an Offering, the Participating Underwriter shall obtain and review an official statement that an issuer of such securities deems final as of its date, except for the omission of no more than the following information: The offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, any other terms or provisions required by an issuer of such securities to be specified in a competitive bid, ratings, other terms of the securities depending on such matters, and the identity of the underwriter(s).

(2) Except in competitively bid offerings, from the time the Participating Underwriter has reached an understanding with an issuer of municipal securities that it will become a Participating Underwriter in an Offering until a final official statement is available, the Participating Underwriter shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the most recent preliminary official statement, if any.

(3) The Participating Underwriter shall contract with an issuer of municipal securities or its designated agent to receive, within seven business days after any final agreement to purchase, offer, or sell the municipal securities in an Offering and in sufficient time to accompany any confirmation that requests payment from any customer, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of this rule and the rules of the Municipal Securities Rulemaking Board.

(4) From the time the final official statement becomes available until the earlier of—

(i) Ninety days from the end of the underwriting period or

(ii) The time when the official statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than twenty-five days following the end of the underwriting period, the Participating Underwriter in an Offering shall send no later than the next business day, by first-class mail or other equally prompt means, to any potential customer, on request, a single copy of the final official statement.

(5)(i) A Participating Underwriter shall not purchase or sell municipal securities in connection with an Offering unless the Participating Underwriter has reasonably determined that an issuer of municipal securities, or an obligated person for whom financial or operating data is presented in the final official statement has undertaken, either individually or in combination with other issuers of such municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such securities, to provide, either directly or indirectly through an indenture trustee or a designated agent:

(A) To each nationally recognized municipal securities information repository and to the appropriate state information depository, if any, annual financial information for each obligated person for whom financial information or operating data is presented

in the final official statement, or, for each obligated person meeting the objective criteria specified in the undertaking and used to select the obligated persons for whom financial information or operating data is presented in the final official statement, except that, in the case of pooled obligations, the undertaking shall specify such objective criteria;

(B) If not submitted as part of the annual financial information, then when and if available, to each nationally recognized municipal securities information repository and to the appropriate state information depository, audited financial statements for each obligated person covered by paragraph (b)(5)(i)(A) of this section;

(C) In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice of any of the following events with respect to the securities being offered in the Offering, if material:

(*1*) Principal and interest payment delinquencies;

(*2*) Non-payment related defaults;

(*3*) Unscheduled draws on debt service reserves reflecting financial difficulties;

(*4*) Unscheduled draws on credit enhancements reflecting financial difficulties;

(*5*) Substitution of credit or liquidity providers, or their failure to perform;

(*6*) Adverse tax opinions or events affecting the tax-exempt status of the security;

(*7*) Modifications to rights of security holders;

(*8*) Bond calls;

(*9*) Defeasances;

(*10*) Release, substitution, or sale of property securing repayment of the securities;

(*11*) Rating changes; and

(D) In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice of a failure of any person specified in paragraph (b)(5)(i)(A) of this section to provide required annual financial information, on or before the date specified in the written agreement or contract.

(ii) The written agreement or contract for the benefit of holders of such securities also shall identify each person for whom annual financial information and notices of material events will be provided, either by name or by the objective criteria used to select such persons, and, for each such person shall:

(A) Specify, in reasonable detail, the type of financial information and operating data to be provided as part of annual financial information;

(B) Specify, in reasonable detail, the accounting principles pursuant to which financial statements will be prepared, and whether the financial statements will be audited; and

(C) Specify the date on which the annual financial information for the preceding fiscal year will be provided, and to whom it will be provided.

(iii) Such written agreement or contract for the benefit of holders of such securities also may provide that the continuing obligation to provide annual financial information and notices of events may be terminated with respect to any obligated person, if and when such obligated person no longer remains an obligated person with respect to such municipal securities.

(c) *Recommendations.* As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any broker, dealer, or municipal securities dealer to recommend the purchase or sale of a municipal security unless such broker, dealer, or municipal securities dealer has procedures in place that provide reasonable assurance that it will receive prompt notice of any event disclosed pursuant to paragraph (b)(5)(i)(C), paragraph (b)(5)(i)(D), and paragraph (d)(2)(ii)(B) of this section with respect to that security.

(d) *Exemptions.* (1) This section shall not apply to a primary offering of municipal securities in authorized denominations of $100,000 or more, if such securities:

(i) Are sold to no more than thirty-five persons each of whom the Participating Underwriter reasonably believes:

(A) Has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the prospective investment; and

(B) Is not purchasing for more than one account or with a view to distributing the securities; or

(ii) Have a maturity of nine months or less; or

(iii) At the option of the holder thereof may be tendered to an issuer of such securities or its designated agent for redemption or purchase at par value or more at least as frequently as every nine months until maturity, earlier redemption, or purchase by an issuer or its designated agent.

(2) Paragraph (b)(5) of this section shall not apply to an Offering of municipal securities if, at such time as an issuer of such municipal securities delivers the securities to the Participating Underwriters:

(i) No obligated person will be an obligated person with respect to more than $10,000,000 in aggregate amount of outstanding municipal securities, including the offered securities and excluding municipal securities that were offered in a transaction exempt from this section pursuant to paragraph (d)(1) of this section;

(ii) An issuer of municipal securities or obligated person has undertaken, either individually or in combination with other issuers of municipal securities or obligated persons, in a written agreement or contract for the benefit of holders of such municipal securities, to provide:

(A) Upon request to any person or at least annually to the appropriate state information depository, if any, financial information or operating data regarding each obligated person for which financial information or operating data is presented in the final official statement, as specified in the undertaking, which financial information and operating data shall include, at a minimum, that financial information and operating data which is customarily prepared by such obligated person and is publicly available; and

(B) In a timely manner, to each nationally recognized municipal securities information repository or to the Municipal Securities Rulemaking Board, and to the appropriate state information depository, if any, notice of events specified in paragraph (b)(5)(i)(C) of this section with respect to the securities that are the subject of the Offering, if material; and

(iii) The final official statement identifies by name, address, and telephone number the persons from which the foregoing information, data, and notices can be obtained.

(3) The provisions of paragraph (b)(5) of this section, other than paragraph (b)(5)(i)(C) of this section, shall not apply to an Offering of municipal securities, if such municipal securities have a stated maturity of 18 months or less.

(4) The provisions of paragraph (c) of this section shall not apply to municipal securities:

(i) Sold in an Offering to which paragraph (b)(5) of this section did not apply, other than Offerings exempt under paragraph (d)(2)(ii) of this section; or

(ii) Sold in an Offering exempt from this section under paragraph (d)(1) of this section.

(e) *Exemptive authority*. The Commission, upon written request, or upon its own motion, may exempt any broker, dealer, or municipal securities dealer, whether acting in the capacity of a Participating Underwriter or otherwise, that is a participant in a transaction or class of transactions from any requirement of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such an exemption is consistent with the public interest and the protection of investors.

(f) *Definitions*. For the purposes of this rule—(1) The term *authorized denominations of $100,000 or more* means municipal securities with a principal amount of $100,000 or more and with restrictions that prevent the sale or transfer of such securities in principal amounts of less than $100,000 other than through a primary offering; except that, for municipal securities with an original issue discount of 10 percent or more, the term means municipal securities with a minimum purchase price of $100,000 or more and with restrictions that prevent the sale or transfer of such securities, in principal amounts that are less than the original

principal amount at the time of the primary offering, other than through a primary offering.

(2) The term *end of the underwriting period* means the later of such time as

(i) The issuer of municipal securities delivers the securities to the Participating Underwriters or

(ii) The Participating Underwriter does not retain, directly or as a member or an underwriting syndicate, an unsold balance of the securities for sale to the public.

(3) The term *final official statement* means a document or set of documents prepared by an issuer of municipal securities or its representatives that is complete as of the date delivered to the Participating Underwriter(s) and that sets forth information concerning the terms of the proposed issue of securities; information, including financial information or operating data, concerning such issuers of municipal securities and those other entities, enterprises, funds, accounts, and other persons material to an evaluation of the Offering; and a description of the undertakings to be provided pursuant to paragraph (b)(5)(i), paragraph (d)(2)(ii), and paragraph (d)(2)(iii) of this section, if applicable, and of any instances in the previous five years in which each person specified pursuant to paragraph (b)(5)(ii) of this section failed to comply, in all material respects, with any previous undertakings in a written contract or agreement specified in paragraph (b)(5)(i) of this section. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents previously provided to each nationally recognized municipal securities information repository, and to a state information depository, if any, or filed with the Commission. If the document is a final official statement, it must be available from the Municipal Securities Rulemaking Board.

(4) The term *issuer of municipal securities* means the governmental issuer specified in section 3(a)(29) of the Act and the issuer of any separate security, including a sepatate security as defined in rule 3b–5(a) under the Act.

(5) The term *potential customer* means (i) Any person contacted by the Participating Underwriter concerning the purchase of municipal securities that are intended to be offered or have been sold in an offering, (ii) Any person who has expressed an interest to the Participating Underwriter in possibly purchasing such municipal securities, and (iii) Any person who has a customer account with the Participating Underwriter.

(6) The term *preliminary official statement* means an official statement prepared by or for an issuer of municipal securities for dissemination to potential customers prior to the availability of the final official statement.

(7) The term *primary offering* means an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities, including any remarketing of municipal securities.

(i) That is accompanied by a change in the authorized denomination of such securities from $100,000 or more to less than $100,000, or

(ii) That is accompanied by a change in the period during which such securities may be tendered to an issuer of such securities or its designated agent for redemption or purchase from a period of nine months or less to a period of more than nine months.

(8) The term *underwriter* means any person who has purchased from an issuer of municipal securities with a view to, or offers or sells for an issuer of municipal securities in connection with, the offering of any municipal security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; except, that such term shall not include a person whose interest is limited to a commission, concession, or allowance from an underwriter, broker, dealer, or municipal securities dealer not in excess of the usual and customary distributors' or sellers' commission, concession, or allowance.

(9) The term *annual financial information* means financial information or operating data, provided at least annually, of the type included in the final official statement with respect to an obligated person, or in the case where no financial information or operating

data was provided in the final official statement with respect to such obligated person, of the type included in the final official statement with respect to those obligated persons that meet the objective criteria applied to select the persons for which financial information or operating data will be provided on an annual basis. Financial information or operating data may be set forth in the document or set of documents, or may be included by specific reference to documents previously provided to each nationally recognized municipal securities information repository, and to a state information depository, if any, or filed with the Commission. If the document is a final official statement, it must be available from the Municipal Securities Rulemaking Board.

(10) The term *obligated person* means any person, including an issuer of municipal securities, who is either generally or through an enterprise, fund, or account of such person committed by contract or other arrangement to support payment of all, or part of the obligations on the municipal securities to be sold in the Offering (other than providers of municipal bond insurance, letters of credit, or other liquidity facilities).

(g) *Transitional provision*. If on July 28, 1989, a Participating Underwriter was contractually committed to act as underwriter in an Offering of municipal securities originally issued before July 29, 1989, the requirements of paragraphs (b)(3) and (b)(4) shall not apply to the Participating Underwriter in connection with such an Offering. Paragraph (b)(5) of this section shall not apply to a Participating Underwriter that has contractually committed to act as an underwriter in an Offering of municipal securities before July 3, 1995; *except that* paragraph (b)(5)(i)(A) and paragraph (b)(5)(i)(B) shall not apply with respect to fiscal years ending prior to January 1, 1996. Paragraph (c) shall become effective on January 1, 1996. Paragraph (d)(2)(ii) and paragraph (d)(2)(iii) of this section shall not apply to an Offering of municipal securities commencing prior to January 1, 1996.

[54 FR 28813, July 10, 1989, as amended at 59 FR 59609, Nov. 17, 1994]

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

(a) Every broker or dealer 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. Each broker or dealer 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 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.

RATIO REQUIREMENTS

Aggregate Indebtedness Standard

(1)(i) No broker or dealer, other than one that elects the provisions of paragraph (a)(1)(ii) of this section, shall permit its aggregate indebtedness to all other persons to exceed 1500 percent of its net capital (or 800 percent of its net capital for 12 months after commencing business as a broker or dealer).

Alternative Standard

(ii) A broker or dealer may elect not to be subject to the Aggregate Indebtedness Standard of paragraph (a)(1)(i) of this section. That broker or dealer shall not permit its net capital to be less than the greater of $250,000 or 2 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, §240.15c3–3a). Such broker or dealer shall notify its Examining Authority, in writing, of its election to operate under this paragraph (a)(1)(ii). Once a broker or dealer has notified its Examining Authority, it shall continue to operate under this paragraph unless a change is approved upon application to the Commission. A broker or dealer that elects this standard and is not exempt from Rule 15c3–3 shall:

(A) Make the computation required by § 240.15c3–3(e) and set forth in Exhibit A, § 240.15c3–3a, on a weekly basis and, in lieu of the 1 percent reduction of certain debit items required by Note E (3) in the computation of its Exhibit A requirement, reduce aggregate debit items in such computation by 3 percent;

(B) Include in Items 7 and 8 of Exhibit A, § 240.15c3–3a, the market value of items specified therein more than 7 business days old;

(C) Exclude credit balances in accounts representing amounts payable for securities not yet received from the issuer or its agent which securities are specified in paragraphs (c)(2)(vi) (A) and (E) of this section and any related debit items from the Exhibit A requirement for 3 business days; and

(D) Deduct from net worth in computing net capital 1 percent of the contract value of all failed to deliver contracts or securities borrowed that were allocated to failed to receive contracts of the same issue and which thereby were excluded from Items 11 or 12 of Exhibit A, § 240.15c3–3a.

Futures Commission Merchants

(iii) No broker or dealer registered as a futures commission merchant shall permit its net capital to be less than the greater of its requirement under paragraph (a)(1) (i) or (ii) of this section, or 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the customer's account).

MINIMUM REQUIREMENTS

See Appendix E (§ 240.15c3–1E) for temporary minimum requirements.

Brokers or Dealers That Carry Customer Accounts

(2)(i) A broker or dealer (other than one described in paragraphs (a)(2)(ii) or (a)(8) of this section) shall maintain net capital of not less than $250,000 if it carries customer or broker or dealer accounts and receives or holds funds or securities for those persons. A broker or dealer shall be deemed to receive funds, or to carry customer or broker or dealer accounts and to receive funds from those persons if, in connection with its activities as a broker or dealer, it receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker or dealer carrying the account of a customer, escrow agent, issuer, underwriter, sponsor, or other distributor of securities. A broker or dealer shall be deemed to hold securities for, or to carry customer or broker or dealer accounts, and hold securities of, those persons if it does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer. A broker or dealer, without complying with this paragraph (a)(2)(i), may receive securities only if its activities conform with the provisions of paragraphs (a)(2) (iv) or (v) of this section, and may receive funds only in connection with the activities described in paragraph (a)(2)(v) of this section.

(ii) A broker or dealer that is exempt from the provisions of § 240.15c3–3 pursuant to paragraph (k)(2)(i) thereof shall maintain net capital of not less than $100,000.

Dealers

(iii) A dealer shall maintain net capital of not less than $100,000. For the purposes of this section, the term ''dealer'' includes:

(A) Any broker or dealer that endorses or writes options otherwise than on a registered national securities exchange or a facility of a registered national securities association; and

(B) Any broker or dealer that effects more than ten transactions in any one calendar year for its own investment account. This section shall not apply to those persons engaging in activities described in paragraphs (a)(2)(v), (a)(2)(vi) or (a)(8) of this section, or to those persons whose underwriting activities are limited solely to acting as underwriters in best efforts or all or none underwritings in conformity with paragraph (b)(2) of § 240.15c2–4, so long as those persons engage in no other dealer activities.

Brokers or Dealers That Introduce Customer Accounts And Receive Securities

(iv) A broker or dealer shall maintain net capital of not less than $50,000 if it introduces transactions and accounts of customers or other brokers or dealers to another registered broker or dealer that carries such accounts on a fully disclosed basis, and if the broker or dealer receives but does not hold customer or other broker or dealer securities. A broker or dealer operating under this paragraph (a)(2)(iv) of this section may participate in a firm commitment underwriting without being subject to the provisions of paragraph (a)(2)(iii) of this section, but may not enter into a commitment for the purchase of shares related to that underwriting.

Brokers or Dealers Engaged in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(v) A broker or dealer shall maintain net capital of not less than $25,000 if it acts as a broker or dealer with respect to the purchase, sale and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account directly from or to the issuer on other than a subscription way basis. A broker or dealer operating under this section may sell securities for the account of a customer to obtain funds for the immediate reinvestment in redeemable securities of registered investment companies. A broker or dealer operating under this paragraph (a)(2)(v) must promptly transmit all funds and promptly deliver all securities received in connection with its activities as a broker or dealer, and may not otherwise hold funds or securities for, or owe money or securities to, customers.

Other Brokers or Dealers

(vi) A broker or dealer that does not receive, directly or indirectly, or hold funds or securities for, or owe funds or securities to, customers and does not carry accounts of, or for, customers and does not engage in any of the activities described in paragraphs (a)(2)(i) through (v) of this section shall maintain net capital of not less than $5,000. A broker or dealer operating under this paragraph may engage in the following dealer activities without being subject to the requirements of paragraph (a)(2)(iii) of this section:

(A) In the case of a buy order, prior to executing such customer's order, it purchases as principal the same number of shares or purchases shares to accumulate the number of shares necessary to complete the order, which shall be cleared through another registered broker or dealer or

(B) In the case of a sell order, prior to executing such customer's order, it sells as principal the same number of shares or a portion thereof, which shall be cleared through another registered broker or dealer.

(3) [Reserved]

Capital Requirements for Market Makers

(4) A broker or dealer engaged in activities as a market maker as defined in paragraph (c)(8) of this section shall maintain net capital in an amount not less than $2,500 for each security in which it makes a market (unless a security in which it makes a market has a market value of $5 or less, in which event the amount of net capital shall be not less than $1,000 for each such security) based on the average number of such markets made by such broker or dealer during the 30 days immediately preceding the computation date. Under no circumstances shall it have net capital less than that required by the provisions of paragraph (a) of this section, or be required to maintain net capital of more than $1,000,000 unless required by paragraph (a) of this section.

(5) [Reserved]

Market Makers, Specialists and Certain Other Dealers

(6)(i) A dealer who meets the conditions of paragraph (a)(6)(ii) of this section may elect to operate under this paragraph (a)(6) and thereby not apply, except to the extent required by this paragraph (a)(6), the provisions of paragraphs (c)(2)(vi) or Appendix A (§ 240.15c3–1a) of this section to market maker and specialist transactions and, in lieu thereof, apply thereto the provisions of paragraph (a)(6)(iii) of this section.

(ii) This paragraph (a)(6) shall be available to a dealer who does not effect transactions with other than brokers or dealers, who does not carry customer accounts, who does not effect transactions in options not listed on a registered national securities exchange or facility of a registered national securities association, and whose market maker or specialist transactions are effected through and carried in a market maker or specialist account cleared by another broker or dealer as provided in paragraph (a)(6)(iv) of this section.

(iii) A dealer who elects to operate pursuant to this paragraph (a)(6) shall at all times maintain a liquidating equity in respect of securities positions in his market maker or specialist account at least equal to:

(A) An amount equal to 25 percent (5 percent in the case of exempted securities) of the market value of the long positions and 30 percent of the market value of the short positions; provided, however, in the case of long or short positions in options and long or short positions in securities other than options which relate to a bona fide hedged position as defined in paragraph (c)(2)(x)(C) of this section, such amount shall equal the deductions in respect of such positions specified by paragraph (c)(2)(x)(A) (*1*) through (*9*) of this section.

(B) Such lesser requirement as may be approved by the Commission under specified terms and conditions upon written application of the dealer and the carrying broker or dealer.

(C) For purposes of this paragraph (a)(6)(iii), equity in such specialist or market maker account shall be computed by (*1*) marking all securities positions long or short in the account to their respective current market values, (*2*) adding (deducting in the case of a debit balance) the credit balance carried in such specialist or market maker account, and (*3*) adding (deducting in the case of short positions) the market value of positions long in such account.

(iv) The dealer shall obtain from the broker or dealer carrying the market maker or specialist account a written undertaking which shall be designated ''Notice Pursuant to § 240.15c3–1(a)(6) of Intention to Carry Specialist or Market Maker Account.'' Said undertaking shall contain the representations required by paragraph (a)(6) of this section and shall be filed with the Commission's Washington, DC, Office, 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 Designated Examining Authorities of both firms prior to effecting any transactions in said account. The broker or dealer carrying such account:

(A) Shall mark the account to the market not less than daily and shall issue appropriate calls for additional equity which shall be met by noon of the following business day;

(B) Shall notify by telegraph the Commission and the Designated Examining Authorities pursuant to 17 CFR 240.17a–11, if the market maker or specialist fails to deposit any required equity within the time prescribed in paragraph (a)(6)(iv)(A) of this section; said telegraphic notice shall be received by the Commission and the Designated Examining Authorities not later than the close of business on the day said call is not met;

(C) Shall not extend further credit in the account if the equity in the account falls below that prescribed in paragraph (a)(6)(iii) of this section, and

(D) Shall take steps to liquidate promptly existing positions in the account in the event of a failure to meet a call for equity.

(v) No such carrying broker or dealer shall permit the sum of (A) the deductions required by paragraph (c)(2)(x)(A) of this section in respect of all transactions in market maker accounts guaranteed, indorsed or carried by such broker or dealer pursuant to paragraph (c)(2)(x) of this section and (B) the equity required by paragraph (iii) of this paragraph (a)(6) in respect of all transactions in the accounts of specialists of market makers in options carried by such broker or dealer pursuant to this paragraph (a)(6) to exceed 1,000 percent of such broker's or dealer's net capital as defined in paragraph (c)(2) of this section for any period exceeding five business days; *Provided*, That solely for

purposes of this paragraph (a)(6)(v), deductions or equity required in a specialist or market maker account in respect of positions in fully paid securities (other than options), which do not underlie options listed on the national securities exchange or facility of a national securities association of which the specialist or market marker is a member, need not be recognized. *Provided further,* That if at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall immediately transmit telegraphic notice of such event to the principal office of the Commission in Washington, DC, the regional or district office of the Commission for the region or district in which the broker or dealer maintains its principal place of business, and such broker's or dealer's Designated Examining Authority. *Provided further,* That if at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then such broker or dealer shall be subject to the prohibitions against withdrawal of equity capital set forth in paragraph (e) of this section, and to the prohibitions against reduction, prepayment and repayment of subordination agreements set forth in paragraph (b)(11) of § 240.15c3–1d, as if such broker or dealer's net capital were below the minimum standards specified by each of the aforementioned paragraphs.

SELF-CLEARING OPTIONS SPECIALISTS

(7) [Reserved]

(8) *Municipal securities brokers' brokers.* (i) A municipal securities brokers' brokers, as defined in subsection (ii) of this paragraph (a)(8), may elect not to be subject to the limitations of paragraph (c)(2)(ix) of this section provided that such brokers' broker complies with the requirements set out in paragraphs (a)(8) (iii), (iv) and (v) of this section.

(ii) The term municipal securities *brokers' broker* shall mean a municipal securities broker or dealer who acts exclusively as an undisclosed agent in the purchase or sale of municipal securities for a registered broker or dealer or registered municipal securities dealer, who has no ''customers'' as defined in this rule and who does not have or maintain any municipal securities in its proprietary or other accounts.

(iii) In order to qualify to operate under this paragraph (a)(8), a brokers' broker shall at all times have and maintain net capital of not less than $150,000.

(iv) For purposes of this paragraph (a)(8), a brokers' broker shall deduct from net worth 1% of the contract value of each municipal failed to deliver contract which is outstanding 21 business days or longer. Such deduction shall be increased by any excess of the contract price of the fail to deliver over the market value of the underlying security.

(v) For purposes of this paragraph (a)(8), a brokers' broker may exclude from its aggregate indebtedness computation indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity. In no event may a brokers' broker exclude any overnight bank loan attributable to the same municipal securities failed to deliver contract for more than one business day. A brokers' broker need not deduct from net worth the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of those failed to receive as required by Rule 15c3–1(c)(2)(iv)(E).

Certain Additional Capital Requirements for Brokers or Dealers Engaging in Reverse Repurchase Agreements

(9) A broker or dealer shall maintain net capital in addition to the amounts required under paragraph (a) of this section in an amount equal to 10 percent of:

(i) The excess of the market value of United States Treasury Bills, Bonds and Notes subject to reverse repurchase agreements with any one party over 105 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party;

(ii) The excess of the market value of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41)

of the Act subject to reverse repurchase agreements with any one party over 110 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party; and

(iii) The excess of the market value of other securities subject to reverse repurchase agreements with any one party over 120 percent of the contract prices (including accrued interest) for reverse repurchase agreements with that party.

(b) Exemptions:

(1) The provisions of this section shall not apply to any specialist:

(i) Whose securities business, except for an occasional non-specialist related securities transaction for its own account, is limited to that of acting as an options market maker on a national securities exchange;

(ii) That is a member in good standing and subject to the capital requirements of a national securities exchange;

(iii) That does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or section 15C of the Act or a member of a national securities exchange; and

(iv) That is not a clearing member of The Options Clearing Corporation and whose securities transactions are effected through and carried in an account cleared by another broker or dealer registered with the Commission under section 15 of the Act.

(2) A member in good standing of a national securities exchange who acts as a floor broker (and whose activities do not require compliance with other provisions of this rule), may elect to comply, in lieu of the other provisions of this section, with the following financial responsibility standard: The value of the exchange membership of the member (based on the lesser of the most recent sale price or current bid price for an exchange membership) is not less than $15,000, or an amount equal to the excess of $15,000 over the value of the exchange membership is held by an independent agent in escrow: *Provided*, That the rules of such exchange require that the proceeds from the sale of the exchange membership of the member and the amount held in escrow pursuant to this paragraph shall be subject to the prior claims of the exchange and its clearing corporation and those arising directly from the closing out of contracts entered into on the floor of such exchanges.

(3) The Commission may, upon written application, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker or dealer who satisfies the Commission that, because of the special nature of its business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

(c) Definitions. For the purpose of this section:

AGGREGATE INDEBTEDNESS

(1) The term *aggregate indebtedness* shall be deemed to mean the total money liabilities of a broker or dealer arising in connection with any transaction whatsoever and includes, among other things, money borrowed, money payable against securities loaned and securities ''failed to receive,'' the market value of securities borrowed to the extent to which no equivalent value is paid or credited (other than the market value of margin securities borrowed from customers in accordance with the provisions of 17 CFR 240.15c3–3 and margin securities borrowed from non-customers), customers' and non-customers' free credit balances, credit balances in customers' and non-customers' accounts having short positions in securities, equities in customers' and non-customers' future commodities accounts and credit balances in customers' and non-customers' commodities accounts, but excluding:

EXCLUSIONS FROM AGGREGATE INDEBTEDNESS

(i) Indebtedness adequately collateralized by securities which are carried long by the broker or dealer and which have not been sold or by securities which collateralize a secured demand note pursuant to Appendix (D)

to this section 17 CFR 240.15c3–1d; indebtedness adequately collateralized by spot commodities which are carried long by the broker or dealer and which have not been sold; or, until October 1, 1976, indebtedness adequately collateralized by municipal securities outstanding for not more than one business day and offset by municipal securities failed to deliver of the same issue and quantity, where such indebtedness is incurred by a broker or dealer effecting transactions solely in municipal securities who is either registered with the Commission or temporarily exempt from such registration pursuant to 17 CFR 240.15a–1(T) or 17 CFR 240.15Ba2–3(T);

(ii) Amounts payable against securities loaned, which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c)

(iii) Amounts payable against securities failed to receive which securities are carried long by the broker or dealer and which have not been sold or which securities collateralize a secured demand note pursuant to Appendix (D) (17 CFR 240.15c3–1d) or amounts payable against securities failed to receive for which the broker or dealer also has a receivable related to securities of the same issue and quantity thereof which are either fails to deliver or securities borrowed by the broker or dealer;

(iv) Credit balances in accounts representing amounts payable for securities or money market instruments not yet received from the issuer or its agent which securities are specified in paragraph (c)(2)(vi)(E) and which amounts are outstanding in such accounts not more than three (3) business days;

(v) Equities in customers' and noncustomers' accounts segregated in accordance with the provisions of the Commodity Exchange Act and the rules and regulations thereunder;

(vi) Liability reserves established and maintained for refunds of charges required by section 27(d) of the Investment Company Act of 1940, but only to the extent of amounts on deposit in a segregated trust account in accordance with 17 CFR 270.27d–1 under the Investment Company Act of 1940;

(vii) Amounts payable to the extent funds and qualified securities are required to be on deposit and are deposited in a ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' pursuant to 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934;

(viii) Fixed liabilities adequately secured by assets acquired for use in the ordinary course of the trade or business of a broker or dealer but no other fixed liabilities secured by assets of the broker or dealer shall be so excluded unless the sole recourse of the creditor for nonpayment of such liability is to such asset;

(ix) Liabilities on open contractual commitments;

(x) Indebtedness subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix (D) (17 CFR 240.15c3–1d);

(xi) Liabilities which are effectively subordinated to the claims of creditors (but which are not subject to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3–1d)) by non-customers of the broker or dealer prior to such subordination, except such subordinations by customers as may be approved by the Examining Authority for such broker or dealer;

(xii) Credit balances in accounts of general partners;

(xiii) Deferred tax liabilities;

(xiv) Eighty-five percent of amounts payable to a registered investment company related to fail to deliver receivables of the same quantity arising out of purchases of shares of those registered investment companies; and

(xv) Eighty-five percent of amounts payable against securities loaned for which the broker or dealer has receivables related to securities of the same class and issue and quantity that are securities borrowed by the broker or dealer.

NET CAPITAL

(2) The term *net capital* shall be deemed to mean the net worth of a broker or dealer, adjusted by:

(i) *Adjustments to net worth related to unrealized profit or loss and deferred tax*

provisions. (A) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker or dealer;

(B)(*1*) In determining net worth, all long and all short positions in listed options shall be marked to their market value and all long and all short securities and commodities positions shall be marked to their market value.

(*2*) In determining net worth, the value attributed to any unlisted option shall be the difference between the option's exercise value and the market value of the underlying security. In the case of an unlisted call, if the market value of the underlying security is less than the exercise value of such call it shall be given no value and in the case of an unlisted put if the market value of the underlying security is more than the exercise value of the unlisted put it shall be given no value.

(C) Adding to net worth the lesser of any deferred income tax liability related to the items in (*1*), (*2*), and (*3*) below, or the sum of (*1*), (*2*) and (*3*) below;

(*1*) The aggregate amount resulting from applying to the amount of the deductions computed in accordance with paragraph (c)(2)(vi) of this section and Appendices A and B, § 240.15c3–1a and 240.15c3–1b, the appropriate Federal and State tax rate(s) applicable to any unrealized gain on the asset on which the deduction was computed;

(*2*) Any deferred tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section;

(*3*) Any deferred tax liability related to unrealized appreciation in value of any asset(s) which has been otherwise deducted from net worth in accordance with the provisions of this section; and,

(D) Adding, in the case of future income tax benefits arising as a result of unrealized losses, the amount of such benefits not to exceed the amount of income tax liabilities accrued on the books and records of the broker or dealer, but only to the extent such benefits could have been applied to reduce accrued tax liabilities on the date of the capital computation, had the related unrealized losses been realized on that date.

(E) Adding to net worth any actual tax liability related to income accrued which is directly related to an asset otherwise deducted pursuant to this section.

(ii) *Subordinated Liabilities.* Excluding liabilities of the broker or dealer which are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix (D) (17 CFR 240.15c3–1d).

(iii) *Sole Proprietors.* Deducting, in the case of a broker or dealer who is a sole proprietor, the excess of liabilities which have not been incurred in the course of business as a broker or dealer over assets not used in the business.

(iv) *Assets Not Readily Convertible Into Cash.* Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness excluded in accordance with subdivision (c)(1)(viii) of this section) including, among other things:

(A) *Fixed Assets and Prepaid Items.* Real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and other expenses; goodwill, organization expenses;

Certain Unsecured and Partly Secured Receivables

(B) All unsecured advances and loans; deficits in customers' and non-customers' unsecured and partly secured notes; deficits in special omnibus accounts maintained in compliance with the requirements of 12 CFR 220.10 of Regulation T under the Securities Exchange Act of 1934, or similar accounts carried on behalf of another broker or dealer, after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less; deficits in customers' and non-customers' unsecured and partly secured accounts after application of calls for margin, marks to the market or other required deposits that are outstanding 5 business days or less, except deficits in cash accounts as defined in 12 CFR 220.8 of Regulation T under the Securities Exchange Act of 1934 for which not more than one extension respecting a specified securities transaction has been requested and granted, and deducting for securities carried in any of such accounts the percentages specified in paragraph (c)(2)(vi) of this section or Appendix A (§ 240.15c3–1a); the market value of stock loaned in excess of the value of

any collateral received therefor; receivables arising out of free shipments of securities (other than mutual fund redemptions) in excess of $5,000 per shipment and all free shipments (other than mutual fund redemptions) outstanding more than 7 business days, and mutual fund redemptions outstanding more than 16 business days; any collateral deficiencies in secured demand notes as defined in Appendix D (§240.15c3–1d);

(C) Interest receivable, floor brokerage receivable, commissions receivable from other brokers or dealers (other than syndicate profits which shall be treated as required in paragraph (c)(2)(iv)(E) of this section), mutual fund concessions receivable and management fees receivable from registered investment companies, all of which receivables are outstanding longer than thirty (30) days from the date they arise; dividends receivable outstanding longer than thirty (30) days from the payable date; good faith deposits arising in connection with a non-municipal securities underwriting, outstanding longer than eleven (11) business days from the settlement of the underwriting with the issuer; receivables due from participation in municipal securities underwriting syndicates and municipal securities joint underwriting accounts which are outstanding longer than sixty (60) days from settlement of the underwriting with the issuer and good faith deposits arising in connection with an underwriting of municipal securities, outstanding longer than sixty (60) days from settlement of the underwriting with the issuer; and receivables due from participation in municipal securities secondary trading joint accounts, which are outstanding longer than sixty (60) days from the date all securities have been delivered by the account manager to the account members;

(D) *Insurance Claims.* Insurance claims which, after seven (7) business days from the date the loss giving rise to the claim is discovered, are not covered by an opinion of outside counsel that the claim is valid and is covered by insurance policies presently in effect; insurance claims which after twenty (20) business days from the date the loss giving rise to the claim is discovered and which are accompanied by an opinion of outside counsel described above, have not been acknowledged in writing by the insurance carrier as due and payable; and insurance claims acknowledged in writing by the carrier as due and payable outstanding longer than twenty (20) business days from the date they are so acknowledged by the carrier; and,

(E) *Other Deductions.* All other unsecured receivables; all assets doubtful of collection less any reserves established therefor; the amount by which the market value of securities failed to receive outstanding longer than thirty (30) calendar days exceeds the contract value of such fails to receive, and the funds on deposit in a ''segregated trust account'' in accordance with 17 CFR 270.27d–1 under the Investment Company Act of 1940, but only to the extent that the amount on deposit in such segregated trust account exceeds the amount of liability reserves established and maintained for refunds of charges required by sections 27(d) and 27(f) of the Investment Company Act of 1940; *Provided*, That any amount deposited in the ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' established pursuant to 17 CFR 240.15c3–3 and clearing deposits shall not be so deducted.

(F)(*1*) For purposes of this paragraph:

(*i*) The term *reverse repurchase agreement deficit* shall mean the difference between the contract price for resale of the securities under a reverse repurchase agreement and the market value of those securities (if less than the contract price).

(*ii*) The term *repurchase agreement deficit* shall mean the difference between the market value of securities subject to the repurchase agreement and the contract price for repurchase of the securities (if less than the market value of the securities).

(*iii*) As used in paragraph (c)(2)(iv)(F)(*1*) of this section, the term *contract price* shall include accrued interest.

(*iv*) Reverse repurchase agreement deficits and the repurchase agreement deficits where the counterparty is the Federal Reserve Bank of New York shall be disregarded.

(*2*)(*i*) In the case of a reverse repurchase agreement, the deduction shall be equal to the reverse repurchase agreement deficit.

(*ii*) In determining the required deductions under paragraph (c)(2)(iv)(F)(*2*)(*i*) of this section, the broker or dealer may reduce the reverse repurchase agreement deficit by:

(*A*) Any margin or other deposits held by the broker or dealer on account of the reverse repurchase agreement;

(*B*) Any excess market value of the securities over the contract price for resale of those securities under any other reverse repurchase agreement with the same party;

(*C*) The difference between the contract price for resale and the market value of securities subject to repurchase agreements with the same party (if the market value of those securities is less than the contract price); and

(*D*) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less.

(*3*) (*i*) In the case of repurchase agreements, the deduction shall be:

(*A*) The excess of the repurchase agreement deficit over 5 percent of the contract price for resale of United States Treasury Bills, Notes and Bonds, 10 percent of the contract price for the resale of securities issued or guaranteed as to principal or interest by an agency of the United States or mortgage related securities as defined in section 3(a)(41) of the Act and 20 percent of the contract price for the resale of other securities and;

(*B*) The excess of the aggregate repurchase agreement deficits with any one party over 25 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section (less any deduction taken with respect to repurchase agreements with that party under paragraph (c)(2)(iv)(F)(*3*)(*i*)(*A*) of this section) or, if greater;

(*C*) The excess of the aggregate repurchase agreement deficits over 300 percent of the broker's or dealer's net capital before the application of paragraph (c)(2)(vi) of this section.

(*ii*) In determining the required deduction under paragraph (c)(2)(iv)(F)(*3*)(*i*) of this section, the broker or dealer may reduce a repurchase agreement deficit by:

(*A*) Any margin or other deposits held by the broker or dealer on account of a reverse repurchase agreement with the same party to the extent not otherwise used to reduce a reverse repurchase deficit;

(*B*) The difference between the contract price and the market value of securities subject to other repurchase agreements with the same party (if the market value of those securities is less than the contract price) not otherwise used to reduce a reverse repurchase agreement deficit; and

(*C*) Calls for margin, marks to the market, or other required deposits which are outstanding one business day or less to the extent not otherwise used to reduce a reverse repurchase agreement deficit.

(G) *Securities borrowed.* 1 percent of the market value of securities borrowed collateralized by an irrevocable letter of credit.

(H) Any receivable from an affiliate of the broker or dealer (not otherwise deducted from net worth) and the market value of any collateral given to an affiliate (not otherwise deducted from net worth) to secure a liability over the amount of the liability of the broker or dealer unless the books and records of the affiliate are made available for examination when requested by the representatives of the Commission or the Examining Authority for the broker or dealer in order to demonstrate the validity of the receivable or payable. The provisions of this subsection shall not apply where the affiliate is a registered broker or dealer, registered government securities broker or dealer or bank as defined in section 3(a)(6) of the Act or insurance company as defined in section 3(a)(19) of the Act or investment company registered under the Investment Company Act of 1940 or federally insured savings and loan association or futures commission merchant registered pursuant to the Commodity Exchange Act.

(v)(A) Deducting the market value of all short securities differences (which shall include securities positions reflected on the securities record which are not susceptible to either count or

confirmation) unresolved after discovery in accordance with the following schedule:

Differences [1]	Numbers of business days after discovery
25 percent	7
50 percent	14
75 percent	21
100 percent	28

[1] Percentage of market value of short securities differences.

(B) Deducting the market value of any long securities differences, where such securities have been sold by the broker or dealer before they are adequately resolved, less any reserves established therefor;

(C) The designated examining authority for a broker or dealer may extend the periods in (v)(A) of this section for up to 10 business days if it finds that exceptional circumstances warrant an extension.

Securities Haircuts

(vi) Deducting the percentages specified in paragraphs (c)(2)(vi) (A) through (M) of this section (or the deductions prescribed for securities positions set forth in Appendix A (§240.15c3–1a) of the market value of all securities, money market instruments or options in the proprietary or other accounts of the broker or dealer.

(A)(*1*) In the case of a security issued or guaranteed as to principal or interest by the United States or any agency thereof, the applicable percentages of the market value of the net long or short position in each of the categories specified below are:

CATEGORY 1

(*i*) Less than 3 months to maturity—0 percent.

(*ii*) 3 months but less than 6 months to maturity—½ of 1 percent.

(*iii*) 6 months but less than 9 months to maturity—¾ of 1 percent.

(*iv*) 9 months but less than 12 months to maturity—1 percent.

CATEGORY 2

(*i*) 1 year but less than 2 years to maturity—1½ percent.

(*ii*) 2 years but less than 3 years to maturity—2 percent.

CATEGORY 3

(*i*) 3 years but less than 5 years to maturity—3%.

(*ii*) 5 years but less than 10 years to maturity—4%.

CATEGORY 4

(*i*) 10 years but less than 15 years to maturity—4½%.

(*ii*) 15 years but less than 20 years to maturity—5%.

(*iii*) 20 years but less than 25 years to maturity—5½%.

(*iv*) 25 years or more to maturity—6%.

Brokers or dealers shall compute a deduction for each category above as follows: Compute the deductions for the net long or short positions in each subcategory above. The deduction for the category shall be the net of the aggregate deductions on the long positions and the aggregate deductions on the short positions in each category plus 50% of the lesser of the aggregate deductions on the long or short positions.

(*2*) A broker or dealer may elect to deduct, in lieu of the computation required under paragraph (c)(2)(vi)(A)(*1*) of this section, the applicable percentages of the market value of the net long or short positions in each of the subcategories specified in paragraph (c)(2)(vi)(A)(*1*) of this section.

(*3*) In computing deductions under paragraph (c)(2)(vi)(A)(*1*) of this section, a broker or dealer may elect to exclude the market value of a long or short security from one category and a security from another category, *Provided*, That:

(*i*) Such securities have maturity dates:

(*A*) Between 9 months and 15 months and within 3 months of one another.

(*B*) Between 2 years and 4 years and within 1 year of one another; or

(*C*) Between 8 years and 12 years and within 2 years of one another.

(*ii*) The net market value of the two excluded securities shall remain in the category of the security with the higher market value.

(*4*) In computing deductions under paragraph (c)(2)(vi)(A)(*1*) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(A)(*1*) of this section, long or short positions in securities issued by the United States or any agency thereof that are deliverable against long or

short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account. The provisions of Appendix B to Rule 15c3–1 (17 CFR 240.15c3–1b) will in any event apply to the positions in futures contracts.

(*5*) In the case of a Government securities dealer that reports to the Federal Reserve System, that transacts business directly with the Federal Reserve System, and that maintains at all times a minimum net capital of at least $50,000,000, before application of the deductions provided for in paragraph (c)(2)(vi) of this section, the deduction for a security issued or guaranteed as to principal or interest by the United States or any agency thereof shall be 75 percent of the deduction otherwise computed under paragraph (c)(2)(vi)(A) of this section.

(B)(*1*) In the case of any municipal security which has a scheduled maturity at date of issue of 731 days or less and which is issued at par value and pays interest at maturity, or which is issued at a discount, and which is not traded flat or in default as to principal or interest, the applicable percentages of the market value on the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 30 days to maturity—0%.

(*ii*) 30 days but less than 91 days to maturity—⅛ of 1%.

(*iii*) 91 days but less than 181 days to maturity—¼ of 1%.

(*iv*) 181 days but less than 271 days to maturity—⅜ of 1%.

(*v*) 271 days but less than 366 days to maturity—½ of 1%.

(*vi*) 366 days but less than 456 days to maturity—¾ of 1%.

(*vii*) 456 days but less than 732 days to maturity—1%.

(*2*) In the case of any municipal security, other than those specified in paragraph (c)(2)(vi)(B)(*1*), which is not traded flat or in default as to principal or interest, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—1%.

(*ii*) 1 year but less than 2 years to maturity—2%.

(*iii*) 2 years but less than 3½ years to maturity—3%.

(*iv*) 3½ years but less than 5 years to maturity—4%.

(*v*) 5 years but less than 7 years to maturity—5%.

(*vi*) 7 years but less than 10 years to maturity—5½%.

(*vii*) 10 years but less than 15 years to maturity—6%.

(*viii*) 15 years but less than 20 years to maturity—6½%.

(*ix*) 20 years or more to maturity—7%.

(C) *Canadian Debt Obligations*. In the case of any security issued or unconditionally guaranteed as to principal and interest by the Government of Canada, the percentages of market value to be deducted shall be the same as in paragraph (A) of this section.

(D)(*1*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets consist of cash or money market instruments and which is generally known as a ''money market fund,'' the deduction shall be 2% of the market value of the greater of the long or short position.

(*2*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments of any maturity which are described in paragraph (c)(2)(vi) (A) through (C) or (E) of this section, the deduction shall be 7% of the market value of the greater of the long or short positions.

(*3*) In the case of redeemable securities of an investment company registered under the Investment Company Act of 1940, which assets are in the form of cash or securities or money market instruments which are described in paragraphs (c)(2)(vi) (A) through (C) or (E) and (F) of this section, the deduction shall be 9% of the market value of the long or short position.

(E) *Commercial paper, bankers acceptances and certificates of deposit.* In the case of any short term promissory note or evidence of indebtedness which has a fixed rate of interest or is sold at a discount, and which has a maturity date at date of issuance not exceeding nine months exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited and is rated in one of the three highest categories by at least two of the nationally recognized statistical rating organizations (*Provided,* That effective January 1, 1977, and until September 1, 1977, this paragraph shall be deemed to require only one such rating), or in the case of any negotiable certificates of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934, the applicable percentage of the market value of the greater of the long or short position in each of the categories specified below are:

(*1*) Less than 30 days to maturity—0 percent.

(*2*) 30 days but less than 91 days to maturity ⅛ of 1 percent.

(*3*) 91 days but less than 181 days to maturity ¼ of 1 percent.

(*4*) 181 days but less than 271 days to maturity ⅜ of 1 percent.

(*5*) 271 days but less than 1 year to maturity ½ of 1 percent; and

(*6*) With respect to any negotiable certificate of deposit or bankers acceptance or similar type of instrument issued or guaranteed by any bank, as defined above, having 1 year or more to maturity, the deduction shall be on the greater of the long or short position and shall be the same percentage as that prescribed in paragraph (c)(2)(vi)(A) of this section.

(F) (*1*) *Nonconvertible debt securities.* In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations, the applicable percentages of the market value of the greater of the long or short position in each of the categories specified below are:

(*i*) Less than 1 year to maturity—2%

(*ii*) 1 year but less than 2 years to maturity—3%

(*iii*) 2 years but less than 3 years to maturity—5%

(*iv*) 3 years but less than 5 years to maturity—6%

(*v*) 5 years but less than 10 years to maturity—7%

(*vi*) 10 years but less than 15 years to maturity—7½%

(*vii*) 15 years but less than 20 years to maturity—8%

(*viii*) 20 years but less than 25 years to maturity—8½%

(*ix*) 25 years or more to maturity—9%

(*2*) A broker or dealer may elect to exclude from the above categories long or short positions that are hedged with short or long positions in securities issued by the United States or any agency thereof or nonconvertible debt securities having a fixed interest rate and a fixed maturity date and which are not traded flat or in default as to principal or interest and which are rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations if such securities have maturity dates:

(*i*) Less than five years and within 6 months of each other;

(*ii*) Between 5 years and 10 years and within 9 months of each other;

(*iii*) Between 10 years and 15 years and within 2 years of each other; or

(*iv*) 15 years or more and within 10 years of each other.

The broker-dealer shall deduct the amounts specified in paragraphs (c)(2)(vi)(F) (*3*) and (*4*) of this section.

(*3*) With respect to those positions described in paragraph (c)(2)(vi)(F)(*2*) of this section that include a long or short position in securities issued by the United States or any agency thereof, the broker or dealer shall exclude the hedging short or long United States or agency securities position from the applicable haircut category under paragraph (c)(2)(vi)(A) of this section. The broker or dealer shall deduct the percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(*i*) Less than 5 years to maturity—1½%
(*ii*) 5 years but less than 10 years to maturity—2½%
(*iii*) 10 years but less than 15 years to maturity— 2¾%
(*iv*) 15 years or more to maturity—3%

(*4*) With respect to those positions described in paragraph (c)(2)(vi)(F)(*2*) of this section that include offsetting long and short positions in nonconvertible debt securities, the broker or dealer shall deduct a percentage of the market value of the hedged long or short position in nonconvertible debt securities as specified in each of the categories below:

(*i*) Less than 5 years to maturity—1¾%
(*ii*) 5 years but less than 10 years to maturity—3%
(*iii*) 10 years but less than 15 years to maturity—3¼%
(*iv*) 15 years or more to maturity—3½%

(*5*) In computing deductions under paragraph (c)(2)(vi)(F)(*3*) of this section, a broker or dealer may include in the categories specified in paragraph (c)(2)(vi)(F)(*3*) of this section, long or short positions in securities issued by the United States or any agency thereof that are deliverable against long or short positions in futures contracts relating to Government securities, traded on a recognized contract market approved by the Commodity Futures Trading Commission, which are held in the proprietary or other accounts of the broker or dealer. The value of the long or short positions included in the categories shall be determined by the contract value of the futures contract held in the account.

(*6*) The provisions of Appendix B to Rule 15c3–1 (17 CFR 240.15c3–1b) will in any event apply to the positions in futures contracts.

(G) *Convertible Debt Securities*. In the case of a debt security not in default which has a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deductions shall be as follows: If the market value is 100 percent or more of the principal amount, the deduction shall be determined as specified in paragraph (c)(2)(vi)(J) of this section; if the market value is less than the principal amount, the deduction shall be determined as specified in paragraph (F) of this section; if such securities are rated as required of paragraph (F) of this section;

(H) In the case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is rated in one of the four highest rating categories by at least two of the nationally recognized statistical rating organizations and which are not in arrears as to dividends, the deduction shall be 10% of the market value of the greater of the long or short position.

(I) [Reserved]

All Other Securities

(J) In the case of all securities or evidences of indebtedness, except those described in Appendix A, § 240.15c3–1a, which are not included in any of the percentage categories enumerated in paragraphs (c)(2)(vi) (A) through (H) of this section or paragraph (c)(2)(vi)(K)(ii) of this section, the deduction shall be 15 percent of the market value of the greater of the long or short positions and to the extent the market value of the lesser of the long or short positions exceeds 25 percent of the market value of the greater of the long or short positions, the percentage deduction on such excess shall be 15 percent of the market value of such excess. No deduction need be made in the case of:

(1) A security that is convertible into or exchangeable for another security within a period of 90 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible or for which it is exchangeable, are short in the accounts of such broker or dealer; or

(2) A security that has been called for redemption and that is redeemable within 90 days.

(K) *Securities with a Limited Market*. In the case of securities (other than exempted securities, nonconvertible debt securities, and cumulative nonconvertible preferred stock) which are not: (*1*) Traded on a national securities exchange; (*2*) designated as ''OTC Margin Stock'' pursuant to Regulation T under the Securities Exchange Act of 1934; (*3*) quoted on ''NASDAQ''; or (*4*) redeemable shares of investment companies

registered under the Investment Company Act of 1940, the deduction shall be as follows:

(*i*) In the case where there are regular quotations in an inter-dealer quotations system for the securities by three or more independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers to both buy and sell in reasonable quantities at stated prices, or where a ready market as defined in paragraph (c)(11) (ii) is deemed to exist, the deduction shall be determined in accordance with paragraph (c)(2)(vi)(J) of this section;

(*ii*) In the case where there are regular quotations in an inter-dealer quotations system for the securities by only one or two independent market-makers (exclusive of the computing broker or dealer) and where each such quotation represents a bona fide offer to brokers or dealers both to buy and sell in reasonable quantities, at stated prices, the deduction on both the long and short position shall be 40 percent.

(L) Where a broker or dealer demonstrates that there is sufficient liquidity for any securities long or short in the proprietary or other accounts of the broker or dealer which are subject to a deduction required by paragraph (c)(2)(vi)(K) of this section, such deduction, upon a proper showing to the Examining Authority for the broker or dealer, may be appropriately decreased, but in no case shall such deduction be less than that prescribed in paragraph (c)(2)(vi)(J) of this section.

Undue Concentration

(M)(*1*) In the case of money market instruments, or securities of a single class or series of an issuer, including any option written, endorsed or held to purchase or sell securities of such a single class or series of an issuer (other than ''exempted securities'' and redeemable securities of an investment company registered pursuant to the Investment Company Act of 1940), and securities underwritten (in which case the deduction provided for herein shall be applied after 11 business days), which are long or short in the proprietary or other accounts of a broker or dealer, including securities that are collateral to secured demand notes defined in Appendix D, §240.15c3–1d, and that have a market value of more than 10 percent of the ''net capital'' of a broker or dealer before the application of paragraph (c)(2)(vi) of this section or Appendix A, §240.15c3–1a, there shall be an additional deduction from net worth and/or the Collateral Value for securities collateralizing a secured demand note defined in Appendix D, §240.15c3–1d, equal to 50 percent of the percentage deduction otherwise provided by this paragraph (c)(2)(vi) of this section or Appendix A, §240.15c3–1a, on that portion of the securities position in excess of 10 percent of the ''net capital'' of the broker or dealer before the application of paragraph (c)(2)(vi) of this section and Appendix A, §240.15c3–1a. In the case of securities described in paragraph (c)(2)(vi)(J), the additional deduction required by this paragraph (c)(2)(vi)(M) shall be 15 percent.

(*2*) This paragraph (c)(2)(vi)(M) shall apply notwithstanding any long or short position exemption provided for in paragraph (c)(2)(vi)(J) of this section (except for long or short position exemptions arising out of the first proviso to paragraph (c)(2)(vi)(J)) and the deduction on any such exempted position shall be 15 percent of that portion of the securities position in excess of 10 percent of the broker or dealer's net capital before the application of paragraph (c)(2)(vi) of this section and Appendix A, §240.15c3–1a.

(*3*) This paragraph (c)(2)(vi)(M) shall be applied to an issue of equity securities only on the market value of such securities in excess of $10,000 or the market value of 500 shares, whichever is greater, or $25,000 in the case of a debt security.

(*4*) This paragraph (c)(2)(vi)(M) will be applied to an issue of municipal securities having the same security provisions, date of issue, interest rate, day, month and year of maturity only if such securities have a market value in excess of $500,000 in bonds ($5,000,000 in notes) or 10 percent of tentative net capital, whichever is greater, and are held in position longer than 20 business days from the date the securities are received by the syndicate manager from the issuer.

(*5*) Any specialist that is subject to a deduction required by this paragraph (c)(2)(vi)(M), respecting its specialty stock, that can demonstrate to the satisfaction of the Examining Authority for such broker or dealer that there is sufficient liquidity for such specialist's specialty stock and that such deduction need not be applied in the public interest for the protection of investors, may upon a proper showing to such Examining Authority have such undue concentration deduction appropriately decreased, but in no case shall the deduction prescribed in paragraph (c)(2)(vi)(J) of this section above be reduced. Each such Examining Authority shall make and preserve for a period of not less than 3 years a record of each application granted pursuant to this paragraph (c)(2)(vi)(M)(5), which shall contain a summary of the justification for the granting of the application.

(N) Any specialist that limits its securities business to that of a specialist (except for an occasional non-specialist related securities transaction for its own account), that does not transact a business in securities with other than a broker or dealer registered with the Commission under section 15 or 15C of the Act or a member of a national securities exchange, and that is not a clearing member of The Options Clearing Corporation need not deduct from net worth in computing net capital those deductions, as to its specialty securities, set forth in paragraph (c)(2)(vi) of this section or Appendix A to this section, except for paragraph (e) of this section limiting withdrawals of equity capital and Appendix D to this section relating to satisfactory subordination agreements. As to a specialist that is solely an options specialist, in paragraph (e) the term ''net capital'' shall be deemed to mean ''net capital before the application of paragraph (c)(2)(vi) of this section or Appendix A to this section'' and ''excess net capital'' shall be deemed to be the amount of net capital before the application of paragraph (c)(2)(vi) of this section or Appendix A to this section in excess of the amount of net capital required under paragraph (a) of this section. In reports filed pursuant to § 240.17a–5 and in making the record required by § 240.17a–3(a)(11) each specialists shall include the deductions that would otherwise have been required by paragraph (c)(2)(vi) of this section or Appendix A to this section in the absence of this paragraph (c)(2)(vi)(N).

(vii) *Non-Marketable Securities.* Deducting 100 percent of the carrying value in the case of securities or evidence of indebtedness in the proprietary or other accounts of the broker or dealer, for which there is no ready market, as defined in paragraph (c)(11) of this section, and securities, in the proprietary or other accounts of the broker or dealer, which cannot be publicly offered or sold because of statutory, regulatory or contractual arrangements or other restrictions.

Open Contractual Commitments

(viii) Deducting, in the case of a broker or dealer that has open contractual commitments (other than those option positions subject to Appendix A, § 240.15c3–1a), the respective deductions as specified in paragraph (c)(2)(vi) of this section or Appendix B, § 240.15c3–1b, from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by any open contractual commitment in the proprietary or other accounts of the broker or dealer.

(A) The deduction for contractual commitments in those securities that are treated in paragraph (c)(2)(vi)(J) of this section shall be 30 percent unless the class and issue of the securities subject to the open contractual commitment deduction are listed for trading on a national securities exchange or are designated as NASDAQ National Market System Securities.

(B) A broker or dealer that maintains in excess of $250,000 of net capital may add back to net worth up to $150,000 of any deduction computed under this paragraph (c)(2)(viii)(B).

(C) The deduction with respect to any single commitment shall be reduced by the unrealized profit in such commitment, in an amount not greater than the deduction provided for by this paragraph (or increased by the unrealized loss), in such commitment, and in no event shall an unrealized profit on any closed transactions operate to increase net capital.

(ix) Deducting from the contract value of each failed to deliver contract that is outstanding five business days or longer (21 business days or longer in the case of municipal securities) the percentages of the market value of the underlying security that would be required by application of the deduction required by paragraph (c)(2)(vi) of this section. Such deduction, however, shall be increased by any excess of the contract price of the failed to deliver contract over the market value of the underlying security or reduced by any excess of the market value of the underlying security over the contract value of the failed to deliver contract, but not to exceed the amount of such deduction. The designated examining authority for the broker or dealer may, upon application of the broker or dealer, extend for a period up to 5 business days, any period herein specified when it is satisfied that the extension is warranted. The designated examining authority upon expiration of the extension may extend for one additional period of up to 5 business days, any period herein specified when it is satisfied that the extension is warranted.

Brokers or Dealers Carrying Accounts of Listed Options Specialists

(x)(A) With respect to any transaction of a specialist in listed options, who is either not otherwise subject to the provisions of this section or is described in paragraph (c)(2)(vi)(N) of this section, for whose specialist account a broker or dealer acts as a guarantor, endorser, or carrying broker or dealer, such broker or dealer shall adjust its net worth by deducting as of noon of each business day the amounts computed as of the prior business day pursuant to §240.15c3–1a. The required deductions may be reduced by any liquidating equity that exists in such specialist's market-maker account as of that time and shall be increased to the extent of any liquidating deficit in such account. Noon shall be determined according to the local time where the broker or dealer is headquartered. In no event shall excess equity in the specialist's market-maker account result in an increase of the net capital of any such guarantor, endorser, or carrying broker or dealer.

(B) *Definitions.* (*1*) The term *listed option* shall mean any option traded on a registered national securities exchange or automated facility of a registered national securities association.

(*2*) For purposes of this section, the equity in an individual specialist's market-maker account shall be computed by:

(*i*) Marking all securities positions long or short in the account to their respective current market values;

(*ii*) Adding (deducting in the case of a debit balance) the credit balance carried in such specialist's market-maker account; and

(*iii*) Adding (deducting in the case of short positions) the market value of positions long in such account.

(C) No guarantor, endorser, or carrying broker or dealer shall permit the sum of the deductions required pursuant to §240.15c3–1a in respect of all transactions in specialists' market-maker accounts guaranteed, endorsed, or carried by such broker or dealer to exceed 1,000 percent of such broker's or dealer's net capital as defined in §240.15c3–1(c)(2) for any period exceeding three business days. If at any time such sum exceeds 1,000 percent of such broker's or dealer's net capital, then the broker or dealer shall:

(*1*) Immediately transmit telegraphic or facsimile notice of such event to the Division of Market Regulation in the headquarters office of the Commission in Washington, D.C., to the district or regional office of the Commission for the district or region in which the broker or dealer maintains its principal place of business, and to its examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (''Designated Examining Authority''); and

(*2*) Be subject to the prohibitions against withdrawal of equity capital set forth in §240.15c3–1(e) and to the prohibitions against reduction, prepayment, and repayment of subordination agreements set forth in paragraph (b)(11) of §240.15c3–1d, as if such broker or dealer's net capital were below the minimum standards specified by each of those paragraphs.

(D) If at any time there is a liquidating deficit in a specialist's market-maker account, then the broker or

dealer guaranteeing, endorsing, or carrying listed options transactions in such specialist's market-maker account may not extend any further credit in that account, and shall take steps to liquidate promptly existing positions in the account. This paragraph shall not prevent the broker or dealer from, upon approval by the broker's or dealer's Designated Examining Authority, entering into hedging positions in the specialist's market-maker account. The broker or dealer also shall transmit telegraphic or facsimile notice of the deficit and its amount by the close of business of the following business day to its Designated Examining Authority and the Designated Examining Authority of the specialist, if different from its own.

(E) Upon written application to the Commission by the specialist and the broker or dealer guaranteeing, endorsing, or carrying options transactions in such specialist's market-maker account, the Commission may approve upon specified terms and conditions lesser adjustments to net worth than those specified in § 240.15c3–1a.

(xi) *Brokers or Dealers Carrying Specialists or Market Makers Accounts.* With respect to a broker or dealer who carries a market maker or specialist account, or with respect to any transaction in options listed on a registered national securities exchange for which a broker or dealer acts as a guarantor or endorser of options written by a specialist in a specialist account, the broker or dealer shall deduct, for each account carried or for each class or series of options guaranteed or endorsed, any deficiency in collateral required by paragraph (a)(6) of this section.

(xii) *Deduction from net worth for certain undermargined accounts.* Deducting the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the Examining Authority for the broker or dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding 5 business days or less.

(xiii) *Deduction from net worth for indebtedness collateralized by exempted securities.* Deducting, at the option of the broker or dealer, in lieu of including such amounts in aggregate indebtedness, 4 percent of the amount of any indebtedness secured by exempted securities or municipal securities if such indebtedness would otherwise be includable in aggregate indebtedness.

EXEMPTED SECURITIES

(3) The term *exempted securities* shall mean those securities deemed exempted securities by section 3(a)(12) of the Securities Exchange Act of 1934 and rules thereunder.

CONTRACTUAL COMMITMENTS

(4) The term *contractual commitments* shall include underwriting, when issued, when distributed and delayed delivery contracts, the writing or endorsement of puts and calls and combinations thereof, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures. A series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment.

ADEQUATELY SECURED

(5) Indebtedness shall be deemed to be adequately secured within the meaning of this section when the excess of the market value of the collateral over the amount of the indebtedness is sufficient to make the loan acceptable as a fully secured loan to banks regularly making secured loans to brokers or dealers.

CUSTOMER

(6) The term *customer* shall mean any person from whom, or on whose behalf, a broker or dealer has received, acquired or holds funds or securities for the account of such person, but shall not include a broker or dealer or a registered municipal securities dealer, or a general, special or limited partner or director or officer of the broker or dealer, or any person to the extent that such person has a claim for property or funds which by contract, agreement, or understanding, or by operation of law, is part of the capital of the broker or dealer. *Provided, however,* That the

term ''customer'' shall also include a broker or dealer, but only insofar as such broker or dealer maintains a special omnibus account carried with another broker or dealer in compliance with 12 CFR 220.4(b) of Regulation T under the Securities Exchange Act of 1934.

NON-CUSTOMER

(7) The term *non-customer* means a broker or dealer, registered municipal securities dealer, general partner, limited partner, officer, director and persons to the extent their claims are subordinated to the claims of creditors of the broker or dealer.

MARKET MAKER

(8) The term *market maker* shall mean a dealer who, with respect to a particular security, (i) regularly publishes bona fide, competitive bid and offer quotations in a recognized interdealer quotation system; or (ii) furnishes bona fide competitive bid and offer quotations on request; and, (iii) is ready, willing and able to effect transactions in reasonable quantities at his quoted prices with other brokers or dealers.

PROMPTLY TRANSMIT AND DELIVER

(9) A broker or dealer is deemed to ''promptly transmit'' all funds and to ''promptly deliver'' all securities within the meaning of paragraphs (a)(2)(i) and (a)(2)(v) of this section where such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities; provided, however, that such prompt transmission or delivery shall not be required to be effected prior to the settlement date for such transaction.

PROMPTLY FORWARD

(10) A broker or dealer is deemed to ''promptly forward'' funds or securities within the meaning of paragraph (a)(2)(i) of this section only when such forwarding occurs no later than noon of the next business day following receipt of such funds or securities.

READY MARKET

(11)(i) The term *ready market* shall include a recognized established securities market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom.

(ii) A *ready market* shall also be deemed to exist where securities have been accepted as collateral for a loan by a bank as defined in section 3(a)(6) of the Securities Exchange Act of 1934 and where the broker or dealer demonstrates to its Examining Authority that such securities adequately secure such loans as that term is defined in paragraph (c)(5) of this section.

EXAMINING AUTHORITY

(12) The term *Examining Authority* of a broker or dealer shall mean for the purposes of 17 CFR 240.15c3–1 and 240.15c3–1a–d the national securities exchange or national securities association of which the broker or dealer is a member or, if the broker or dealer is a member of more than one such self-regulatory organization, the organization designated by the Commission as the Examining Authority for such broker or dealer, or if the broker or dealer is not a member of any such self-regulatory organization, the Regional or District Office of the Commission where such broker or dealer has its principal place of business.

EQUITY

(13) [Reserved]

(14) The term *municipal securities* shall mean those securities included within the definition of ''municipal securities'' in section 3(a)(29) of the Securities Exchange Act of 1934.

(d) *Debt-equity requirements.* No broker or dealer shall permit the total of outstanding principal amounts of its satisfactory subordination agreements (other than such agreements which qualify under this paragraph (d) as equity capital) to exceed 70 percent of its

debt-equity total, as hereinafter defined, for a period in excess of 90 days or for such longer period which the Commission may, upon application of the broker or dealer, grant in the public interest or for the protection of investors. In the case of a corporation, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, par or stated value of capital stock, paid in capital in excess of par, retained earnings, unrealized profit and loss or other capital accounts. In the case of a partnership, the debt-equity total shall be the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of partners (exclusive of such partners' securities accounts) subject to the provisions of paragraph (e) of this section, and unrealized profit and loss. In the case of a sole proprietorship, the debt-equity total shall include the sum of its outstanding principal amounts of satisfactory subordination agreements, capital accounts of the sole proprietorship and unrealized profit and loss. *Provided, however*, That a satisfactory subordination agreement entered into by a partner or stockholder which has an initial term of at least three years and has a remaining term of not less than 12 months shall be considered equity for the purposes of this paragraph (d) if:

(1) It does not have any of the provisions for accelerated maturity provided for by paragraphs (b)(9)(i), (10)(i) or (10)(ii) of Appendix (D) (17 CFR 240.15c3–1d) and is maintained as capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section or

(2) The partnership agreement provides that capital contributed pursuant to a satisfactory subordination agreement as defined in Appendix (D) (17 CFR 240.15c3–1d) shall in all respects be partnership capital subject to the provisions restricting the withdrawal thereof required by paragraph (e) of this section.

(e)(1) *Notice provisions relating to limitations on the withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3–1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate without written notice given in accordance with paragraph (e)(1)(iv) of this section:

(i) Two business days prior to any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 30 percent of the broker or dealer's excess net capital. A broker or dealer, in an emergency situation, may make withdrawals, advances or loans that on a net basis exceed 30 percent of the broker or dealer's excess net capital in any 30 calendar day period without giving the advance notice required by this paragraph, with the prior approval of its Examining Authority. Where a broker or dealer makes a withdrawal with the consent of its Examining Authority, it shall in any event comply with paragraph (e)(1)(ii) of this section; or

(ii) Two business days after any withdrawals, advances or loans if those withdrawals, advances or loans on a net basis exceed in the aggregate in any 30 calendar day period, 20 percent of the broker or dealer's excess net capital.

(iii) This paragraph (e)(1) does not apply to:

(A) Securities or commodities transactions in the ordinary course of business between a broker or dealer and an affiliate where the broker or dealer makes payment to or on behalf of such affiliate for such transaction and then receives payment from such affiliate for the securities or commodities transaction within two business days from the date of the transaction; or

(B) Withdrawals, advances or loans which in the aggregate in any thirty calendar day period, on a net basis, equal $500,000 or less.

(iv) Each required notice shall be effective when received by the Commission 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, the broker or dealer's Examining Authority and the Commodity Futures Trading Commission if such broker or dealer is registered with that Commission.

(2) *Limitations on Withdrawal of equity capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to appendix C (17 CFR 240.15c3–1c) may be withdrawn by action of a stockholder or a partner or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor, employee or affiliate, if after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in appendix D (17 CFR 240.15c3–1d)) under satisfactory subordination agreements which are scheduled to occur within 180 days following such withdrawal, advance or loan if:

(i) The broker or dealer's net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a) of this section;

(ii) The broker-dealer is registered as a futures commission merchant, its net capital would be less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account);

(iii) The broker-dealer's net capital would be less than 25 percent of deductions from net worth in computing net capital required by paragraphs (c)(2)(vi), (f) and appendix A, of this section, unless the broker or dealer has the prior approval of the Commission to make such withdrawal;

(iv) The total outstanding principal amounts of satisfactory subordination agreements of the broker or dealer and any subsidiaries or affiliates consolidated pursuant to appendix C (17 CFR 240.15c3–1c) (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d) of this section;

(v) The broker or dealer is subject to the aggregate indebtedness limitations of paragraph (a) of this section, the aggregate indebtedness of any of the consolidated entities exceeds 1000 percent of its net capital; or

(vi) The broker or dealer is subject to the alternative net capital requirement of paragraph (f) of this section, its net capital would be less than 5 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a.

(3)(i) *Temporary Restrictions on Withdrawal of Net Capital.* The Commission may by order restrict, for a period up to twenty business days, any withdrawal by the broker or dealer of equity capital or unsecured loan or advance to a stockholder, partner, sole proprietor, employee or affiliate if such withdrawal, advance or loan:

(A) When aggregated with all other withdrawals, advances or loans on a net basis during a 30 calendar day period exceeds 30 percent of the broker or dealer's excess net capital; and

(B) The Commission, based on the facts and information available, concludes that the withdrawal, advance or loan may be detrimental to the financial integrity of the broker or dealer, or may unduly jeopardize the broker or dealer's ability to repay its customer claims or other liabilities which may cause a significant impact on the markets or expose the customers or creditors of the broker or dealer to loss without taking into account the application of the Securities Investor Protection Act.

(ii) An order temporarily prohibiting the withdrawal of capital shall be rescinded if the Commission determines that the restriction on capital withdrawal should not remain in effect. The hearing will be held within two business days from the date of the request in writing by the broker or dealer.

(4)(i) *Miscellaneous provisions.* Excess net capital is that amount in excess of the amount required under paragraph (a) of this section. For the purposes of paragraphs (e)(1) and (e)(2) of this section, a broker or dealer may use the amount of excess net capital and deductions required under paragraphs

(c)(2)(vi), (f) and appendix A of this section reported in its most recently required filed Form X–17A–5 for the purposes of calculating the effect of a projected withdrawal, advance or loan relative to excess net capital or deductions. The broker or dealer must assure itself that the excess net capital or the deductions reported on the most recently required filed Form X–17A–5 have not materially changed since the time such report was filed.

(ii) The term equity capital includes capital contributions by partners, par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts. The term equity capital does not include securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions.

(iii) Paragraphs (e)(1) and (e)(2) of this section shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation, and such payments shall not be included in the calculation of withdrawals, advances, or loans for purposes of paragraphs (e)(1) and (e)(2) of this section.

(iv) For the purpose of this paragraph (e) of this section, any transaction between a broker or dealer and a stockholder, partner, sole proprietor, employee or affiliate that results in a diminution of the broker or dealer's net capital shall be deemed to be an advance or loan of net capital.

(Secs. 15(c)(3), 17(a) and 23(a), 15 U.S.C. 78o(c)(3), 78q(a), and 78w(a))
[40 FR 29799, July 16, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.15c3–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 240.15c3–1a Options (Appendix A to 17 CFR 240.15c3–1).

(a) *Definitions.* (1) The term *unlisted option* shall mean any option not included in the definition of listed option provided in paragraph (c)(2)(x) of § 240.15c3–1.

(2) The term *option series* refers to listed option contracts of the same type (either a call or a put) and exercise style, covering the same underlying security with the same exercise price, expiration date, and number of underlying units.

(3) The term *related instrument* within an option class or product group refers to futures contracts and options on futures contracts covering the same underlying instrument. In relation to options on foreign currencies a related instrument within an option class also shall include forward contracts on the same underlying currency.

(4) The term *underlying instrument* refers to long and short positions, as appropriate, covering the same foreign currency, the same security, or a security which is exchangeable for or convertible into the underlying security within a period of 90 days. If the exchange or conversion requires the payment of money or results in a loss upon conversion at the time when the security is deemed an underlying instrument for purposes of this Appendix A, the broker or dealer will deduct from net worth the full amount of the conversion loss. The term underlying instrument shall not be deemed to include securities options, futures contracts, options on futures contracts, qualified stock baskets, or unlisted instruments.

(5) The term *options class* refers to all options contracts covering the same underlying instrument.

(6) The term *product group* refers to two or more option classes, related instruments, underlying instruments, and qualified stock baskets in the same portfolio type (see paragraph (b)(1)(ii) of this section) for which it has been determined that a percentage of offsetting profits may be applied to losses at the same valuation point.

(b) The deduction under this Appendix A to § 240.15c3–1 shall equal the sum of the deductions specified in paragraphs (b)(1)(v)(C) or (b)(2) of this section.

THEORETICAL PRICING CHARGES

(1)(i) *Definitions.* (A) The terms *theoretical gains and losses* shall mean the gain and loss in the value of individual option series, the value of underlying instruments, related instruments, and qualified stock baskets within that option's class, at 10 equidistant intervals

(valuation points) ranging from an assumed movement (both up and down) in the current market value of the underlying instrument equal to the percentage corresponding to the deductions otherwise required under §240.15c3–1 for the underlying instrument (See paragraph (a)(1)(iii) of this section). Theoretical gains and losses shall be calculated using a theoretical options pricing model that satisfies the criteria set forth in paragraph (a)(1)(i)(B) of this section.

(B) The term *theoretical options pricing model* shall mean any mathematical model, other than a broker-dealer proprietary model, approved by a Designated Examining Authority. Such Designated Examining Authority shall submit the model to the Commission, together with a description of its methods for approving models. Any such model shall calculate theoretical gains and losses as described in paragraph (a)(1)(i)(A) of this section for all series and issues of equity, index and foreign currency options and related instruments, and shall be made available equally and on the same terms to all registered brokers or dealers. Its procedures shall include the arrangement of the vendor to supply accurate and timely data to each broker-dealer with respect to its services, and the fees for distribution of the services. The data provided to brokers or dealers shall also contain the minimum requirements set forth in paragraphs (b)(1)(v)(C) of this section and the product group offsets set forth in paragraphs (b)(1)(v)(B) of this section. At a minimum, the model shall consider the following factors in pricing the option:

(*1*) The current spot price of the underlying asset;

(*2*) The exercise price of the option;

(*3*) The remaining time until the option's expiration;

(*4*) The volatility of the underlying asset;

(*5*) Any cash flows associated with ownership of the underlying asset that can reasonably be expected to occur during the remaining life of the option; and

(*6*) The current term structure of interest rates.

(C) The term *major market foreign currency* shall mean the currency of a sovereign nation whose short-term debt is rated in one of the two highest categories by at least two nationally recognized statistical rating organizations and for which there is a substantial inter-bank forward currency market. For purposes of this section, the European Currency Unit (ECU) shall be deemed a major market foreign currency.

(D) The term *qualified stock basket* shall mean a set or basket of stock positions which represents no less than 50% of the capitalization for a high-capitalization or non-high-capitalization diversified market index, or, in the case of a narrow-based index, no less than 95% of the capitalization for such narrow-based index.

(ii) With respect to positions involving listed options in a single specialist's market-maker account, and, separately, with respect to positions involving listed option positions in its proprietary or other account, the broker or dealer shall group long and short positions into the following portfolio types:

(A) Equity options on the same underlying instrument and positions in that underlying instrument;

(B) Options on the same major market foreign currency, positions in that major market foreign currency, and related instruments within those options' classes;

(C) High-capitalization diversified market index options, related instruments within the option's class, and qualified stock baskets in the same index;

(D) Non-high-capitalization diversified index options, related instruments within the index option's class, and qualified stock baskets in the same index; and

(E) Narrow-based index options, related instruments within the index option's class, and qualified stock baskets in the same index.

(iii) Before making the computation, each broker or dealer shall obtain the theoretical gains and losses for each options series and for the related and underlying instruments within those

options' class in each specialist's market-maker account guaranteed, endorsed, or carried by a broker or dealer, or in the proprietary or other accounts of that broker or dealer. For each option series, the theoretical options pricing model shall calculate theoretical prices at 10 equidistant valuation points within a range consisting of an increase or a decrease of the following percentages of the daily market price of the underlying instrument:

(*A*) +(−)15% for equity securities with a ready market, narrow-based indexes, and non-high-capitalization diversified indexes;

(*B*) +(−)6% for major market foreign currencies;

(*C*) +(−) 20% for all other currencies; and

(*D*) +(−)10% for high-capitalization diversified indexes.

(iv)(A) As to non-clearing option specialists and market-makers, the percentages of the daily market price of the underlying instrument shall be:

(*1*) +(−) 4½% for major market foreign currencies; and

(*2*) +6(−)8% for high-capitalization diversified indexes.

(*3*) +(−) 10% for a non-clearing market-maker, or specialist in non-high capitalization diversified index product group.

(B) The provisions of this paragraph (b)(1)(iv) shall expire two years from September 1, 1997, unless otherwise extended by the Commission.

(v)(A) The broker or dealer shall multiply the corresponding theoretical gains and losses at each of the 10 equidistant valuation points by the number of positions held in a particular options series, the related instruments and qualified stock baskets within the option's class, and the positions in the same underlying instrument.

(B) In determining the aggregate profit or loss for each portfolio type, the broker or dealer will be allowed the following offsets in the following order, provided, that in the case of qualified stock baskets, the broker or dealer may elect to net individual stocks between qualified stock baskets and take the appropriate deduction on the remaining, if any, securities:

(*1*) First, a broker or dealer is allowed the following offsets within an option's class:

(*i*) Between options on the same underlying instrument, positions covering the same underlying instrument, and related instruments within the option's class, 100% of a position's gain shall offset another position's loss at the same valuation point;

(*ii*) Between index options, related instruments within the option's class, and qualified stock baskets on the same index, 95%, or such other amount as designated by the Commission, of gains shall offset losses at the same valuation point;

(*2*) Second, a broker-dealer is allowed the following offsets within an index product group:

(*i*) Among positions involving different high-capitalization diversified index option classes within the same product group, 90% of the gain in a high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in a different high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class;

(*ii*) Among positions involving different non-high-capitalization diversified index option classes within the same product group, 75% of the gain in a non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another non-high-capitalization diversified market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(*iii*) Among positions involving different narrow-based index option classes within the same product group, 90% of the gain in a narrow-based market index option, related instruments, and qualified stock baskets within that index option's class shall offset the loss at the same valuation point in another narrow-based market index option, related instruments, and qualified stock baskets within that index option's class or product group;

(*iv*) No qualified stock basket should offset another qualified stock basket; and

(*3*) Third, a broker-dealer is allowed the following offsets between product groups: Among positions involving different diversified index product groups within the same market group, 50% of the gain in a diversified market index option, a related instrument, or a qualified stock basket within that index option's product group shall offset the loss at the same valuation point in another product group;

(C) For each portfolio type, the total deduction shall be the larger of:

(*1*) The amount for any of the 10 equidistant valuation points representing the largest theoretical loss after applying the offsets provided in paragraph (b)(1)(v)(B) if this section; or

(*2*) A minimum charge equal to 25% times the multiplier for each equity and index option contract and each related instrument within the option's class or product group, or $25 for each option on a major market foreign currency with the minimum charge for futures contracts and options on futures contracts adjusted for contract size differentials, not to exceed market value in the case of long positions in options and options on futures contracts; plus

(*3*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 5% of the market value of the qualified stock basket for high-capitalization diversified and narrow-based indexes; and

(*4*) In the case of portfolio types involving index options and related instruments offset by a qualified stock basket, there will be a minimum charge of 7½% of the market value of the qualified stock basket for non-high-capitalization diversified indexes.

ALTERNATIVE STRATEGY BASED METHOD

(2) A broker or dealer may elect to apply the alternative strategy based method in accordance with the provisions of this paragraph (b)(2).

(i) *Definitions*. (A) The term *intrinsic value* or *in-the-money amount* shall mean the amount by which the exercise value, in the case of a call, is less than the current market value of the underlying instrument, and, in the case of a put, is greater than the current market value of the underlying instrument.

(B) The term *out-of-the-money amount* shall mean the amount by which the exercise value, in the case of a call, is greater than the current market value of the underlying instrument, and, in the case of a put, is less than the current market value of the underlying instrument.

(C) The term *time value* shall mean the current market value of an option contract that is in excess of its intrinsic value.

(ii) Every broker or dealer electing to calculate adjustments to net worth in accordance with the provisions of this paragraph (b)(2) must make the following adjustments to net worth:

(A) Add the time value of a short position in a listed option; and

(B) Deduct the time value of a long position in a listed option, which relates to a position in the same underlying instrument or in a related instrument within the option class or product group as recognized in the strategies enumerated in paragraph (b)(2)(iii)(D) of this section; and

(C) Add the net short market value or deduct the long market value of listed options as recognized in the strategies enumerated in paragraphs (b)(2)(iii)(E)(*1*) and (*2*) of this section.

(iii) In computing net capital after the adjustments provided for in paragraph (b)(2)(ii) of this section, every broker or dealer shall deduct the percentages specified in this paragraph (b)(2)(iii) for all listed option positions, positions covering the same underlying instrument and related instruments within the options' class or product group.

UNCOVERED CALLS

(A) Where a broker or dealer is short a call, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1 of the current market value of the underlying instrument for such option reduced by its out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall this deduction be less than the

greater of $250 for each short call option contract for 100 shares or 50% of the aforementioned percentage.

UNCOVERED PUTS

(B) Where a broker or dealer is short a put, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for such option reduced by its out-of-the-money amount, to the extent that such reduction does not operate to increase net capital. In no event shall the deduction provided by this paragraph be less than the greater of $250 for each short put option contract for 100 shares or 50% of the aforementioned percentage.

LONG POSITIONS

(C) Where a broker or dealer is long puts or calls, deducting 50 percent of the market value of the net long put and call positions in the same options series.

CERTAIN SECURITY POSITIONS WITH OFFSETTING OPTIONS

(D)(*1*) Where a broker or dealer is long a put for which it has an offsetting long position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the long offsetting position, not to exceed the out-of-the-money amount of the option. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*2*) Where a broker or dealer is long a call for which it has an offsetting short position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the short offsetting position, not to exceed the out-of-the-money amount of the option. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares, provided that the minimum charge need not exceed the intrinsic value of the option.

(*3*) Where a broker or dealer is short a call for which it has an offsetting long position in the same number of units of the same underlying instrument, deducting the percentage required by paragraphs (c)(2)(vi) (A) through (K) of § 240.15c3–1 of the current market value of the underlying instrument for the offsetting long position reduced by the short call's intrinsic value. In no event shall the deduction provided by this paragraph be less than $25 for each option contract for 100 shares.

CERTAIN SPREAD POSITIONS

(E)(*1*) Where a broker or dealer is short a listed call and is also long a listed call in the same class of options contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after adjustments required in paragraph (b) of this section, shall be the amount by which the exercise value of the long call exceeds the exercise value of the short call. If the exercise value of the long call is less than or equal to the exercise value of the short call, no deduction is required.

(*2*) Where a broker or dealer is short a listed put and is also long a listed put in the same class of options contracts and the long option expires on the same date as or subsequent to the short option, the deduction, after the adjustments required in paragraph (b) of this section, shall be the amount by which the exercise value of the short put exceeds the exercise value of the long put. If the exercise value of the long put is equal to or greater than the exercise value of the short put, no deduction is required.

(c) With respect to transactions involving unlisted options, every broker or dealer shall determine the value of unlisted option positions in accordance with the provision of paragraph (c)(2)(i) of § 240.15c3–1, and shall deduct the percentages of all securities positions or unlisted options in the proprietary or other accounts of the broker or dealer specified in this paragraph (c). However, where computing the deduction required for a security position as if

the security position had no related unlisted option position and positions in unlisted options as if uncovered would result in a lesser deduction from net worth, the broker or dealer may compute such deductions separately.

UNCOVERED CALLS

(1) Where a broker or dealer is short a call, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the current market value of the security underlying such option reduced by any excess of the exercise value of the call over the current market value of the underlying security. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

UNCOVERED PUTS

(2) Where a broker or dealer is short a put, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the current market value of the security underlying the option reduced by any excess of the market value of the underlying security over the exercise value of the put. In no event shall the deduction provided by this paragraph be less than $250 for each option contract for 100 shares.

COVERED CALLS

(3) Where a broker or dealer is short a call and long equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the current market value of the underlying security reduced by any excess of the current market value of the underlying security over the exercise value of the call. No reduction under this paragraph shall have the effect of increasing net capital.

COVERED PUTS

(4) Where a broker or dealer is short a put and short equivalent units of the underlying security, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the current market value of the underlying security reduced by any excess of the exercise value of the put over the market value of the underlying security. No such reduction shall have the effect of increasing net capital.

CONVERSION ACCOUNTS

(5) Where a broker or dealer is long equivalent units of the underlying security, long a put written or endorsed by a broker or dealer and short a call in its proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the current market value of the underlying security.

(6) Where a broker or dealer is short equivalent units of the underlying security, long a call written or endorsed by a broker or dealer and short a put in his proprietary or other accounts, deducting 5 percent (or 50 percent of such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the market value of the underlying security.

LONG OPTIONS

(7) Where a broker or dealer is long a put or call endorsed or written by a broker or dealer, deducting 15 percent (or such other percentage required by paragraphs (c)(2)(vi) (A) through (K) of §240.15c3–1) of the market value of the underlying security, not to exceed any value attributed to such option in paragraph (c)(2)(i) of §240.15c3–1.

[62 FR 6481, Feb. 12, 1997]

§240.15c3–1b Adjustments to net worth and aggregate indebtedness for certain commodities transactions (Appendix B to 17 CFR 240.15c3–1).

(a) Every broker or dealer in computing net capital pursuant to 17 CFR 240.15c3–1 shall comply with the following:

(1) Where a broker or dealer has an asset or liability which is treated or defined in paragraph (c) of 17 CFR 240.15c3–1, the inclusion or exclusion of all or part of such asset or liability for

the computation of aggregate indebtedness and net capital shall be in accordance with paragraph (c) of 17 CFR 240.15c3–1, except as specifically provided otherwise in this Appendix B. Where a commodity related asset or liability is specifically treated or defined in 17 CFR 1.17 and is not generally or specifically treated or defined in 17 CFR 240.15c3–1 or this Appendix B, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with 17 CFR 1.17.

AGGREGATE INDEBTEDNESS

(2) The term *aggregate indebtedness* as defined in paragraph (c)(1) of this section shall exclude with respect to commodity-related transactions:

(i) Indebtedness arising in connection with an advance to a non-proprietary account when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are covered.

(ii) Advances received by the broker or dealer against bills of lading issued in connection with the shipment of commodities sold by the broker or dealer; and

(iii) Equity balances in the accounts of general partners.

NET CAPITAL

(3) In computing net capital as defined in paragraph (c)(2) of this section, the net worth of a broker or dealer shall be adjusted as follows with respect to commodity-related transactions:

(i) *Unrealized profit or loss for certain commodities transactions.* (A) Unrealized profits shall be added and unrealized losses shall be deducted in the commodities accounts of the broker or dealer, including unrealized profits and losses on fixed price commitments and forward contracts; and

(B) The value attributed to any commodity option which is not traded on a contract market shall be the difference between the option's strike price and the market value for the physical or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the physical or futures contract which is the subject of the option is less than the strike price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the physical commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

(ii) Deduct any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits need not be deducted until the close of business on the business day following the date on which such deficit or debit ledger balance originated;

(iii) Deduct all unsecured receivables, advances and loans except for:

(A) Management fees receivable from commodity pools outstanding no longer than thirty (30) days from the date they are due;

(B) Receivables from foreign clearing organizations;

(C) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B. In the case of an introducing broker or an applicant for registration as an introducing broker, include 50 percent of the value of a guarantee or security deposit with a futures commission merchant which carries or intends to carry accounts for the customers of the introducing broker.

(iv) Deduct all inventories (including work in process, finished goods, raw materials and inventories held for resale) except for readily marketable spot commodities; or spot commodities which adequately collateralize indebtedness under paragraph (c)(7) of 17 CFR 1.17;

(v) Guarantee deposits with commodities clearing organizations are not required to be deducted from net worth;

(vi) Stock in commodities clearing organizations to the extent of its margin value is not required to be deducted from net worth;

(vii) Deduct from net worth the amount by which any advances paid by the broker or dealer on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts.

(viii) Do not include equity in the commodity accounts of partners in net worth.

(ix) In the case of all inventory, fixed price commitments and forward contracts, except for inventory and forward contracts in the inter-bank market in those foreign currencies which are purchased or sold for further delivery on or subject to the rules of a contract market and covered by an open futures contract for which there will be no charge, deduct the applicable percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract or by a commodity option on a physical—No charge.

(B) Inventory which is covered by an open futures contract or commodity option—5% of the market value.

(C) Inventory which is not covered—20% of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10% of the market value.

(E) Fixed price commitments (open purchases and sales) and forward contracts which are not covered by an open futures contract or commodity option—20% of the market value.

(x) Deduct 4% of the market value of commodity options granted (sold) by option customers on or subject to the rules of a contract market.

(xi) [Reserved]

(xii) Deduct for undermargined customer commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin, or other required deposits which are outstanding three business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements on such accounts, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding three days or less to restore original margin when the original margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph (a)(3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (a)(3)(xii). In the event that an owner of a customer account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this paragraph shall be the lesser of (A) the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of such asset after application of the percentage deductions specified in paragraph (a)(3)(ix) of this Appendix B or, where appropriate, specified in paragraph (c)(2)(vi) or (c)(2)(vii) of §240.15c3–1 this chapter;

(xiii) Deduct for undermargined noncustomer and omnibus commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin, or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding two days or less to restore original margin when the original margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph

(a)(3)(ii) of this Appendix B such amount shall not also be deducted under this paragraph (a)(3)(xiii). In the event that an owner of a non-customer or omnibus account has deposited an asset other than cash to margin, guarantee or secure his account, the value attributable to such asset for purposes of this paragraph shall be the lesser of (A) the value attributable to such asset pursuant to the margin rules of the applicable board of trade, or (B) the market value of such asset after application of the percentage deductions specified in paragraph (a)(3)(ix) of this Appendix B or, where appropriate, specified in paragraph (c)(2)(vi) or (c)(2)(vii) of § 240.15c3–1 of this chapter;

(xiv) In the case of open futures contracts and granted (sold) commodity options held in proprietary accounts carried by the broker or dealer which are not covered by a position held by the broker or dealer or which are not the result of a ''changer trade made in accordance with the rules of a contract market, deduct:

(A) For a broker or dealer which is a clearing member of a contract market for the positions on such contract market cleared by such member, the applicable margin requirement of the applicable clearing organization;

(B) For a broker or dealer which is a member of a self-regulatory organization 150% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

(C) For all other brokers or dealers, 200% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

(D) For open contracts or granted (sold) commodity options for which there are no applicable maintenance margin requirements, 200% of the applicable initial margin requirement;

Provided, the equity in any such proprietary account shall reduce the deduction required by this paragraph (a)(3)(xiv) if such equity is not otherwise includable in net capital.

(xv) In the case of a broker or dealer which is a purchaser of a commodity option which is traded on a contract market the deduction shall be the same safety factor as if the broker or dealer were the grantor of such option in accordance with paragraph (a)(3)(xiv), but in no event shall the safety factor be greater than the market value attributed to such option.

(xvi) In the case of a broker or dealer which is a purchaser of a commodity option not traded on a contract market which has value and such value is used to increase net capital, the deduction is ten percent of the market value of the physical or futures contract which is the subject of such option but in no event more than the value attributed to such option.

(xvii) Deduction 5% of all unsecured receivables includable under paragraph (a)(3)(iii)(C) of this Appendix B used by the broker or dealer in computing ''net capital'' and which are not receivable from (A) a futures commission merchant registered as such with the Commodity Futures Trading Commission, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xviii) A loan or advance or any other form of receivable shall not be considered ''secured'' for the purposes of paragraph (a)(3) of this Appendix B unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash: *Provided, however*, That the receivable will be considered secured only to the extent of the market value of such collateral after application of the percentage deductions specified in paragraph (a)(3)(ix) of this Appendix B; and

(B)(*1*) The readily marketable collateral is in the possession or control of the broker or dealer; or

(*2*) The broker or dealer has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(xix) The term *cover* for purposes of this Appendix B shall mean cover as defined in 17 CFR 1.17(j).

(xx) The term *customer* for purposes of this Appendix B shall mean customer as defined in 17 CFR 1.17(b)(2). The term ''non-customer'' for purposes

of this Appendix B shall mean non-customer as defined in 17 CFR 1.17(b)(4).

(Secs. 15(c)(3), 17(a) and 23(a), 15 U.S.C. 78o(c)(3), 78q(a), and 78w(a))
[44 FR 34886, June 15, 1979, as amended at 46 FR 37041, July 17, 1981; 49 FR 31848, Aug. 9, 1984]

§ 240.15c3–1c Consolidated Computations of Net Capital and Aggregate Indebtedness for Certain Subsidiaries and Affiliates (Appendix C to 17 CFR 240.15c3–1).

(a) *Flow Through Capital Benefits.* Every broker or dealer in computing its net capital and aggregate indebtedness pursuant to 17 CFR 240.15c3–1 shall, subject to the provisions of paragraphs (b) and (d) of this Appendix, consolidate in a single computation assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes directly or indirectly the obligations or liabilities. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the broker or dealer may also be so consolidated if an opinion of counsel is obtained as provided for in paragraph (b) of this section.

(b) *Required Counsel Opinions.*(1) If the consolidation, provided for in paragraph (a) of this section, of any such subsidiary or affiliate results in the increase of the broker's or dealers's net capital and/or the decrease of the broker's or dealer's minimum net capital requirement under paragraph (a) of § 240.15c3–1 and an opinion of counsel described in paragraph (b)(2) of this section has not been obtained, such benefits shall not be recognized in the broker's or dealer's computation required by this section.

(2) Except as provided for in paragraph (b)(1) of this section, consolidation shall be permitted with respect to any subsidiaries or affiliates which are majority owned and controlled by the broker or dealer for which the broker or dealer can demonstrate to the satisfaction of the Commission, through the Examining Authority, by an opinion of counsel that the net asset values, or the portion thereof related to the parent's ownership interest in the subsidiary or affiliate may be caused by the broker or dealer or a trustee appointed pursuant to the Securities Investor Protection Act of 1970 or otherwise, to be distributed to the broker or dealer within 30 calendar days. Such opinion shall also set forth the actions necessary to cause such a distribution to be made, identify the parties having the authority to take such actions, identify and describe the rights of other parties or classes of parties, including but not limited to customers, general creditors, subordinated lenders, minority shareholders, employees, litigants and governmental or regulatory authorities, who may delay or prevent such a distribution and such other assurances as the Commission or the Examining Authority by rule or interpretation may require. Such opinion shall be current and periodically renewed in connection with the broker's or dealer's annual audit pursuant to 17 CFR 240.17a–5 under the Securities Exchange Act of 1934 or upon any material change in circumstances.

(c) *Principles of Consolidation.* In preparing a consolidated computation of net capital and/or aggregate indebtedness pursuant to this section, the following minimum and non-exclusive requirements shall be observed:

(1) Consolidated net worth shall be reduced by the estimated amount of any tax reasonably anticipated to be incurred upon distribution of the assets of the subsidiary or affiliate.

(2) Liabilities of a consolidated subsidiary or affiliate which are subordinated to the claims of present and future creditors pursuant to a satisfactory subordination agreement shall not be added to consolidated net worth unless such subordination extends also to the claims of present or future creditors of the parent broker or dealer and all consolidated subsidiaries.

(3) Subordinated liabilities of a consolidated subsidiary or affiliate which are consolidated in accordance with paragraph (c)(2) of this section may not be prepaid, repaid or accelerated if any of the entities included in such consolidation would otherwise be unable to comply with the provisions of Appendix (D), 17 CFR 240.15c3–1d.

(4) Each broker or dealer included within the consolidation shall at all times be in compliance with the net

capital requirement to which it is subject.

(d) *Certain Precluded Acts*. No broker or dealer shall guarantee, endorse or assume directly or indirectly any obligation or liability of a subsidiary or affiliate unless the obligation or liability is reflected in the computation of net capital and/or aggregate indebtedness pursuant to 17 CFR 240.15c3–1 or this Appendix (C), except as provided in paragraph (b)(1) of this section.

[40 FR 29808, July 16, 1975, as amended at 57 FR 56988, Dec. 2, 1992]

§ 240.15c3–1d Satisfactory Subordination Agreements (Appendix D to 17 CFR 240.15c3–1).

(a) *Introduction*. (1) This Appendix sets forth minimum and non-exclusive requirements for satisfactory subordination agreements (hereinafter ''subordination agreement''). The Examining Authority may require or the broker or dealer may include such other provisions as deemed necessary or appropriate to the extent such provisions do not cause the subordination agreement to fail to meet the minimum requirements of this Appendix (D).

(2) *Certain Definitions*. For purposes of 17 CFR 240.15c3–1 and this Appendix (D):

(i) A subordination agreement may be either a subordinated loan agreement or a secured demand note agreement.

(ii) The term *subordinated loan agreement* shall mean the agreement or agreements evidencing or governing a subordinated borrowing of cash.

(iii) The term *Collateral Value* of any securities pledged to secure a secured demand note shall mean the market value of such securities after giving effect to the percentage deductions set forth in paragraph (c)(2)(vi) of § 240.15c3–1 except for paragraph (c)(2)(vi)(J). In lieu of the deduction under (c)(2)(vi)(J), the broker or dealer shall reduce the market value of the securities pledged to secure the secured demand note by 30 percent.

(iv) The term *Payment Obligation* shall mean the obligation of a broker or dealer in respect to any subordination agreement (A) to repay cash loaned to the broker or dealer pursuant to a subordinated loan agreement or (B) to return a secured demand note contributed to the broker or dealer or reduce the unpaid principal amount thereof and to return cash or securities pledged as collateral to secure the secured demand note and (C) ''Payment'' shall mean the performance by a broker or dealer of a Payment Obligation.

(v)(A) The term *secured demand note agreement* shall mean an agreement (including the related secured demand note) evidencing or governing the contribution of a secured demand note to a broker or dealer and the pledge of securities and/or cash with the broker or dealer as collateral to secure payment of such secured demand note. The secured demand note agreement may provide that neither the lender, his heirs, executors, administrators or assigns shall be personally liable on such note and that in the event of default the broker or dealer shall look for payment of such note solely to the collateral then pledged to secure the same.

(B) The secured demand note shall be a promissory note executed by the lender and shall be payable on the demand of the broker or dealer to which it is contributed; provided, however, that the making of such demand may be conditioned upon the occurrence of any of certain events which are acceptable to the Commission and to the Examining Authority for such broker or dealer.

(C) If such note is not paid upon presentment and demand as provided for therein, the broker or dealer shall have the right to liquidate all or any part of the securities then pledged as collateral to secure payment of the same and to apply the net proceeds of such liquidation, together with any cash then included in the collateral, in payment of such note. Subject to the prior rights of the broker or dealer as pledgee, the lender, as defined herein, may retain ownership of the collateral and have the benefit of any increases and bear the risks of any decreases in the value of the collateral and may retain the right to vote securities contained within the collateral and any right to income therefrom or distributions thereon, except the broker or dealer shall have the right to receive and hold

as pledgee all dividends payable in securities and all partial and complete liquidating dividends.

(D) Subject to the prior rights of the broker or dealer as pledgee, the lender may have the right to direct the sale of any securities included in the collateral, to direct the purchases of securities with any cash included therein, to withdraw excess collateral or to substitute cash or other securities as collateral, provided that the net proceeds of any such sale and the cash so substituted and the securities so purchased or substituted are held by the broker or dealer, as pledgee, and are included within the collateral to secure payment of the secured demand note, and provided further that no such transaction shall be permitted if, after giving effect thereto, the sum of the amount of any cash, plus the Collateral Value of the securities, then pledged as collateral to secure the secured demand note would be less than the unpaid principal amount of the secured demand note.

(E) Upon payment by the lender, as distinguished from a reduction by the lender which is provided for in (b)(6)(iii) or reduction by the broker or dealer as provided for in subparagraph (b)(7) of this Appendix (D), of all or any part of the unpaid principal amount of the secured demand note, a broker or dealer shall issue to the lender a subordinated loan agreement in the amount of such payment (or in the case of a broker or dealer that is a partnership credit a capital account of the lender) or issue preferred or common stock of the broker or dealer in the amount of such payment, or any combination of the foregoing, as provided for in the secured demand note agreement.

(F) The term *lender* shall mean the person who lends cash to a broker or dealer pursuant to a subordinated loan agreement and the person who contributes a secured demand note to a broker or dealer pursuant to a secured demand note agreement.

(b) *Minimum Requirements for Subordination Agreements.* (1) Subject to paragraph (a) of this section, a subordination agreement shall mean a written agreement between the broker or dealer and the lender, which (i) has a minimum term of one year, except for temporary subordination agreements provided for in paragraph (c)(5) of this Appendix (D), and (ii) is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws) against the broker or dealer and the lender and their respective heirs, executors, administrators, successors and assigns.

(2) *Specific Amount.* All subordination agreements shall be for a specific dollar amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this Appendix (D).

(3) *Effective Subordination.* The subordination agreement shall effectively subordinate any right of the lender to receive any Payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the broker or dealer arising out of any matter occurring prior to the date on which the related Payment Obligation matures consistent with the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d, except for claims which are the subject of subordination agreements which rank on the same priority as or junior to the claim of the lender under such subordination agreements.

(4) *Proceeds of Subordinated Loan Agreements.* The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with by the broker or dealer as part of its capital and shall be subject to the risks of the business.

(5) *Certain Rights of the Broker or Dealer.* The subordination agreement shall provide that the broker or dealer shall have the right to:

(i) Deposit any cash proceeds of a subordinated loan agreement and any cash pledged as collateral to secure a secured demand note in an account or accounts in its own name in any bank or trust company;

(ii) Pledge, repledge, hypothecate and rehypothecate, any or all of the securities pledged as collateral to secure a secured demand note, without notice, separately or in common with other securities or property for the purpose of

securing any indebtedness of the broker or dealer; and

(iii) Lend to itself or others any or all of the securities and cash pledged as collateral to secure a secured demand note.

(6) *Collateral for Secured Demand Notes.* Only cash and securities which are fully paid for and which may be publicly offered or sold without registration under the Securities Act of 1933, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note. The secured demand note agreement shall provide that if at any time the sum of the amount of any cash, plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of the secured demand note, the broker or dealer must immediately transmit written notice to that effect to the lender and the Examining Authority for such broker or dealer. The secured demand note agreement shall also require that following such transmittal:

(i) The lender, prior to noon of the business day next succeeding the transmittal of such notice, may pledge as collateral additional cash or securities sufficient, after giving effect to such pledge, to bring the sum of the amount of any cash plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note, up to an amount not less than the unpaid principal amount of the secured demand note; and

(ii) Unless additional cash or securities are pledged by the lender as provided in paragraph (b)(6)(i) of this section, the broker or dealer at noon on the business day next succeeding the transmittal of notice to the lender must commence sale, for the account of the lender, of such of the securities then pledged as collateral to secure the secured demand note and apply so much of the net proceeds thereof, together with such of the cash then pledged as collateral to secure the secured demand note as may be necessary to eliminate the unpaid principal amount of the secured demand note; *Provided, however,* That the unpaid principal amount of the secured demand note need not be reduced below the sum of the amount of any remaining cash, plus the Collateral Value of the remaining securities, then pledged as collateral to secure the secured demand note. The broker or dealer may not purchase for its own account any securities subject to such a sale.

(iii) The secured demand note agreement also may provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the aggregate indebtedness of the broker or dealer may not exceed 1000 percent of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3–1, net capital may not be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a, or, if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater. No single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3–1.

Permissive Prepayments

(7) A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation

(hereinafter referred to as a ''Prepayment''), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements that comply with the provisions of paragraph (c)(5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by §240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of §240.15c3–1, its net capital would be less than 5 percent of its aggregate debit items computed in accordance with §240.15c3–3a, or if registered as a futures commission merchant, 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of §240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

Suspended Repayment

(8)(i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding that are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital, or in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of §240.15c3–1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with §240.15c3–3a or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by §240.15c3–1 including paragraph (a)(1)(ii), if applicable. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of §240.15c3–1 and §240.15c3–1d.

(9) *Accelerated Maturity-Obligation to Repay to Remain Subordinate.* (i) Subject to the provisions of paragraph (b)(8) of this appendix, a subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Examining Authority given not earlier than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after the giving of such notice,

but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(ii) Notwithstanding the provisions of paragraph (b)(8) of this appendix, the Payment Obligation of the broker or dealer with respect to a subordination agreement, together with accrued interest and compensation, shall mature in the event of any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to the bankruptcy laws, or any other marshalling of the assets and liabilities of the broker or dealer but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

(10)(i) *Accelerated Maturity of Subordination Agreements on Event of Default and Event of Acceleration—Obligation to Repay to Remain Subordinate.* A subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Examining Authority of the broker or dealer of the occurrence of any Event of Acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the broker or dealer and the Examining Authority for the broker or dealer. Any subordination agreement containing such Events of Acceleration may also provide, that if upon such accelerated maturity date the Payment Obligation of the broker or dealer is suspended as required by paragraph (b)(8) of this Appendix (D) and liquidation of the broker or dealer has not commenced on or prior to such accelerated maturity date, then notwithstanding paragraph (b)(8) of this appendix the Payment Obligation of the broker or dealer with respect to such subordination agreement shall mature on the day immediately following such accelerated maturity date and in any such event the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Acceleration which may be included in a subordination agreement complying with this paragraph (b)(10) shall be limited to:

(A) Failure to pay interest or any installment of principal on a subordination agreement as scheduled;

(B) Failure to pay when due other money obligations of a specified material amount;

(C) Discovery that any material, specified representation or warranty of the broker or dealer which is included in the subordination agreement and on which the subordination agreement was based or continued was inaccurate in a material respect at the time made;

(D) Any specified and clearly measurable event which is included in the subordination agreement and which the lender and the broker or dealer agree (*1*) is a significant indication that the financial position of the broker or dealer has changed materially and adversely from agreed upon specified norms or (*2*) could materially and adversely affect the ability of the broker or dealer to conduct its business as conducted on the date the subordination agreement was made; or (*3*) is a significant change in the senior management of the broker or dealer or in the general business conducted by the broker or dealer from that which obtained on the date the subordination agreement became effective;

(E) Any continued failure to perform agreed covenants included in the subordination agreement relating to the conduct of the business of the broker or dealer or relating to the maintenance and reporting of its financial position; and

(ii) Notwithstanding the provisions of paragraph (b)(8) of this appendix, a subordination agreement may provide

that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commenced, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. Any subordination agreement which so provides for maturity of the Payment Obligation upon the occurrence of an Event of Default shall also provide that the date on which such Event of Default occurs shall, if liquidation of the broker or dealer has not already commenced, be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this Appendix (D). Events of Default which may be included in a subordination agreement shall be limited to:

(A) The making of an application by the Securities Investor Protection Corporation for a decree adjudicating that customers of the broker or dealer are in need of protection under the Securities Investor Protection Act of 1970 and the failure of the broker or dealer to obtain the dismissal of such application within 30 days;

(B) The aggregate indebtedness of the broker or dealer exceeding 1500 percent of its net capital or, in the case of a broker or dealer that has elected to operate under paragraph (a)(1)(ii) of §240.15c3–1, its net capital computed in accordance therewith is less than 2 percent of its aggregate debit items computed in accordance with §240.15c3–3a or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, or the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

(C) The Commission shall revoke the registration of the broker or dealer;

(D) The Examining Authority shall suspend (and not reinstate within 10 days) or revoke the broker's or dealer's status as a member thereof;

(E) Any receivership, insolvency, liquidation pursuant to the Securities Investor Protection Act of 1970 or otherwise, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshalling of the assets and liabilities of the broker or dealer.

A subordination agreement which contains any of the provisions permitted by this paragraph (b)(10) shall not contain the provision otherwise permitted by clause (i) of paragraph (b)(9).

BROKERS AND DEALERS CARRYING THE ACCOUNTS OF SPECIALISTS AND MARKET MAKERS IN LISTED OPTIONS

(11) A subordination agreement which becomes effective on or after August 1, 1977 in favor of a broker or dealer who guarantees, endorses, carries or clears specialist or market maker transactions in options listed on a national securities exchange or facility of a national securities association shall provide that reduction, prepayment or repayment of the unpaid principal amount thereof, pursuant to those terms of the agreement required or permitted by paragraphs (b)(6)(iii), (b)(7), or (b)(8)(i) of this section, shall not occur in contravention of paragraphs (a)(6)(v), (a)(7)(iv), or (c)(2)(x)(B)(*1*) of §240.15c3–1 insofar as they apply to such broker or dealer.

(c) *Miscellaneous Provisions*—(1) *Prohibited Cancellation*. The subordination agreement shall not be subject to cancellation by either party; no Payment shall be made with respect thereto and the agreement shall not be terminated,

rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of 17 CFR 240.15c3–1 and 240.15c3–1d.

(2) Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding that are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer either the aggregate indebtedness of the broker or dealer would exceed 1200 percent of its net capital or its net capital would be less than 120 percent of the minimum dollar amount required by § 240.15c3–1, or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3–1, its net capital would be less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a, or, if registered as a futures commission merchant, 6 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of § 240.15c3–1.

(3) *Certain Legends.* If all the provisions of a satisfactory subordination agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

(4) *Legal Title to Securities.* All securities pledged as collateral to secure a secured demand note must be in bearer form, or registered in the name of the broker or dealer or the name of its nominee or custodian.

Temporary and Revolving Subordination Agreements

(5)(i) For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of § 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis that has a stated term of no more than 45 days from the date such subordination agreement became effective. This temporary relief shall not apply to a broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to § 240.17a–11, or if immediately prior to entering into such subordination agreement, either:

(A) The aggregate indebtedness of the broker or dealer exceeds 1000 percent of its net capital or its net capital is less than 120 percent of the minimum dollar amount required by § 240.15c3–1, or

(B) In the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of § 240.15c3–1, its net capital is less than 5 percent of aggregate debits computed in accordance with § 240.15c3–1, or, if registered as a futures commission merchant, less than 7 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or less than 120 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section, or

(C) The amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of § 240.15c3–1. Such temporary subordination agreement shall be subject to all other provisions of this Appendix D.

(ii) A broker or dealer shall be permitted to enter into a revolving subordinated loan agreement which provides for prepayment within less than one year of all or any portion of the Payment Obligation thereunder at the option of the broker or dealer upon the

prior written approval of the Examining Authority for the broker or dealer. The Examining Authority, however, shall not approve any prepayment if:

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 900 percent of its net capital or its net capital would be less than 200 percent of the minimum dollar amount required by §240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (a)(1)(ii) of §240.15c3–1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with §240.15c3–3a, or, if registered as a futures commission merchant, 10 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder (less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, each such deduction not to exceed the amount of funds in the option customer's account), if greater, or its net capital would be less than 200 percent of the minimum dollar amount required by paragraph (a)(1)(ii) of this section or

(B) Pre-tax losses during the latest three-month period equalled more than 15% of current excess net capital.

Any subordination agreement entered into pursuant to this paragraph (c)(5)(ii) shall be subject to all the other provisions of this Appendix D. Any such subordination agreement shall not be considered equity for purposes of subsection (d) of section 15c3–1, despite the length of the initial term of the loan.

(6)(i) *Filing*. Two copies of any proposed subordination agreement (including nonconforming subordination agreements) shall be filed at least 10 days prior to the proposed execution date of the agreement with the Commission's Regional or District Office for the region or district in which the broker or dealer maintains its principal place of business or at such other time as the Regional or District Office for good cause shall accept such filing. Copies of the proposed agreement shall also be filed with the Examining Authority in such quantities and at such time as the Examining Authority may require. The broker or dealer shall also file with said parties a statement setting forth the name and address of the lender, the business relationship of the lender to the broker or dealer, and whether the broker or dealer carried funds or securities for the lender at or about the time the proposed agreement was so filed. All agreements shall be examined by the Commission's Regional or District Office or the Examining Authority with whom such agreement is required to be filed prior to their becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this section unless and until the Examining Authority has found the agreement acceptable and such agreement has become effective in the form found acceptable.

(ii) The broker or dealer need not file with the Regional or District Office for the region or district in which the broker or dealer maintains its principal place of business (if a Regional or District Office is not its Examining Authority) copies of any proposed subordination agreement or the statement described above if the Examining Authority for that broker or dealer has consented to file with the Commission periodic reports (not less than monthly) summarizing for the period, on a firm-by-firm basis, the subordination agreements it has approved for that period. Such reports should include at the minimum, the amount of the loan and its duration, the name of the lender and the business relationship of the lender to the broker or dealer.

(7) *Subordination Agreements in Effect Prior to Adoption*. Any subordination agreement which has been entered into prior to December 20, 1978 and which has been deemed to be satisfactorily

subordinated pursuant to 17 CFR 240.15c3–1 as in effect prior to December 20, 1978, shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. *Provided*, That no renewal of an agreement which provides for automatic or optional renewal by the broker or dealer or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this Appendix within 6 months from December 20, 1978. *Provided, further*, That all subordination agreements must meet the requirements of this Appendix within 5 years of December 20, 1978.

(Secs. 15(c)(3), 17(a) and 23(a), 15 U.S.C. 78o(c)(3), 78q(a), and 78w(a))

[40 FR 29808, July 16, 1975, as amended at 42 FR 31778, June 23, 1977; 44 FR 34887, June 15, 1979; 46 FR 35635, July 10, 1981; 47 FR 21775, May 20, 1982; 49 FR 31848, Aug. 9, 1984; 57 FR 56988, Dec. 2, 1992; 58 FR 37657, July 13, 1993; 59 FR 5945, Feb. 9, 1994]

§ 240.15c3–1e Temporary Minimum Requirements (Appendix E to 17 CFR 240.15c3–1e).

Brokers or Dealers That Carry Customer Accounts Aggregate Indebtedness Standard

(a) A broker or dealer that falls within the provisions of paragraph (a)(2)(i) of § 240.15c3–1 and computes its required net capital under § 240.15c3–1(a)(1)(i) shall maintain net capital not less than the greater of the amount computed under the paragraph (a)(1)(i) or:

(1) $25,000 until June 30, 1993;

(2) $100,000 on July 1, 1993, until December 31, 1993;

(3) $175,000 on January 1, 1994, until June 30, 1994; and

(4) $250,000 on July 1, 1994.

Brokers or Dealers That Elect the Alternative Standard

(b) A broker or dealer that elects the provisions of § 240.15c3–1(a)(1)(ii) shall maintain net capital of not less than the greater of the amount computed under the paragraph (a)(1)(ii) or:

(1) $100,000 until June 30, 1993;

(2) $150,000 on July 1, 1993, until December 31, 1993;

(3) $200,000 on January 1, 1994, until June 30, 1994; and

(4) $250,000 on July 1, 1994.

Broker or Dealers That are Exempt From Securities Exchange Act Rule 15c3–3 Under Paragraph (k)(2)(i) and Dealers

(c) A broker or dealer that falls within the provisions of § 240.15c3–1(a)(2) (ii) or (iii) and computes its required net capital under § 240.15c3–1(a)(1)(i) shall maintain net capital not less than the greater of the same computed under § 240.15c3–1(a)(1)(i) or:

(1) $25,000 until June 30, 1993;

(2) $50,000 on July 1, 1993, until December 31, 1993;

(3) $75,000 on January 1, 1994, until June 30, 1994; and

(4) $100,000 on July 1, 1994.

Brokers or Dealers That Introduce Customer Accounts and Receive Securities

(d) An introducing broker that falls within the provisions of § 240.15c3–1(a)(2)(iv) and computes its required net capital under § 240.15c3–1(a)(1)(i) shall maintain net capital of not less than the greater of the amount computed under § 240.15c3–1(a)(1)(i) or:

(1) $5,000 until June 30, 1993;

(2) $20,000 on July 1, 1993, until December 31, 1993;

(3) $35,000 on January 1, 1994, until June 30, 1994; and

(4) $50,000 on July 1, 1994.

Brokers or Dealers Engaged in the Sale of Redeemable Shares of Registered Investment Companies and Certain Other Share Accounts

(e) A broker or dealer that falls within the provisions of § 240.15c3–1(a)(2)(v) and computes its required net capital under § 240.15c3–1(a)(1)(i) shall maintain net capital of not less than the greater of the amount computed under § 240.15c3–1(a)(1)(i) or:

(1) $2,500 until June 30, 1993;

(2) $10,000 on July 1, 1993, until December 31, 1993;

(3) $17,500 on January 1, 1994, until June 30, 1994; and

(4) $25,000 on July 1, 1994.

Other Brokers or Dealers

(f) A broker or dealer that falls within the provisions of § 240.15c3–1(a)(2)(vi), computes its required net capital under § 240.15c3–1(a)(1)(i) and is not otherwise

subject to a $5,000 minimum net capital requirement shall maintain net capital of not less than the greater of the amount computed under § 240.15c3–1(a)(1)(i) or:

(1) $2,500 until June 30, 1993;

(2) $3,300 on July 1, 1993, until December 31, 1993;

(3) $4,100 on January 1, 1994, until June 30, 1994; and

(4) $5,000 on July 1, 1994.

[57 FR 56990, Dec. 2, 1992]

§ 240.15c3–2 Customers' free credit balances.

No broker or dealer shall use any funds arising out of any free credit balance carried for the account of any customer in connection with the operation of the business of such broker or dealer unless such broker or dealer has established adequate procedures pursuant to which each customer for whom a free credit balance is carried will be given or sent, together with or as a part of the customer's statement of account, whenever sent but not less frequently than once every three months, a written statement informing such customer of the amount due to the customer by such broker or dealer on the date of such statement, and containing a written notice that (a) such funds are not segregated and may be used in the operation of the business of such broker or dealer, and (b) such funds are payable on the demand of the customer: *Provided, however,* That this section shall not apply to a broker or dealer which is also a banking institution supervised and examined by State or Federal authority having supervision over banks. For the purpose of this section the term *customer* shall mean every person other than a broker or dealer.

(Sec. 15, 48 Stat. 895; 15 U.S.C. 78*o*)
[29 FR 7240, June 3, 1964]

§ 240.15c3–3 Customer protection—reserves and custody of securities.

(a) *Definitions.* For the purpose of this section:

(1) The term *customer* shall mean any person from whom or on whose behalf a broker or dealer has received or acquired or holds funds or securities for the account of that person. The term shall not include a broker or dealer or a registered municipal securities dealer. The term shall not include general partners or directors or principal officers of the broker or dealer or any other person to the extent that that person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer. The term customer shall, however, include another broker or dealer to the extent that that broker or dealer maintains an omnibus account for the account of customers with the broker or dealer in compliance with Regulation T under the Securities Exchange Act of 1934.

(2) The term *securities carried for the account of a customer* (hereinafter also ''customer securities'') shall mean:

(i) Securities received by or on behalf of a broker or dealer for the account of any customer and securities carried long by a broker or dealer for the account of any customer; and

(ii) Securities sold to, or bought for, a customer by a broker or dealer.

(3) The term *fully paid securities* shall include all securities carried for the account of a customer in a special cash account as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System, as well as margin equity securities within the meaning of Regulation T which are carried for the account of a customer in a general account or any special account under Regulation T during any period when section 8 of Regulation T (12 CFR 220.8) specifies that margin equity securities shall have no loan value in a general account or special convertible debt security account, and all such margin equity securities in such account if they are fully paid: *Provided, however,* That the term ''fully paid securities'' shall not apply to any securities which are purchased in transactions for which the customer has not made full payment.

(4) The term *margin securities* shall mean those securities carried for the account of a customer in a general account as defined in Regulation T, as well as securities carried in any special

account (such general or special accounts hereinafter referred to as ''margin accounts'') other than the securities referred to in paragraph (a)(3) of this section.

(5) The term *excess margin securities* shall mean those securities referred to in paragraph (a)(4) of this section carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of this section which the broker or dealer identifies as not constituting margin securities.

(6) The term *qualified security* shall mean a security issued by the United States or a security in respect of which the principal and interest are guaranteed by the United States.

(7) The term *bank* shall mean a bank as defined in section 3(a)(6) of the Act and shall also mean any building and loan, savings and loan or similar banking institution subject to supervision by a Federal banking authority. With respect to a broker or dealer who maintains his principal place of business in the Dominion of Canada, the term ''bank'' shall also mean a Canadian bank subject to supervision by an authority of the Dominion of Canada.

(8) The term *free credit balances* shall mean liabilities of a broker or dealer to customers which are subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise, excluding, however, funds in commodity accounts which are segregated in accordance with the Commodity Exchange Act or in a similar manner.

(9) The term *other credit balances* shall mean cash liabilities of a broker or dealer to customers other than free credit balances and funds in commodities accounts segregated as aforesaid.

(10) The term *funds carried for the account of any customer* (hereinafter also ''customer funds'') shall mean all free credit and other credit balances carried for the account of the customer.

(11) The term *principal officer* shall mean the president, executive vice president, treasurer, secretary or any other person performing a similar function with the broker or dealer.

(12) The term *household members and other persons related to principals* includes husbands or wives, children, sons-in-law or daughters-in-law and any household relative to whose support a principal contributes directly or indirectly. For purposes of this paragraph (a)(12), a principal shall be deemed to be a director, general partner, or principal officer of the broker or dealer.

(13) The term *affiliated person* includes any person who directly or indirectly controls a broker or dealer or any person who is directly or indirectly controlled by or under common control with the broker or dealer. Ownership of 10% or more of the common stock of the relevant entity will be deemed prima facie control of that entity for purposes of this paragraph.

(b) *Physical possession or control of securities.* (1) A broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of customers.

(2) A broker or dealer shall not be deemed to be in violation of the provisions of paragraph (b)(1) of this section regarding physical possession or control of customers' securities if, solely as the result of normal business operations, temporary lags occur between the time when a security is required to be in the possession or control of the broker or dealer and the time that it is placed in his physical possession or under his control, provided that the broker or dealer takes timely steps in good faith to establish prompt physical possession or control. The burden of proof shall be on the broker or dealer to establish that the failure to obtain physical possession or control of securities carried for the account of customers as required by paragraph (b)(1) of this section is merely temporary and solely the result of normal business operations including same day receipt and redelivery (turnaround), and to establish that he has taken timely steps in good faith to place them in his physical possession or control.

(3) A broker or dealer shall not be deemed to be in violation of the provisions of paragraph (b)(1) of this section

regarding physical possession or control of fully-paid or excess margin securities borrowed from any person, provided that the broker or dealer and the lender, at or before the time of the loan, enter into a written agreement that, at a minimum;

(i) Sets forth in a separate schedule or schedules the basis of compensation for any loan and generally the rights and liabilities of the parties as to the borrowed securities;

(ii) Provides that the lender will be given a schedule of the securities actually borrowed at the time of the borrowing of the securities;

(iii) Specifies that the broker or dealer (A) must provide to the lender, upon the execution of the agreement or by the close of the business day of the loan if the loan occurs subsequent to the execution of the agreement, collateral, consisting exclusively of cash or United States Treasury bills and Treasury notes or an irrevocable letter of credit issued by a bank as defined in section 3(a)(6) (A) through (C) of the Securities Exchange Act which fully secures the loan of securities, and (B) must mark the loan to the market not less than daily and, in the event that the market value of all the outstanding securities loaned at the close of trading at the end of the business day exceeds 100 percent of the collateral then held by the lender, the borrowing broker or dealer must provide additional collateral of the type described in proviso (iii) (A) to the lender by the close of the next business day as necessary to equal, together with the collateral then held by the lender, not less than 100 percent of the market value of the securities loaned; and

(iv) Contains a prominent notice that the provisions of the Securities Investor Protection Act of 1970 may not protect the lender with respect to the securities loan transaction and that, therefore, the collateral delivered to the lender may constitute the only source of satisfaction of the broker's or dealer's obligation in the event the broker or dealer fails to return the securities.

(4)(i) Notwithstanding paragraph (k)(2)(i) of this section, a broker or dealer that retains custody of securities that are the subject of a repurchase agreement between the broker or dealer and a counterparty shall:

(A) Obtain the repurchase agreement in writing;

(B) Confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the trading day on which the transaction is intitiated and at the end of any other day during which other securities are substituted if the substitution results in a change to issuer, maturity date, par amount or coupon rate as specified in the previous confirmation;

(C) Advise the counterparty in the repurchase agreement that the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970 do not protect the counterparty with respect to the repurchase agreement;

(D) Maintain possession or control of securities that are the subject of the agreement.

(ii) For purpose of this paragraph (b)(4), securities are in the broker's or dealer's control only if they are in the control of the broker or dealer within the meaning of § 240.15c3–3 (c)(1), (c)(3), (c)(5) or (c)(6) of this title.

(iii) A broker or dealer shall not be in violation of the requirement to maintain possession or control pursuant to paragraph (b)(4)(i)(D) during the trading day if:

(A) In the written repurchase agreement, the counterparty grants the broker or dealer the right to substitute other securities for those subject to the agreement; and

(B) The provision in the written repurchase agreement governing the right, if any, to substitute is immediately preceded by the following disclosure statement, which must be prominently displayed:

REQUIRED DISCLOSURE

The [seller] is not permitted to substitute other securities for those subject to this agreement and therefore must keep the [buyer's] securities segregated at all times, unless in this agreement the [buyer] grants the [seller] the right to substitute other securities. If the [buyer] grants the right to substitute, this means that the [buyer's] securities will likely be commingled with the [seller's] own securities during the trading day.

The [buyer] is advised that, during any trading day that the [buyer's] securities are commingled with the [seller's] securities, they will be subject to liens granted by the [seller] to its clearing bank and may be used by the [seller] for deliveries on other securities transactions. Whenever the securities are commingled, the [seller's] ability to resegregate substitute securities for the [buyer] will be subject to the [seller's] ability to satisfy the clearing lien or to obtain substitute securities.

(iv) A confirmation issued in accordance with paragraph (b)(4)(i)(B) of this section shall specify the issuer, maturity date, coupon rate, par amount and market value of the security and shall further identify a CUSIP or mortgage-backed security pool number, as appropriate, except that a CUSIP or a pool number is not required on the confirmation if it is identified in internal records of the broker or dealer that designate the specific security of the counterparty. For purposes of this paragraph (b)(4)(iv), the market value of any security that is the subject of the repurchase transaction shall be the most recently available bid price plus accrued interest, obtained by any reasonable and consistent methodology.

(v) This paragraph (b)(4) shall not apply to a repurchase agreement between the broker or dealer and another broker or dealer (including a government securities broker or dealer), a registered municipal securities dealer, or a general partner or director or principal officer of the broker or dealer or any person to the extent that his claim is explicitly subordinated to the claims of creditors of the broker or dealer.

(c) *Control of securities.* Securities under the control of a broker or dealer shall be deemed to be securities which:

(1) Are represented by one or more certificates in the custody or control of a clearing corporation or other subsidiary organization of either national securities exchanges or of a registered national securities association, 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 customers entitled to receive specified quantities or units of the securities so held for such customers collectively; or

(2) Are carried for the account of any customer by a broker or dealer and are carried in a special omnibus account in the name of such broker or dealer with another broker or dealer in compliance with the requirements of section 4(b) of Regulation T under the Act (12 CFR 220.4(b)), such securities being deemed to be under the control of such broker or dealer to the extent that he has instructed such carrying broker or dealer to maintain physical possession or control of them free of any charge, lien, or claim of any kind in favor of such carrying broker or dealer or any persons claiming through such carrying broker or dealer; or

(3) Are the subject of bona fide items of transfer; provided that securities 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 him, he has not received a written statement by the issuer or its transfer agent acknowledging the transfer instructions and the possession of the securities or he has not obtained a revalidation of a window ticket from a transfer agent with respect to the certificate delivered for transfer; or

(4) Are in the custody of a foreign depository, foreign clearing agency or foreign custodian bank which the Commission upon application from a broker or dealer, a registered national securities exchange or a registered national securities association, or upon its own motion shall designate as a satisfactory control location for securities; or

(5) Are in the custody or control of a bank as defined in section 3(a)(6) of the Act, the delivery of which securities to the broker or dealer does not require the payment of money or value and the bank having acknowledged in writing that the securities 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; or

(6)(i) Are held in or are in transit between offices of the broker or dealer; or (ii) 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

(7) 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 customer securities.

(d) *Requirement to reduce securities to possession or control.* Not later than the next business day, a broker or dealer, as of the close of the preceding business day, shall determine from his books or records the quantity of fully paid securities and excess margin securities in his possession or control and the quantity of fully paid securities and excess margin securities not in his possession or control. In making this daily determination inactive margin accounts (accounts having no activity by reason of purchase or sale of securities, receipt or delivery of cash or securities or similar type events) may be computed not less than once weekly. If such books or records indicate, as of such close of the business day, that such broker or dealer has not obtained physical possession or control of all fully paid and excess margin securities as required by this section and there are securities of the same issue and class in any of the following noncontrol locations:

(1) Securities subject to a lien securing moneys borrowed by the broker or dealer or securities loaned to another broker or dealer or a clearing corporation, then the broker or dealer shall, not later than the business day following the day on which such determination is made, issue instructions for the release of such securities from the lien or return of such loaned securities and shall obtain physical possession or control of such securities within two business days following the date of issuance of the instructions in the case of securities subject to lien securing borrowed moneys and within five business days following the date of issuance of instructions in the case of securities loaned; or

(2) Securities included on his books or records as failed to receive more than 30 calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain physical possession or control of securities so failed to receive through a buy-in procedure or otherwise; or

(3) Securities receivable by the broker or dealer as a security dividend receivable, stock split or similar distribution for more than 45 calendar days, then the broker or dealer shall, not later than the business day following the day on which such determination is made, take prompt steps to obtain physical possession or control of securities so receivable through a buy-in procedure or otherwise.

(4) A broker or dealer which is subject to the requirements of §240.15c3–3 with respect to physical possession or control of fully paid and excess margin securities shall prepare and maintain a current and detailed description of the procedures which it utilizes to comply with the possession or control requirements set forth in this section. The records required herein shall be made available upon request to the Commission and to the designated examining authority for such broker or dealer.

(e) *Special reserve bank account for the exclusive benefit of customers.* (1) Every broker or dealer shall maintain with a bank or banks at all times when deposits are required or hereinafter specified a ''Special Reserve Bank Account for the Exclusive Benefit of Customers'' (hereinafter referred to as the ''Reserve Bank Account''), and it shall be separate from any other bank account of the broker or dealer. Such broker or dealer shall at all times maintain in such Reserve Bank Account, through deposits made therein, cash and/or qualified securities in an amount not

less than the amount computed in accordance with the formula set forth in § 240.15c3–3a.

(2) It shall be unlawful for any broker or dealer to accept or use any of the amounts under items comprising Total Credits under the formula referred to in paragraph (e)(1) of this section 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 shall be maintained in the Reserve Bank Account pursuant to paragraph (e)(1) of this section.

(3) Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital (as defined in § 240.15c3–1 or in the capital rules of a national securities exchange of which it is a member and exempt from § 240.15c3–1 by paragraph (b)(2) thereof) and which carries aggregate customer funds (as defined in paragraph (a)(10) of this section), as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later than 1 hour after the opening of banking business on the second following business day. If a broker or dealer, computing on a monthly basis, has, at the time of any required computation, aggregate indebtedness in excess of 800 percent of net capital, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when his aggregate indebtedness exceeded 800 percent of his net capital. Computations in addition to the computations required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve each such record in accordance with § 240.17a–4.

(f) *Notification of banks.* A broker or dealer required to maintain the reserve bank account prescribed by this section or who maintains a special account referred to in paragraph (k) of this section shall obtain and preserve in accordance with § 240.17a–4 written notification from each bank in which he has his reserve bank account or special account that the bank was informed that all cash and/or qualified securities deposited therein are being held by the bank for the exclusive benefit of customers of the broker or dealer in accordance with the regulations of the Commission, and are being kept separate from any other accounts maintained by the broker or dealer with the bank, and the broker or dealer shall have a written contract with the bank which provides that the cash and/or qualified securities shall at no time be used directly or indirectly as security for a loan to the broker or dealer by the bank and, shall 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.

(g) *Withdrawals from the reserve bank account.* A broker or dealer may make withdrawals from his reserve bank account if and to the extent that at the time of the withdrawal the amount remaining in the reserve bank account is not less than the amount then required by paragraph (e) of this section. A bank may presume that any request for withdrawal from a reserve bank account is in conformity and compliance with this paragraph (g). On any business day on which a withdrawal is made, the broker or dealer shall make a record of the computation on the basis of which he makes such withdrawal, and he shall preserve such computation in accordance with § 240.17a–4.

(h) *Buy-in of short security differences.* A broker or dealer shall within 45 calendar days after the date of the examination, count, verification and comparison of securities pursuant to § 240.17a–13 or otherwise or to the annual report of financial condition in accordance with § 240.17a–5, buy-in all short security differences which are not resolved during the 45-day period.

(i) *Notification in the event of failure to make a required deposit.* If a broker or dealer shall fail to make in his reserve bank account or special account a deposit, as required by this section, the broker or dealer shall by telegram immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and shall promptly thereafter confirm such notification in writing.

(j) [Reserved]

(k) *Exemptions.* (1) The provisions of this section shall not be applicable to a broker or dealer meeting all of the following conditions:

(i) His dealer transactions (as principal for his own account) are limited to the purchase, sale, and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker or dealer;

(ii) His transactions as broker (agent) are limited to: (*a*) The sale and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; (*b*) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (*c*) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(iii) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

(iv) Notwithstanding the foregoing, this section shall not apply to any insurance company which is a registered broker-dealer, and which otherwise meets all of the conditions in paragraphs (k)(1) (i), (ii), and (iii) of this section, solely by reason of its participation in transactions that are a part of the business of insurance, including the purchasing, selling, or holding of securities for or on behalf of such company's general and separate accounts.

(2) The provisions of this section shall not be applicable to a broker or dealer:

(i) Who carries no margin accounts, promptly transmits all customer funds and delivers all securities received in connection with his activities as a broker or dealer, does not otherwise hold funds or securities for, or owe money or securities to, customers and effectuates all financial transactions between the broker or dealer and his customers through one or more bank accounts, each to be designated as ''Special Account for the Exclusive Benefit of Customers of (name of the broker or dealer)''; or

(ii) Who, as an introducing broker or dealer, clears all transactions with and for customers on a fully disclosed basis with a clearing broker or dealer, and who promptly transmits all customer funds and securities to the clearing broker or dealer which carries all of the accounts of such customers and maintains and preserves such books and records pertaining thereto pursuant to the requirements of §§ 240.17a–3 and 240.17a–4 of this chapter, as are customarily made and kept by a clearing broker or dealer.

(3) Upon written application by a broker or dealer, the Commission may exempt such broker or dealer from the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission finds that the broker or dealer has established safeguards for the protection of funds and securities of customers comparable with those provided for by this section and that it is not necessary in

the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of this section.

(l) *Delivery of securities*. Nothing stated in this section shall be construed as affecting the absolute right of a customer of a broker or dealer to receive in the course of normal business operations following demand made on the broker or dealer, the physical delivery of certificates for:

(1) Fully-paid securities to which he is entitled, and,

(2) Margin securities upon full payment by such customer to the broker or dealer of his indebtedness to the broker or dealer; and, subject to the right of the broker or dealer under § 220.7(b) of Regulation T [12 CFR 220.7(b)] to retain collateral for his own protection beyond the requirements of Regulation T, excess margin securities not reasonably required to collateralize such customer's indebtedness to the broker or dealer.

(m) *Completion of sell orders on behalf of customers*. If a broker or dealer executes a sell order of a customer (other than an order to execute a sale of securities which the seller does not own) and if for any reason whatever the broker or dealer has not obtained possession of the securities from the customer within 10 business days after the settlement date, the broker or dealer shall immediately thereafter close the transaction with the customer by purchasing securities of like kind and quantity: *Provided, however*, The term *customer* for the purpose of this paragraph (m) shall not include a broker or dealer who maintains a special omnibus account with another broker or dealer in compliance with section 4(b) of Regulation T [12 CFR 220.4(b)].

NOTE: See 38 FR 12103, May 9, 1973 for an order suspending indefinitely the operation of paragraph (m) as to sell orders for exempted securities (e.g., U.S. Government and municipal obligations).

(n) *Extensions of time*. If a registered national securities exchange or a registered national securities association is satisfied that a broker or dealer is acting in good faith in making the application and that exceptional circumstances warrant such action, such exchange or association, on application of the broker or dealer, may extend any period specified in paragraphs (d)(2) and (3), (h) and (m) of this section, relating to the requirement that such broker or dealer take action within a designated period of time to buy-in a security, for one or more limited periods commensurate with the circumstances. Each such exchange or association shall make and preserve for a period of not less than 3 years a record of each extension granted pursuant to paragraph (n) of this section which shall contain a summary of the justification for the granting of the extension.

(Secs. 15(c)(2), 15(c)(3), 17(a), 23(a), 48 Stat. 895, 897, 901, secs. 3, 4, 8, 49 Stat. 1377, 1379, secs. 2, 5, 52 Stat. 1075, 1076, sec. 7(d), 84 Stat. 1653; 15 U.S.C. 78o(c), 78q(a), 78w(a); sec. 6(c), 84 Stat. 1652; 15 U.S.C. 78fff)

[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]

§ 240.15c3–3a Exhibit A—formula for determination reserve requirement 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

	Credits	Debits
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 Corp. for all option contracts written or purchased in customer accounts. (See Note F.)	.....	XXX
Total credits	.....	.....
Total debits	.....	.....
14. Excess of total credits (sum of items 1–9) over total debits (sum of items 10–13) 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 shall be not less than 105 percent of the excess of total credits over total debits	.....	XXX

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

NOTE B. Item 2 shall include the amount of Letters of Credit obtained by a member of Options Clearing Corporation which are collateralized by customers' securities, to the extent of the member's margin requirement at Options Clearing Corp.

NOTE C. Item 3 shall include in addition to monies payable against customer's 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 shall 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 shall 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 shall not be in excess of the amount 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 4(b) of Regulation T under the Act (12 CFR 220.4(b) or similar accounts carried on behalf of another broker or dealer, shall be reduced by any deficits in such accounts (or if a credit, such credit shall be increased) less any calls for margin, marks 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 shall 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 shall 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) shall 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) shall 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 of joint accounts, custodian accounts, participations in hedge funds or limited partnerships or similar type accounts or arrangements of a person who would be excluded from the definition of customer ("non-customer") which persons includible in the definition of customer shall 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 shall 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; if such percentage ownership is greater than 50 percent, then the entire debit balance shall 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 shall include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.

[42 FR 27224, May 27, 1977, as amended at 50 FR 41340, Oct. 10, 1985; 52 FR 30334, Aug. 14, 1987]

§ 240.15c6–1 Settlement cycle.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, a broker or dealer shall not effect or enter into a contract for the purchase or sale of a security (other than an exempted security, government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) that provides for payment of funds and delivery of securities later than the third business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(b) Paragraphs (a) and (c) of this section shall not apply to contracts:

(1) For the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are not disseminated through an automated quotation system of a registered securities association;

(2) For the purchase or sale of securities that the Commission may from time to time, taking into account then existing market practices, exempt by order from the requirements of paragraph (a) of this section, either unconditionally or on specified terms and

conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

(c) Paragraph (a) of this section shall not apply to contracts for the sale for cash of securities that are priced after 4:30 p.m. Eastern time on the date such securities are priced and that are sold by an issuer to an underwriter pursuant to a firm commitment underwritten offering registered under the Securities Act of 1933 or sold to an initial purchaser by a broker-dealer participating in such offering provided that a broker or dealer shall not effect or enter into a contract for the purchase or sale of such securities that provides for payment of funds and delivery of securities later than the fourth business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

(d) For purposes of paragraphs (a) and (c) of this section, the parties to a contract shall be deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities pursuant to a firm commitment offering if the managing underwriter and the issuer have agreed to such date for all securities sold pursuant to such offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

[58 FR 52903, Oct. 13, 1993, as amended at 60 FR 26622, May 17, 1995]

REGULATION 15D: REPORTS OF REGISTRANTS UNDER THE SECURITIES ACT OF 1933

ANNUAL REPORTS

§ 240.15d–1 Requirement of annual reports.

Every registrant under the Securities Act of 1933 shall file an annual report, on the appropriate form authorized or prescribed therefor, for the fiscal year in which the registration statement under the Securities Act of 1933 became effective and for each fiscal year thereafter, unless the registrant is exempt from such filing by section 15(d) of the Act or rules thereunder. Annual reports shall be filed within the period specified in the appropriate report form.

[47 FR 17052, Apr. 21, 1982, as amended at 61 FR 49960, Sept. 24, 1996]

§ 240.15d–2 Special financial report.

(a) If the registration statement under the Securities Act of 1933 did not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant shall, within 90 days after the effective date of the registration statement, file a special report furnishing certified financial statements for such last full fiscal year or other period, as the case may be, meeting the requirements of the form appropriate for annual reports of the registrant. If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or six months following the end of the registrant's latest full fiscal year.

(b) The report shall be filed under cover of the facing sheet of the form appropriate for annual reports of the registrant, shall indicate on the facing sheet that it contains only financial statements for the fiscal year in question, and shall be signed in accordance with the requirements of the annual report form.

(15 U.S.C. 78*l*, 78m, 78*o*)

[13 FR 9326, Dec. 31, 1948, as amended at 36 FR 1891, Feb. 3, 1971; 58 FR 60306, Nov. 15, 1993]

§ 240.15d–3 Reports for depositary shares registered on Form F–6.

Annual and other reports are not required with respect to Depositary Shares registered on Form F–6 (§ 230.36 of this chapter). The exemption in this section does not apply to any deposited

securities registered on any other form under the Securities Act of 1933.

[62 FR 39768, July 24, 1997]

§ 240.15d–4 Reporting by Form 40–F registrants.

A registrant that is eligible to use Forms 40–F and 6–K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 15D (§§ 240.15d–1 through 240.15d–21 of this chapter).

[56 FR 30075, July 1, 1991]

§ 240.15d–5 Reporting by successor issuers.

(a) Where in connection with a succession by merger, consolidation, exchange of securities, acquisition of assets or otherwise, securities of any issuer that is not required to file reports pursuant to section 15(d) (15 U.S.C. 78o(d)) of the Act are issued to the holders of any class of securities of another issuer that is required to file such reports, the duty to file reports pursuant to such section shall be deemed to have been assumed by the issuer of the class of securities so issued. The successor issuer shall, after the consummation of the succession, file reports in accordance with section 15(d) of the Act (15 U.S.C. 78o(d)) and the rules and regulations thereunder, unless that issuer is exempt from filing such reports or the duty to file such reports is suspended under section 15(d) of the Act (15 U.S.C. 78o(d)).

(b) An issuer that is deemed to be a successor issuer according to paragraph (a) of this section shall file reports on the same forms as the predecessor issuer except as follows:

(1) An issuer that is not a foreign issuer shall not be eligible to file on Form 20–F (§ 240.220f of this chapter).

(2) A foreign private issuer shall be eligible to file on Form 20–F.

(c) The provisions of paragraph (a) of this section shall not apply to an issuer of securities in connection with a succession that was registered on Form F–8 (§ 239.38 of this chapter), Form F–10 and Form 10–SB (§ 239.40 of this chapter) or Form F–80 (§ 239.41 of this chapter).

[36 FR 3805, Feb. 27, 1971, as amended at 48 FR 46740, Oct. 14, 1983; 56 FR 30075, July 1, 1991; 62 FR 39768, July 24, 1997]

§ 240.15d–6 Suspension of duty to file reports.

If the duty of an issuer to file reports pursuant to section 15(d) of the Act as to any fiscal year is suspended as provided in section 15(d) of the Act, such issuer shall, within 30 days after the beginning of the first fiscal year, file a notice on Form 15 informing the Commission of such suspension unless Form 15 has already been filed pursuant to Rule 12h–3. If the suspension resulted from the issuer's merger into, or consolidation with, another issuer or issuers, the notice shall be filed by the successor issuer.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78w(a))

[49 FR 12690, Mar. 30, 1984]

OTHER REPORTS

§ 240.15d–10 Transition reports.

(a) Every issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent fiscal year and the opening date of its new fiscal year; *Provided, however,* that an issuer shall file an annual report for any fiscal year that ended before the date on which the issuer determined to change its fiscal year end. In no event shall the transition report cover a period of 12 or more months.

(b) The report pursuant to this section shall be filed for the transition period not more than 90 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report shall be filed on the form appropriate for annual reports of the issuer, shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements for the

transition period filed therewith shall be audited. Financial statements, which may be unaudited, shall be filed for the comparable period of the prior year, or a footnote, which may be unaudited, shall state for the comparable period of the prior year, revenues, gross profits, income taxes, income or loss from continuing operations before extraordinary items and cumulative effect of a change in accounting principles and net income or loss. The effects of any discontinued operations and/or extraordinary items as classified under the provisions of generally accepted accounting principles also shall be shown, if applicable. Per share data based upon such income or loss and net income or loss shall be presented in conformity with applicable accounting standards. Where called for by the time span to be covered, the comparable period financial statements or footnote shall be included in subsequent filings.

(c) If the transition period covers a period of less than six months, in lieu of the report required by paragraph (b) of this section, a report may be filed for the transition period on Form 10–Q and Form 10–QSB (§ 249.308a of this chapter) not more than 45 days after either the close of the transition period or the date of the determination to change the fiscal closing date, whichever is later. The report on Form 10–Q and Form 10–QSB shall cover the period from the close of the last fiscal year end and shall indicate clearly the period covered. The financial statements filed therewith need not be audited but, if they are not audited, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period. The notes to financial statements for the transition period included in such first annual report may be integrated with the notes to financial statements for the full fiscal period. A separate audited balance sheet as of the end of the transition period shall be filed in the annual report only if the audited balance sheet as of the end of the fiscal year prior to the transition period is not filed. Schedules need not be filed in transition reports on Form 10–Q and Form 10–QSB.

(d) Notwithstanding the foregoing in paragraphs (a), (b), and (c) of this section, if the transition period covers a period of one month or less, the issuer need not file a separate transition report if either:

(1) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is an annual report, and that report covers the transition period as well as the fiscal year; or

(2)(i) The issuer files with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period; and

(ii) The first report required to be filed by the issuer for the newly adopted fiscal year after the date of the determination to change the fiscal year end is a quarterly report on Form 10–Q and Form 10–QSB; and

(iii) Information on the transition period is included in the issuer's quarterly report on Form 10–Q and Form 10–QSB for the first quarterly period (except the fourth quarter) of the newly adopted fiscal year that ends after the date of the determination to change the fiscal year. The information covering the transition period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for the transition period.

(e) Every issuer required to file quarterly reports on Form 10–Q and Form 10–QSB pursuant to § 240.15d–13 of this chapter that changes its fiscal year end shall:

(1) File a quarterly report on Form 10–Q and Form 10–QSB within the time period specified in General Instruction A.1. to that form for any quarterly period (except the fourth quarter) of the old fiscal year that ends before the date on which the issuer determined to change its fiscal year end, except that the issuer need not file such quarterly report if the date on which the quarterly period ends also is the date on which the transition period ends;

(2) File a quarterly report on Form 10–Q and Form 10–QSB within the time specified in General Instruction A.1. to

that form for each quarterly period of the old fiscal year within the transition period. In lieu of a quarterly report for any quarter of the old fiscal year within the transition period, the issuer may file a quarterly report on Form 10–Q and Form 10–QSB for any period of three months within the transition period that coincides with a quarter of the newly adopted fiscal year if the quarterly report is filed within 45 days after the end of such three month period, provided the issuer thereafter continues filing quarterly reports on the basis of the quarters of the newly adopted fiscal year;

(3) Commence filing quarterly reports for the quarters of the new fiscal year no later than the quarterly report for the first quarter of the new fiscal year that ends after the date on which the issuer determined to change the fiscal year end; and

(4) Unless such information is or will be included in the transition report, or the first annual report on Form 10–K and Form 10–KSB for the newly adopted fiscal year, include in the initial quarterly report on Form 10–Q and Form 10–QSB for the newly adopted fiscal year information on any period beginning on the first day subsequent to the period covered by the issuer's final quarterly report on Form 10–Q and Form 10–QSB or annual report on Form 10–K and Form 10–KSB for the old fiscal year. The information covering such period required by Part II and Item 2 of Part I may be combined with the information regarding the quarter. However, the financial statements required by Part I, which may be unaudited, shall be furnished separately for such period.

Note to paragraphs (c) and (e): If it is not practicable or cannot be cost-justified to furnish in a transition report on Form 10–Q and Form 10–QSB or a quarterly report for the newly adopted fiscal year financial statements for corresponding periods of the prior year where required, financial statements may be furnished for the quarters of the preceding fiscal year that most nearly are comparable if the issuer furnishes an adequate discussion of seasonal and other factors that could affect the comparability of information or trends reflected, an assessment of the comparability of the data, and a representation as to the reason recasting has not been undertaken.

(f) Every successor issuer that has a different fiscal year from that of its predecessor(s) shall file a transition report pursuant to this section, containing the required information about each predecessor, for the transition period, if any, between the close of the fiscal year covered by the last annual report of each predecessor and the date of succession. The report shall be filed for the transition period on the form appropriate for annual reports of the issuer not more than 90 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (b) of this section. If the transition period covers a period of less than six months, in lieu of a transition report on the form appropriate for the issuer's annual reports, the report may be filed for the transition period on Form 10–Q and Form 10–QSB not more than 45 days after the date of the succession, with financial statements in conformity with the requirements set forth in paragraph (c) of this section. Notwithstanding the foregoing, if the transition period covers a period of one month or less, the successor issuer need not file a separate transition report if the information is reported by the successor issuer in conformity with the requirements set forth in paragraph (d) of this section.

(g)(1) Paragraphs (a) through (f) of this section shall not apply to foreign private issuers.

(2) Every foreign private issuer that changes its fiscal closing date shall file a report covering the resulting transition period between the closing date of its most recent year and the opening date of its new fiscal year. In no event shall a transition report cover a period longer than 12 months.

(3) The report for the transition period shall be filed on Form 20–F responding to all items to which such issuer is required to respond when Form 20–F is used as an annual report. Such report shall be filed within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements for the transition period filed therewith shall be audited.

(4) If the transition period covers a period of six or fewer months, in lieu of the report required by paragraph (g)(3) of this section, a report for the transition period may be filed on Form 20–F responding to Items, 3, 9, 15, 16, and 17 or 18 within three months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later. The financial statements required by either Item 17 or Item 18 shall be furnished for the transition period. Such financial statements may be unaudited and condensed as permitted in Article 10 of Regulation S–X (§ 210.10–01 of this chapter), but if the financial statements are unaudited and condensed, the issuer shall file with the first annual report for the newly adopted fiscal year separate audited statements of income and cash flows covering the transition period.

(5) Notwithstanding the foregoing in paragraphs (g)(2), (g)(3), and (g)(4) of this section, if the transition period covers a period of one month or less, a foreign private issuer need not file a separate transition report if the first annual report for the newly adopted fiscal year covers the transition period as well as the fiscal year.

(h) The provisions of this rule shall not apply to investment companies required to file reports pursuant to Rule 30b1–1 (§ 270.30b1–1 of this chapter) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*).

(i) No filing fee shall be required for a transition report filed pursuant to this section.

NOTE: In addition to the report or reports required to be filed pursuant to this section, every issuer, except a foreign private issuer or an investment company required to file reports pursuant to Rule 30b1–1 under the Investment Company Act of 1940, that changes its fiscal closing date is required to file a report on Form 8–K responding to Item 8 thereof within the period specified in General Instruction B.1. to that form.

[54 FR 10318, Mar. 13, 1989, as amended at 56 FR 30075, July 1, 1991]

§ 240.15d–11 Current reports on Form 8–K (§ 249.308 of this chapter).

(a) Except as provided in paragraph (b) of this section, every registrant subject to § 240.15d–1 shall file a current report on Form 8–K within the period specified in that form unless substantially the same information as that required by Form 8–K has been previously reported by the registrant.

(b) This rule shall not apply to foreign governments, foreign private issuers required to make reports on Form 6–K (17 CFR 249.306) pursuant to Rule 15d–16 (17 CFR 240.15d–16), issuers of American depositary receipts for securities of any foreign issuer, or investment companies required to file periodic reports pursuant to Rule 30b1–1 (17 CFR 270.30b1–1) under the investment Company Act of 1940.

(Sec. 5, 78 Stat. 569, 574; sec. 2, 82 Stat. 454; secs. 1, 2, 84 Stat. 1497; secs. 10, 18, 89 Stat. 119, 155 (15 U.S.C. 78n(a), secs. 20(a), 38(a)), 54 Stat. 822, 841 (15 U.S.C. 80a–20(a), 80a–37(a)))

[42 FR 4429, Jan. 25, 1977, as amended at 50 FR 27939, July 9, 1985]

§ 240.15d–13 Quarterly reports on Form 10–Q and Form 10–QSB (§ 249.308a and § 249.308b of this chapter).

(a) Except as provided in paragraphs (b) and (c) of this section, every issuer that has securities registered pursuant to the Securities Act of 1933 and is required to file annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 on Form 10–K and Form 10–KSB (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter) shall file a quarterly report on Form 10–Q and Form 10–QSB (§ 249.308a of this chapter) within the period specified in General Instruction A.1. to that form for each of the first three quarters of each fiscal year of the issuer, commencing with the first fiscal quarter following the most recent fiscal year for which full financial statements were included in the registration statement, or, if the registration statement included financial statements for an interim period subsequent to the most recent fiscal year end meeting the requirements of Article 10 of Regulation S–X, for the first fiscal quarter subsequent to the quarter reported upon in the registration statement. The first quarterly report of the issuer shall be filed either within 45 days after the effective date of the registration statement or on or before the date on which

such report would have been required to be filed if the issuer had been required to file reports on Form 10–Q and Form 10–QSB as of its last fiscal quarter, whichever is later.

(b) The provisions of this rule shall not apply to the following issuers:

(1) Investment companies required to file reports pursuant to § 270.30b1–1;

(2) Foreign private issuers required to file reports pursuant to § 240.15d–16.

(c) Part I of the quarterly reports on Form 10–Q or Form 10–QSB need not be filed by:

(1) Mutual life insurance companies; or

(2) Mining companies not in the production stage but engaged primarily in the exploration for the development of mineral deposits other than oil, gas or coal, if all of the following conditions are met:

(i) The registrant has not been in production during the current fiscal year or the two years immediately prior thereto; except that being in production for an aggregate period of not more than eight months over the three-year period shall not be a violation of this condition.

(ii) Receipts from the sale of mineral products or from the operations of mineral producing properties by the registrant and its subsidiaries combined have not exceeded $500,000 in any of the most recent six years and have not aggregated more than $1,500,000 in the most recent six fiscal years.

(d) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q and Form 10–QSB shall not be deemed to be ''filed'' for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(e) Notwithstanding the foregoing provisions of this section, the financial information required by Part I of Form 10–Q and Form 10–QSB, or financial information submitted in lieu thereof pursuant to paragraph (d) of this section, shall not be deemed to be ''filed'' for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act.

(Secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; secs. 1, 2, 82 Stat. 454; secs. 1, 2, 28(c), 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 78*l*, 78m, 78*o*(d), 78w(a))

[42 FR 24065, May 12, 1977, as amended at 46 FR 63255, Dec. 31, 1981; 50 FR 27939, July 9, 1985; 54 FR 10319, Mar. 13, 1989, 61 FR 30403, June 14, 1996]

§ 240.15d–16 Reports of foreign private issuers on Form 6–K [17 CFR 249.306].

(a) Every foreign private issuer which is subject to Rule 15d–1 [17 CFR 240.15d–1] shall make reports on Form 6–K, except that this rule shall not apply to:

(1) Investment companies required to file reports pursuant to Rule 30b1–1 [17 CFR 270.30b1–1];

(2) Issuers of American depositary receipts for securities of any foreign issuer.

(b) Such reports shall be transmitted promptly after the information required by Form 6–K is made public by the issuer, by the country of its domicile or under the laws of which it was incorporated or organized or by a foreign securities exchange with which the issuer has filed the information.

(c) Reports furnished pursuant to this rule shall not be deemed to be ''filed'' for the purpose of section 18 of the Act or otherwise subject to the liabilities of that section.

[32 FR 7849, May 30, 1967, as amended at 44 FR 70137, Dec. 6, 1979; 47 FR 54781, Dec. 6, 1982; 50 FR 27939, July 9, 1985; 56 FR 30075, July 1, 1991]

§ 240.15d–17 [Reserved]

EXEMPTION OF CERTAIN ISSUERS FROM SECTION 15(D) OF THE ACT

§ 240.15d–21 Reports for employee stock purchase, savings and similar plans.

(a) Separate annual and other reports need not be filed pursuant to section 15(d) of the Act with respect to any employee stock purchase, savings or similar plan: *Provided*,

(1) The issuer of the stock or other securities offered to employees through their participation in the plan files annual reports on Form 10–K and Form

10–KSB (§ 249.310 of this chapter) or U5S (§ 259.5s of this chapter); and

(2) Such issuer furnishes, as a part of its annual report on such form or as an amendment thereto, the financial statements required by Form 11–K (§ 249.311 of this chapter) with respect to the plan.

(b) If the procedure permitted by this Rule is followed, the financial statements required by Form 11–K with respect to the plan shall be filed within 120 days after the end of the fiscal year of the plan, either as a part of or as an amendment to the annual report of the issuer for its last fiscal year, *provided that* if the fiscal year of the plan ends within 62 days prior to the end of the fiscal year of the issuer, such information, financial statements and exhibits may be furnished as a part of the issuer's next annual report. If a plan subject to the Employee Retirement Income Security Act of 1974 uses the procedure permitted by this Rule, the financial statements required by Form 11–K shall be filed within 180 days after the plan's fiscal year end.

[27 FR 7871, Aug. 9, 1962, as amended at 55 FR 23929, June 13, 1990]

§ 240.15g–1 Exemptions for certain transactions.

The following transactions shall be exempt from 17 CFR 240.15g–2, 17 CFR 240.15g–3, 17 CFR 240.15g–4, 17 CFR 240.15g–5, and 17 CFR 240.15g–6:

(a) Transactions by a broker or dealer:

(1) Whose commissions, commission equivalents, mark-ups, and mark-downs from transactions in penny stocks during each of the immediately preceding three months and during eleven or more of the preceding twelve months, or during the immediately preceding six months, did not exceed five percent of its total commissions, commission equivalents, mark-ups, and mark-downs from transactions in securities during those months; and

(2) Who has not been a market maker in the penny stock that is the subject of the transaction in the immediately preceding twelve months.

NOTE: Prior to April 28, 1993, commissions, commission equivalents, mark-ups, and mark-downs from transactions in designated securities, as defined in 17 CFR 240.15c2–6(d)(2) as of April 15, 1992, may be considered to be commissions, commission equivalents, mark-ups, and mark-downs from transactions in penny stocks for purposes of paragraph (a)(1) of this section.

(b) Transactions in which the customer is an institutional accredited investor, as defined in 17 CFR 230.501(a)(1), (2), (3), (7), or (8).

(c) Transactions that meet the requirements of Regulation D (17 CFR 230.501–230.508), or transactions with an issuer not involving any public offering pursuant to section 4(2) of the Securities Act of 1933.

(d) Transactions in which the customer is the issuer, or a director, officer, general partner, or direct or indirect beneficial owner of more than five percent of any class of equity security of the issuer, of the penny stock that is the subject of the transaction.

(e) Transactions that are not recommended by the broker or dealer.

(f) Any other transaction or class of transactions or persons or class of persons that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts by order as consistent with the public interest and the protection of investors.

[57 FR 18032, Apr. 28, 1992]

§ 240.15g–2 Risk disclosure document relating to the penny stock market.

(a) It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless, prior to effecting such transaction, the broker or dealer has furnished to the customer a document containing the information set forth in Schedule 15G, 17 CFR 240.15g–100, and has obtained from the customer a manually signed and dated written acknowledgement of receipt of the document.

(b) The broker or dealer shall preserve, as part of its records, a copy of the written acknowledgment required by paragraph (a) of this section for the period specified in 17 CFR 240.17a–4(b) of this chapter.

[58 FR 37417, July 12, 1993]

§240.15g–3 Broker or dealer disclosure of quotations and other information relating to the penny stock market.

(a) *Requirement*. It shall be unlawful for a broker or dealer to effect a transaction in any penny stock with or for the account of a customer unless such broker or dealer discloses to such customer, within the time periods and in the manner required by paragraph (b) of this section, the following information:

(1) The inside bid quotation and the inside offer quotation for the penny stock.

(2) If paragraph (a)(1) of this section does not apply because of the absence of an inside bid quotation and an inside offer quotation:

(i) With respect to a transaction effected with or for a customer on a principal basis (other than as provided in paragraph (a)(2)(ii) of this section):

(A) The dealer shall disclose its offer price for the security:

(1) If during the previous five days the dealer has effected no fewer than three *bona fide* sales to other dealers consistently at its offer price for the security current at the time of those sales, and

(2) If the dealer reasonably believes in good faith at the time of the transaction with the customer that its offer price accurately reflects the price at which it is willing to sell one or more round lots to another dealer. For purposes of paragraph (a)(2)(i)(A) of this section, ''consistently'' shall constitute, at a minimum, seventy-five percent of the dealer's *bona fide* interdealer sales during the previous five-day period, and, if the dealer has effected only three *bona fide* inter-dealer sales during such period, all three of such sales.

(B) The dealer shall disclose its bid price for the security:

(1) If during the previous five days the dealer has effected no fewer than three *bona fide* purchases from other dealers consistently at its bid price for the security current at the time of those purchases, and

(2) If the dealer reasonably believes in good faith at the time of the transaction with the customer that its bid price accurately reflects the price at which it is willing to buy one or more round lots from another dealer. For purposes of paragraph (a)(2)(i)(B) of this section, ''consistently'' shall constitute, at a minimum, seventy-five percent of the dealer's *bona fide* interdealer purchases during the previous five-day period, and, if the dealer has effected only three *bona fide* inter-dealer purchases during such period, all three of such purchases.

(C) If the dealer's bid or offer prices to the customer do not satisfy the criteria of paragraphs (a)(2)(i)(A) or (a)(2)(i)(B) of this section, the dealer shall disclose to the customer:

(1) That it has not effected interdealer purchases or sales of the penny stock consistently at its bid or offer price, and

(2) The price at which it last purchased the penny stock from, or sold the penny stock to, respectively, another dealer in a *bona fide* transaction.

(ii) With respect to transactions effected by a broker or dealer with or for the account of the customer:

(A) On an agency basis or

(B) On a basis other than as a market maker in the security, where, after having received an order from the customer to purchase a penny stock, the dealer effects the purchase from another person to offset a contemporaneous sale of the penny stock to such customer, or, after having received an order from the customer to sell the penny stock, the dealer effects the sale to another person to offset a contemporaneous purchase from such customer, the broker or dealer shall disclose the best independent interdealer bid and offer prices for the penny stock that the broker or dealer obtains through reasonable diligence. A broker-dealer shall be deemed to have exercised reasonable diligence if it obtains quotations from three market makers in the security (or all known market makers if there are fewer than three).

(3) With respect to bid or offer prices and transaction prices disclosed pursuant to paragraph (a) of this section, the broker or dealer shall disclose the number of shares to which the bid and offer prices apply.

(b) *Timing*. (1) The information described in paragraph (a) of this section:

(i) Shall be provided to the customer orally or in writing prior to effecting any transaction with or for the customer for the purchase or sale of such penny stock; and

(ii) Shall be given or sent to the customer in writing, at or prior to the time that any written confirmation of the transaction is given or sent to the customer pursuant to 17 CFR 240.10b–10 of this chapter.

(2) A broker or dealer, at the time of making the disclosure pursuant to paragraph (b)(1)(i) of this section, shall make and preserve as part of its records, a record of such disclosure for the period specified in 17 CFR 240.17a–4(b).

(c) *Definitions.* For purposes of this section:

(1) The term *bid price* shall mean the price most recently communicated by the dealer to another broker or dealer at which the dealer is willing to purchase one or more round lots of the penny stock, and shall not include indications of interest.

(2) The term *offer price* shall mean the price most recently communicated by the dealer to another broker or dealer at which the dealer is willing to sell one or more round lots of the penny stock, and shall not include indications of interest.

(3) The term *inside bid quotation* for a security shall mean the highest bid quotation for the security displayed by a market maker in the security on a Qualifying Electronic Quotation System, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotations for the security at specified prices.

(4) The term *inside offer quotation* for a security shall mean the lowest offer quotation for the security displayed by a market maker in the security on a Qualifying Electronic Quotation System, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotations for the security at specified prices.

(5) The term *Qualifying Electronic Quotation System* shall mean an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this section.

[57 FR 18033, Apr. 28, 1992]

§ 240.15g–4 Disclosure of compensation to brokers or dealers.

PRELIMINARY NOTE: Brokers and dealers may wish to refer to Securities Exchange Act Release No. 30608 (April 20, 1992) for a discussion of the procedures for computing compensation in active and competitive markets, inactive and competitive markets, and dominated and controlled markets.

(a) *Disclosure requirement.* It shall be unlawful for any broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless such broker or dealer discloses to such customer, within the time periods and in the manner required by paragraph (b) of this section, the aggregate amount of any compensation received by such broker or dealer in connection with such transaction.

(b) *Timing.* (1) The information described in paragraph (a) of this section:

(i) Shall be provided to the customer orally or in writing prior to effecting any transaction with or for the customer for the purchase or sale of such penny stock; and

(ii) Shall be given or sent to the customer in writing, at or prior to the time that any written confirmation of the transaction is given or sent to the customer pursuant to 17 CFR 240.10b–10.

(2) A broker or dealer, at the time of making the disclosure pursuant to paragraph (b)(1)(i) of this section, shall make and preserve as part of its records, a record of such disclosure for the period specified in 17 CFR 240.17a–4(b).

(c) *Definition of compensation.* For purposes of this section, *compensation* means, with respect to a transaction in a penny stock:

(1) If a broker is acting as agent for a customer, the amount of any remuneration received or to be received by it from such customer in connection with such transaction;

(2) If, after having received a buy order from a customer, a dealer other than a market maker purchased the penny stock as principal from another person to offset a contemporaneous

sale to such customer or, after having received a sell order from a customer, sold the penny stock as principal to another person to offset a contemporaneous purchase from such customer, the difference between the price to the customer and such contemporaneous purchase or sale price; or

(3) If the dealer otherwise is acting as principal for its own account, the difference between the price to the customer and the prevailing market price.

(d) *Active and competitive* market. For purposes of this section only, a market may be deemed to be ''active and competitive'' in determining the prevailing market price with respect to a transaction by a market maker in a penny stock if the aggregate number of transactions effected by such market maker in the penny stock in the five business days preceding such transaction is less than twenty percent of the aggregate number of all transactions in the penny stock reported on a Qualifying Electronic Quotation System (as defined in 17 CFR 240.15g–3(c)(5)) during such five-day period. No presumption shall arise that a market is not ''active and competitive'' solely by reason of a market maker not meeting the conditions specified in this paragraph.

[57 FR 18034, Apr. 28, 1992]

§ 240.15g–5 Disclosure of compensation of associated persons in connection with penny stock transactions.

(a) *General*. It shall be unlawful for a broker or dealer to effect a transaction in any penny stock for or with the account of a customer unless the broker or dealer discloses to such customer, within the time periods and in the manner required by paragraph (b) of this section, the aggregate amount of cash compensation that any associated person of the broker or dealer who is a natural person and has communicated with the customer concerning the transaction at or prior to receipt of the customer's transaction order, other than any person whose function is solely clerical or ministerial, has received or will receive from any source in connection with the transaction and that is determined at or prior to the time of the transaction, including separate disclosure, if applicable, of the source and amount of such compensation that is not paid by the broker or dealer.

(b) *Timing*. (1) The information described in paragraph (a) of this section:

(i) Shall be provided to the customer orally or in writing prior to effecting any transaction with or for the customer for the purchase or sale of such penny stock; and

(ii) Shall be given or sent to the customer in writing, at or prior to the time that any written confirmation of the transaction is given or sent to the customer pursuant to 17 CFR 240.10b–10.

(2) A broker or dealer, at the time of making the disclosure pursuant to paragraph (b)(1)(i) of this section, shall make and preserve as part of its records, a record of such disclosure for the period specified in 17 CFR 240.17a–4(b).

(c) *Contingent compensation arrangements*. Where a portion or all of the cash or other compensation that the associated person may receive in connection with the transaction may be determined and paid following the transaction based on aggregate sales volume levels or other contingencies, the written disclosure required by paragraph (b)(1)(ii) of this section shall state that fact and describe the basis upon which such compensation is determined.

[57 FR 18034, Apr. 28, 1992]

§ 240.15g–6 Account statements for penny stock customers.

(a) *Requirement*. It shall be unlawful for any broker or dealer that has effected the sale to any customer, other than in a transaction that is exempt pursuant to 17 CFR 240.15g–1, of any security that is a penny stock on the last trading day of any calendar month, or any successor of such broker or dealer, to fail to give or send to such customer a written statement containing the information described in paragraphs (c) and (d) of this section with respect to each such month in which such security is held for the customer's account with the broker or dealer, within ten days following the end of such month.

(b) *Exemptions*. A broker or dealer shall be exempted from the requirement of paragraph (a) of this section

under either of the following circumstances:

(1) If the broker or dealer does not effect any transactions in penny stocks for or with the account of the customer during a period of six consecutive calendar months, then the broker or dealer shall not be required to provide monthly statements for each quarterly period that is immediately subsequent to such six-month period and in which the broker or dealer does not effect any transaction in penny stocks for or with the account of the customer, *provided* that the broker or dealer gives or sends to the customer written statements containing the information described in paragraphs (d) and (e) of this section on a quarterly basis, within ten days following the end of each such quarterly period.

(2) If, on all but five or fewer trading days of any quarterly period, a security has a price of five dollars or more, the broker or dealer shall not be required to provide a monthly statement covering the security for subsequent quarterly periods, until the end of any such subsequent quarterly period on the last trading day of which the price of the security is less than five dollars.

(c) *Price determinations.* For purposes of paragraphs (a) and (b) of this section, the price of a security on any trading day shall be determined at the close of business in accordance with the provisions of 17 CFR 240.3a51–1(d)(1).

(d) *Market and price information.* The statement required by paragraph (a) of this section shall contain at least the following information with respect to each penny stock covered by paragraph (a) of this section, as of the last trading day of the period to which the statement relates:

(1) The identity and number of shares or units of each such security held for the customer's account; and

(2) The estimated market value of the security, to the extent that such estimated market value can be determined in accordance with the following provisions:

(i) The highest inside bid quotation for the security on the last trading day of the period to which the statement relates, multiplied by the number of shares or units of the security held for the customer's account; or

(ii) If paragraph (d)(2)(i) of this section is not applicable because of the absence of an inside bid quotation, and if the broker or dealer furnishing the statement has effected at least ten separate Qualifying Purchases in the security during the last five trading days of the period to which the statement relates, the weighted average price per share paid by the broker or dealer in all Qualifying Purchases effected during such five-day period, multiplied by the number of shares or units of the security held for the customer's account; or

(iii) If neither of paragraphs (d)(2)(i) nor (d)(2)(ii) of this section is applicable, a statement that there is ''no estimated market value'' with respect to the security.

(e) *Legend.* In addition to the information required by paragraph (d) of this section, the written statement required by paragraph (a) of this section shall include a conspicuous legend that is identified with the penny stocks described in the statement and that contains the following language:

If this statement contains an estimated value, you should be aware that this value may be based on a limited number of trades or quotes. Therefore, you may not be able to sell these securities at a price equal or near to the value shown. However, the broker-dealer furnishing this statement may not refuse to accept your order to sell these securities. Also, the amount you receive from a sale generally will be reduced by the amount of any commissions or similar charges. If an estimated value is not shown for a security, a value could not be determined because of a lack of information.

(f) *Preservation of records.* Any broker or dealer subject to this section shall preserve, as part of its records, copies of the written statements required by paragraph (a) of this section and keep such records for the periods specified in 17 CFR 240.17a–4(b).

(g) *Definitions.* For purposes of this section:

(1) The term *Quarterly period* shall mean any period of three consecutive full calendar months.

(2) The *inside bid quotation* for a security shall mean the highest bid quotation for the security displayed by a market maker in the security on a

Qualifying Electronic Quotation System, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotations for the security at specified prices.

(3) The term *Qualifying Electronic Quotation System* shall mean an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this section.

(4) The term *Qualifying Purchases* shall mean *bona fide* purchases by a broker or dealer of a penny stock for its own account, each of which involves at least 100 shares, but excluding any block purchase involving more than one percent of the outstanding shares or units of the security.

[57 FR 18034, Apr. 28, 1992]

§ 240.15g–8 Sales of escrowed securities of blank check companies.

As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for any person to sell or offer to sell any security that is deposited and held in an escrow or trust account pursuant to Rule 419 under the Securities Act of 1933 (17 CFR 230.419), or any interest in or related to such security, other than pursuant to a qualified domestic relations order as defined by the Internal Revenue Code of 1986, as amended (26 U.S.C. 1 *et seq.*), or Title I of the Employee Retirement Income Security Act (29 U.S.C. 1001 *et seq.*), or the rules thereunder.

[57 FR 18045, Apr. 28, 1992]

§ 240.15g–9 Sales practice requirements for certain low-priced securities.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts or practices, it shall be unlawful for a broker or dealer to sell a penny stock to, or to effect the purchase of a penny stock by, any person unless:

(1) The transaction is exempt under paragraph (c) of this section; or

(2) Prior to the transaction:

(i) The broker or dealer has approved the person's account for transactions in penny stocks in accordance with the procedures set forth in paragraph (b) of this section; and

(ii) The broker or dealer has received from the person a written agreement to the transaction setting forth the identity and quantity of the penny stock to be purchased.

(b) In order to approve a person's account for transactions in penny stocks, the broker or dealer must:

(1) Obtain from the person information concerning the person's financial situation, investment experience, and investment objectives;

(2) Reasonably determine, based on the information required by paragraph (b)(1) of this section and any other information known by the broker-dealer, that transactions in penny stocks are suitable for the person, and that the person (or the person's independent adviser in these transactions) has sufficient knowledge and experience in financial matters that the person (or the person's independent adviser in these transactions) reasonably may be expected to be capable of evaluating the risks of transactions in penny stocks;

(3) Deliver to the person a written statement:

(i) Setting forth the basis on which the broker or dealer made the determination required by paragraph (b)(2) of this section;

(ii) Stating in a highlighted format that it is unlawful for the broker or dealer to effect a transaction in a penny stock subject to the provisions of paragraph (a)(2) of this section unless the broker or dealer has received, prior to the transaction, a written agreement to the transaction from the person; and

(iii) Stating in a highlighted format immediately preceding the customer signature line that:

(A) The broker or dealer is required by this section to provide the person with the written statement; and

(B) The person should not sign and return the written statement to the broker or dealer if it does not accurately reflect the person's financial situation, investment experience, and investment objectives; and

(4) Obtain from the person a manually signed and dated copy of the written statement required by paragraph (b)(3) of this section.

(c) For purposes of this section, the following transactions shall be exempt:

(1) Transactions that are exempt under 17 CFR 240.15g–1 (a), (b), (d), (e), and (f).

(2) Transactions that meet the requirements of 17 CFR 230.505 or 230.506 (including, where applicable, the requirements of 17 CFR 230.501 through 230.503, and 17 CFR 230.507 through 230.508), or transactions with an issuer not involving any public offering pursuant to section 4(2) of the Securities Act of 1933.

(3) Transactions in which the purchaser is an established customer of the broker or dealer.

(d) For purposes of this section:

(1) The term *penny stock* shall have the same meaning as in 17 CFR 240.3a51–1.

(2) The term *established customer* shall mean any person for whom the broker or dealer, or a clearing broker on behalf of such broker or dealer, carries an account, and who in such account:

(i) Has effected a securities transaction, or made a deposit of funds or securities, more than one year previously; or

(ii) Has made three purchases of penny stocks that occurred on separate days and involved different issuers.

[54 FR 35481, Aug. 28, 1989. Redesignated and amended at 58 FR 37417, July 12, 1993]

§ 240.15g–100 Schedule 15G—Information to be included in the document distributed pursuant to 17 CFR 240.15g–2.

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Schedule 15G

Under the Securities Exchange Act of 1934

Instructions to Schedule 15G

A. The information contained in Schedule 15G (''Schedule'') must be reproduced in its entirety. No language of the document may be omitted, added to, or altered in any way. No material may be given to a customer that is intended in any way to detract from, rebut, or contradict the Schedule.

B. The document entitled ''Important Information on Penny Stocks'' must be distributed as the first page of Schedule 15G, and on one page only. The remainder of Schedule 15G, entitled ''Further Information,'' explains the items discussed in the first page in greater detail.

C. The disclosures made through the Schedule are in addition to any other disclosure(s) that are required to be made under the federal securities laws, including without limitation the disclosures required pursuant to the rules adopted under Sections 15(c)(1), 15(c)(2), and 15(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(c) (1) and (2), and 15 U.S.C. 78o(g), respectively.

D. The format and typeface of the document must be reproduced as presented in the Schedule. The document may be reproduced from the Schedule by photographic copying that is clear, complete, and at least satisfies the type-size requirements set forth below for printing. In the alternative, the document may be printed and must meet the following criteria regarding typeface:

1. Words appearing in capital letters in the Schedule must be reproduced in capital letters and printed in bold-face roman type at least as large as ten-point modern type and at least two points leaded.

2. Words appearing in lower-case letters must be reproduced in lower-case roman type at least as large as ten point modern type and at least two points leaded.

3. Words that are underlined in the document must be underlined in reproduction and appear in bold-faced roman type at least as large as ten point modern type and at least two points leaded, and meet the criteria for lower-case or capital letters in paragraphs (1) and (2) above, whichever is applicable.

E. Recipients of the document must not be charged any fee for the document.

F. The content of the Schedule is as follows:

[next page]

IMPORTANT INFORMATION ON PENNY STOCKS

This statement is required by the U.S. Securities and Exchange Commission (SEC) and contains important information on penny stocks. Your broker-dealer is required to obtain your signature to show that you have received this statement before your first trade in a penny stock. You are urged to read this statement before signing and before making a purchase or sale of a penny stock.

Penny stocks can be very risky.

• Penny stocks are low-priced shares of small companies not traded on an exchange or quoted on NASDAQ. Prices often are not available. Investors in penny stocks often are unable to sell stock back to the dealer that sold them the stock. Thus, you may lose your investment. Be cautious of newly issued penny stock.

• Your salesperson is not an impartial advisor but is paid to sell you the stock. Do not rely only on the salesperson, but seek outside advice before you buy any stock. If you have problems with a salesperson, contact the firm's compliance officer or the regulators listed below.

Information you should get.

• *Before you buy penny stock,* federal law requires your salesperson to tell you the ''*offer*'' and the ''*bid*'' on the stock, and the ''*compensation*'' the salesperson and the firm receive for the trade. The firm also must mail a confirmation of these prices to you after the trade.

• You will need this price information to determine what profit, if any, you will have when you sell your stock. The offer price is the wholesale price at which the dealer is willing to sell stock to other dealers. The bid price is the wholesale price at which the dealer is willing to buy the stock from other dealers. In its trade with you, the dealer may add a retail charge to these wholesale prices as compensation (called a ''markup'' or ''markdown'').

• The difference between the bid and the offer price is the dealer's ''*spread.*'' A spread that is large compared with the purchase price can make a resale of a stock very costly. To be profitable when you sell, the bid price of your stock must rise above the amount of this spread *and* the compensation charged by both your selling and purchasing dealers. If the dealer has no bid price, you may not be able to sell the stock after you buy it, and may lose your whole investment.

Brokers' duties and customer's rights and remedies.

• If you are a victim of fraud, you may have rights and remedies under state and federal law. You can get the disciplinary history of a salesperson or firm from the NASD at 1–800–289–9999, and additional information from your state securities official, at the North American Securities Administrators Association's central number: (202) 737–0900. You also may contact the SEC with complaints at (202) 272–7440.

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FURTHER INFORMATION

The securities being sold to you have not been approved or disapproved by the Securities and Exchange Commission. Moreover, the Securities and Exchange Commission has not passed upon the fairness or the merits of this transaction nor upon the accuracy or adequacy of the information contained in any prospectus or any other information provided by an issuer or a broker or dealer.

Generally, penny stock is a security that:

• Is priced under five dollars;

• Is *not* traded on a national stock exchange or on NASDAQ (the NASD's automated quotation system for actively traded stocks);

• May be listed in the ''pink sheets'' or the NASD OTC Bulletin Board;

• Is issued by a company that has less than $5 million in net tangible assets and has been in business less than three years, by a company that has under $2 million in net tangible assets and has been in business for at least three years, or by a company that has revenues of $6 million for 3 years.

Use Caution When Investing in Penny Stocks

1. *Do not make a hurried investment decision.* High-pressure sales techniques can be a warning sign of fraud. The salesperson is not an impartial advisor, but is paid for selling stock to you. The salesperson also does not have to watch your investment for you. Thus, you should think over the offer and seek outside advice. Check to see if the information given by the salesperson differs from other information you may have. Also, it is illegal for salespersons to promise that a stock will increase in value or is risk-free, or to guarantee against loss. If you think there is a problem, ask to speak with a compliance official at the firm, and, if necessary, any of the regulators referred to in this statement.

2. *Study the company issuing the stock.* Be wary of companies that have no operating history, few assets, or no defined business purpose. These may be sham or ''shell'' corporations. Read the prospectus for the company carefully before you invest. Some dealers fraudulently solicit investors' money to buy stock in sham companies, artificially inflate the stock prices, then cash in their profits before public investors can sell their stock.

3. *Understand the risky nature of these stocks.* You should be aware that you may lose part or all of your investment. Because of large dealer spreads, you will not be able to sell the stock immediately back to the dealer at the same price it sold the stock to you. In some cases, the stock may fall quickly in value. New companies, whose stock is sold in an ''initial public offering,'' often are riskier investments. Try to find out if the shares the salesperson wants to sell you are part of such an offering. Your salesperson must give you a ''prospectus'' in an initial public offering, but the financial condition shown in the prospectus of new companies can change very quickly.

4. *Know the brokerage firm and the salespeople with whom you are dealing.* Because of the nature of the market for penny stock, you may have to rely solely on the original brokerage firm that sold you the stock for prices and to buy the stock back from you. Ask the National Association of Securities Dealers, Inc. (NASD) or your state securities regulator, which is a member of the North

American Securities Administrators Association, Inc. (NASAA), about the licensing and disciplinary record of the brokerage firm and the salesperson contacting you. The telephone numbers of the NASD and NASAA are listed on the first page of this document.

5. *Be cautious if your salesperson leaves the firm.* If the salesperson who sold you the stock leaves his or her firm, the firm may reassign your account to a new salesperson. If you have problems, ask to speak to the firm's branch office manager or a compliance officer. Although the departing salesperson may ask you to transfer your stock to his or her new firm, you do not have to do so. Get information on the new firm. Be wary of requests to sell your securities when the salesperson transfers to a new firm. Also, you have the right to get your stock certificate from your selling firm. You do not have to leave the certificate with that firm or any other firm.

YOUR RIGHTS

Disclosures to you. Under penalty of federal law, your brokerage firm must tell you the following information at two different times—*before* you agree to buy or sell a penny stock, and after the trade, by *written confirmation:*

• *The bid and offer price quotes for penny stock, and the number of shares to which the quoted prices apply.* The *bid* and *offer* quotes are the wholesale prices at which dealers trade among themselves. These prices give you an idea of the market value of the stock. The dealer must tell you these price quotes if they appear on an automated quotation system approved by the SEC. If not, the dealer must use its own quotes or trade prices. You should calculate the *spread,* the difference between the bid and offer quotes, to help decide if buying the stock is a good investment.

A lack of quotes may mean that the market among dealers is not active. It thus may be difficult to resell the stock. You also should be aware that the actual price charged to you for the stock may differ from the price quoted to you for 100 shares. You should therefore determine, before you agree to a purchase, what the actual sales price (before the *markup*) will be for the exact number of shares you want to buy.

• *The brokerage firm's compensation for the trade.* A *markup* is the amount a dealer adds to the wholesale offer price of the stock and a *markdown* is the amount it subtracts from the wholesale bid price of the stock as *compensation.* A markup/markdown usually serves the same role as a broker's commission on a trade. Most of the firms in the penny stock market will be dealers, not brokers.

• *The compensation received by the brokerage firm's salesperson for the trade.* The brokerage firm must disclose to you, as a total sum, the cash compensation of your salesperson for the trade that is known at the time of the trade. The firm must describe in the written confirmation the nature of any other compensation of your salesperson that is unknown at the time of the trade.

In addition to the items listed above, your brokerage firm must send to you:

• *Monthly account statements. In general, your brokerage firm must send you a monthly statement* that gives an estimate of the value of each penny stock in your account, if there is enough information to make an estimate. If the firm has not bought or sold any penny stocks for your account for six months, it can provide these statements every three months.

A Written Statement of Your Financial Situation and Investment Goals. In general, unless you have had an account with your brokerage firm for more than one year, or you have previously bought three different penny stocks from that firm, your brokerage firm must send you a written statement for you to sign that accurately describes your financial situation, your investment experience, and your investment goals, and that contains a statement of why your firm decided that penny stocks are a suitable investment for you. The firm also must get your written consent to buy the penny stock.

Legal remedies. If penny stocks are sold to you in violation of your rights listed above, or other federal or state securities laws, you may be able to cancel your purchase and get your money back. If the stocks are sold in a fraudulent manner, you may be able to sue the persons and firms that caused the fraud for damages. If you have signed an arbitration agreement, however, you may have to pursue your claim through arbitration. You may wish to contact an attorney. The SEC is not authorized to represent individuals in private litigation.

However, to protect yourself and other investors, you should report any violations of your brokerage firm's duties listed above and other securities laws to the SEC, the NASD, or your state securities administrator at the telephone numbers on the first page of this document. These bodies have the power to stop fraudulent and abusive activity of salespersons and firms engaged in the securities business. Or you can write to the SEC at 450 Fifth St., NW., Washington, DC 20549; the NASD at 1735 K Street, NW., Washington, DC 20006; or NASAA at 555 New Jersey Avenue, NW., Suite 750, Washington, DC 20001. NASAA will give you the telephone number of your state's securities agency. If there is any disciplinary record of a person or a firm, the NASD, NASAA, or your state securities regulator will send you this information if you ask for it.

MARKET INFORMATION

The market for penny stocks. Penny stocks usually are not listed on an exchange or quoted on the NASDAQ system. Instead, they are traded between dealers on the telephone in the ''over-the-counter'' market. The NASD's OTC Bulletin Board also will contain information on some penny stocks. At times, however, price information for these stocks is not publicly available.

Market domination. In some cases, only one or two dealers, acting as ''market makers,'' may be buying and selling a given stock. You should first ask if a firm is acting as a *broker* (your agent) or as a dealer. A *dealer* buys stock itself to fill your order or already owns the stock. A *market maker* is a dealer who holds itself out as ready to buy and sell stock on a regular basis. If the firm is a market maker, ask how many other market makers are dealing in the stock to see if the firm (or group of firms) dominates the market. When there are only one or two market makers, there is a risk that the dealer or group of dealers may control the market in that stock and set prices that are not based on competitive forces. In recent years, some market makers have created fraudulent markets in certain penny stocks, so that stock prices rose suddenly, but collapsed just as quickly, at a loss to investors.

Mark-ups and mark-downs. The actual price that the customer pays usually includes the mark-up or mark-down. Markups and markdowns are direct profits for the firm and its salespeople, so you should be aware of such amounts to assess the overall value of the trade.

The ''spread.'' The difference between the bid and offer price is the spread. Like a mark-up or mark-down, the spread is another source of profit for the brokerage firm and compensates the firm for the risk of owning the stock. A large spread can make a trade very expensive to an investor. For some penny stocks, the spread between the bid and offer may be a large part of the purchase price of the stock. Where the bid price is much lower than the offer price, the market value of the stock must rise substantially before the stock can be sold at a profit. Moreover, an investor may experience substantial losses if the stock must be sold immediately.

Example: If the bid is $0.04 per share and the offer is $0.10 per share, the spread (difference) is $0.06, which appears to be a small amount. But you would lose $0.06 on every share that you bought for $0.10 if you had to sell that stock immediately to the same firm. If you had invested $5,000 at the $0.10 offer price, the market maker's repurchase price, at $0.04 bid, would be only $2,000; thus you would lose $3,000, or more than half of your investment, if you decided to sell the stock. In addition, you would have to pay compensation (a ''mark-up,'' ''mark-down,'' or commission) to buy and sell the stock. ¼

In addition to the amount of the spread, the price of your stock must rise enough to make up for the compensation that the dealer charged you when it first sold you the stock. Then, when you want to resell the stock, a dealer again will charge compensation, in the form of a markdown. The dealer subtracts the markdown from the price of the stock when it buys the stock from you. Thus, to make a profit, the bid price of your stock must rise above the amount of the original spread, the markup, and the markdown.

Primary offerings. Most penny stocks are sold to the public on an ongoing basis. However, dealers sometimes sell these stocks in initial public offerings. You should pay special attention to stocks of companies that have never been offered to the public before, because the market for these stocks is untested. Because the offering is on a first-time basis, there is generally no market information about the stock to help determine its value. The federal securities laws generally require broker-dealers to give investors a ''prospectus,'' which contains information about the objectives, management, and financial condition of the issuer. In the absence of market information, investors should read the company's prospectus with special care to find out if the stocks are a good investment. However, the prospectus is only a description of the current condition of the company. The outlook of the start-up companies described in a prospectus often is very uncertain.

For more information about penny stocks, contact the Office of Filings, Information, and Consumer Services of the U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, (202) 272–7440.

[57 FR 18035, Apr. 28, 1992, as amended at 57 FR 31446, July 16, 1992; 58 FR 37417, July 12, 1993]

NATIONAL AND AFFILIATED SECURITIES ASSOCIATIONS

§ 240.15Aa–1 Registration of a national or an affiliated securities association.

Any application for registration of an association as a national, or as an affiliated, securities association shall be made in triplicate on Form X–15AA–1 accompanied by three copies of the exhibits prescribed by the Commission to be filed in connection therewith.

(Sec. 15A, 52 Stat. 1070; 15 U.S.C. 78*o*–3)

[13 FR 8209, Dec. 22, 1948. Redesignated at 30 FR 11851, Sept. 16, 1965]

§ 240.15Aj–1 Amendments and supplements to registration statements of securities associations.

Every association applying for registration or registered as a national securities association or as an affiliated securities association shall keep its registration statement up-to-date in the manner prescribed below:

(a) *Amendments.* Promptly after the discovery of any inaccuracy in the registration statement or in any amendment or supplement thereto the association shall file with the Commission an amendment correcting such inaccuracy.

(b) *Current supplements.* Promptly after any change which renders no longer accurate any information contained or incorporated in the registration statement or in any amendment or supplement thereto the association shall file with the Commission a current supplement setting forth such change, except that:

(1) Supplements setting forth changes in the information called for in Exhibit C need not be filed until 10 days after the calendar month in which the changes occur.

(2) No current supplements need be filed with respect to changes in the information called for in Exhibit B.

(3) If changes in the information called for in items (1) and (2) of Exhibit C are reported in any record which is published at least once a month by the association and promptly filed in triplicate with the Commission, no current supplement need be filed with respect thereto.

(c) *Annual supplements.* (1) Promptly after March 1 of each year, the association shall file with the Commission an annual consolidated supplement as of such date on Form X–15AJ–2 (§ 249.803) except that:

(i) If the securities association publishes or cooperates in the publication of the information required in Items 6(a) and 6(b) of Form X–15AJ–2 on an annual or more frequent basis, in lieu of filing such an item the securities association may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date.

(ii) Promptly after March 1, 1995, and every three years thereafter each association shall file complete Exhibit A to Form X–15AJ–2. The information contained in this exhibit shall be up to date as of the latest practicable date within 3 months of the date on which these exhibits are filed. If the association publishes or cooperates in the publication of the information required in this exhibit on an annual or more frequent basis, in lieu of filing such exhibit the association may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date. If a securities association keeps the information required in this exhibit up to date and makes it available to the Commission and the public upon request, in lieu of filing such an exhibit a securities association may certify that the information is kept up to date and is available to the Commission and the public upon request.

(2) Promptly after the close of each fiscal year of the association, it shall file with the Commission a supplement setting forth its balance sheet as of the close of such year and its income and expense statement for such year.

(d) *Filing, dating, etc.* Each amendment or supplement shall be filed in triplicate, at least one of which must be signed and attested, in the same manner as required in the case of the original registration statement, and must conform to the requirements of Form X–15Aj–1, except that the annual consolidated supplement shall be filed on Form X–15Aj–2. All amendments and supplements shall be dated and numbered in order of filing. One amendment or supplement may include any number of changes. In addition to the formal filing of amendments and supplements above described, each association shall send to the Commission three copies of any notices, reports, circulars, loose-leaf insertions, riders,

new additions, lists or other records of changes covered by amendments or supplements when, as and if such records are made available to members of the association.

(Sec. 15A, 52 Stat. 1070; 15 U.S.C. 78*o*–3)

[13 FR 8209, Dec. 22, 1948, as amended at 18 FR 6259, Oct. 1, 1953. Redesignated at 30 FR 11851, Sept. 16, 1965; 59 FR 66700, Dec. 28, 1994]

§ 240.15Al2–1 [Reserved]

§ 240.15Ba2–1 Application for registration of municipal securities dealers which are banks or separately identifiable departments or divisions of banks.

(a) An application for registration, pursuant to Section 15B(a) of the Act, of a municipal securities dealer which is a bank (as defined in section 3(a)(6) of the Act) or a separately identifiable department or division of a bank (as defined by the Municipal Securities Rulemaking Board), shall be filed with the Commission on Form MSD (§ 249.950 of this chapter), in accordance with the instructions contained therein.

(b) If the information contained in any application for registration pursuant to paragraph (a) of this section, or in any amendment to such application, is or becomes inaccurate for any reason, applicant shall promptly file an amendment on Form MSD (§ 249.950 of this chapter) correcting such information.

(c) Every amendment filed pursuant to this rule shall constitute a ''report'' within the meaning of sections 17 and 32(a) of the Act (15 U.S.C. 78q and 78ff (a)).

[40 FR 49776, Oct. 24, 1975]

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

(a) An application for registration, pursuant to section 15B(a) of the Act, of a municipal securities dealer who is not subject to the requirements of § 240.15Ba2–1, that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) on Form BD in accordance with the instructions contained therein.

(b) Every applicant shall file with its application for registration a statement that such applicant is filing for registration as an intrastate dealer in accordance with the requirements of this section. Such statement shall be deemed a part of the application for registration.

(c) If the information contained in any application for registration filed pursuant to paragraph (a) of this section, or in any amendment to such application, is or becomes inaccurate for any reason, the dealer shall promptly file with the Central Registration Depository an amendment on Form BD correcting such information.

(d) Every application or amendment filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15B, 17, 18, 32(a), and other applicable provisions of the Act.

[58 FR 14, Jan. 4, 1993]

§ 240.15Ba2–4 Registration of successor to registered municipal securities dealer.

(a) In the event that a municipal securities dealer succeeds to and continues the business of a registered municipal securities dealer, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form MSD, in the case of a municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or Form BD, in the case of any other municipal securities dealer, and the predecessor files a notice of withdrawal from registration on Form MSDW or Form BDW, as the case may be; *Provided, however,* That the registration of the predecessor dealer will cease to be effective as the registration of the successor dealer 45 days after the application for registration on Form MSD or Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a municipal securities dealer succeeds to and continues the business of a registered predecessor municipal securities dealer, and the succession is based solely on a change

in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor dealer on Form MSD, in the case of a predecessor municipal securities dealer that is a bank or a separately identifiable department or division of a bank, or on Form BD, in the case of any other municipal securities dealer, to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

[58 FR 10, Jan. 4, 1993]

§ 240.15Ba2–5 Registration of fiduciaries.

The registration of a municipal securities dealer shall be deemed to be the registration 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 municipal securities 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 MSD, if the municipal securities dealer is a bank or a separately identifiable department of a bank, or Form BD, if the municipal securities dealer is other than a bank or a separately identifiable department or division of a bank.

[41 FR 28948, July 14, 1976]

§ 240.15Ba2–6 [Reserved]

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

(a) Notice of withdrawal from registration as a municipal securities dealer pursuant to section 15B(c) shall be filed on Form MSDW, in the case of a municipal securities dealer which is a bank or a separately identifiable department or division of a bank, or Form BDW, in the case of any other municipal securities dealer, in accordance with the instructions contained therein.

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW on or after January 25, 1993, by a dealer who has previously filed an application for registration on Form BD with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a dealer on Form BDW shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993. Every notice of withdrawal on Form MSDW shall be filed with the Commission.

(c) Except as hereinafter provided, a notice to withdraw from registration filed by a municipal securities dealer pursuant to section 15B(c) shall become effective for all matters on the 60th day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If a notice to withdraw from registration is filed with the Commission at any time after the date of the issuance of a Commission order instituting proceedings pursuant to section 15B(c) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such municipal securities dealer, or if, before the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except as such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) Every notice of withdrawal filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15B, 17(a), and other applicable provisions of the Act.

[41 FR 28949, July 14, 1976, as amended at 58 FR 14, Jan. 4, 1993]

§ 240.15Bc7–1 Availability of examination reports.

(a) Upon written request, copies of any report of an examination of a municipal securities dealer made by the Commission or furnished to it by an appropriate regulatory agency pursuant to section 17(c)(3) of the Act or by a registered securities association pursuant to section 15B(c)(7)(B) of the Act shall be made available to the Municipal Securities Rulemaking Board (the ''Board'') by the Commission subject to the following limitations:

(1) The Board shall establish by rule and shall maintain adequate procedures for ensuring the confidentiality of any information made available to it by the Commission pursuant to section 15B(c)(7)(B) of the Act;

(2) Information made available to the Board shall not identify any municipal securities broker, municipal securities dealer, or associated person that is the subject of a non-public examination report.

(b) If information to be made available to the Board is furnished to the Commission on a separate form prepared by an appropriate regulatory agency other than the Commission or by a registered securities association, that form, rather than a copy of any report of an examination, will be made available to the Board, provided that the conditions set forth in this paragraph are satisfied. Within sixty days of every six month period ending May 31 and November 30, each appropriate regulatory agency or registered securities association making available information on a separate form shall furnish to the Commission two copies of a form containing the information set forth in paragraphs (b)(1) through (b)(8) of this section. The Commission shall make one copy of the form promptly available to the Board. Copies of any forms furnished pursuant to this paragraph shall not identify any municipal securities broker, municipal securities dealer, or associated person that is the subject of an examination from which information was derived for the form; however, the Commission may obtain for its own use, upon request, the identity of any such examinee or the full examination reports. Furnished forms shall include the following information:

(1) The report period.

(2)(i) With respect to a registered securities association, the number of examinations that formed the basis of the report and, of these examinations, the number that were routine, special, and financial/operational.

(ii) With respect to an appropriate regulatory agency that is a bank agency, the number of examinations that formed the basis of the report and, of these examinations, the number that were routine, special, and financial/operational. The number of examinations that formed the basis of the report of bank dealers and the number of examinations of separately identifiable departments or divisions of banks effecting municipal securities transactions.

(3) Indications of the violations of each Board rule found in examinations that formed the basis for the report.

(4) Copies of public notices issued during the report period of any formal actions and non-public information regarding any actions taken on violations of Board rules.

(5) Any comments concerning any questionable practices relating to municipal securities activities, whether or not covered by provisions of the Act and the rules and regulations thereunder, including the rules of the Board.

(6) Descriptions of any significant or recurring customer complaints relating to municipal securities activities received by the appropriate regulatory agency or registered securities association during the report period or by municipal securities dealers during the 12 month period preceding the examination.

(7) Description of any novel issues or interpretations arising under the Board's rules.

(8) Description of any changes to existing Board rules or additional rules that would improve the regulatory scheme for municipal securities professionals or assist in the enforcement of the Board's rules.

(c) Copies of any report of an examination of a municipal securities broker or municipal securities dealer made by the Commission or furnished to it pursuant to section 15B(c)(7)(B) or

17(c)(3) of the Act, or separate forms made available to the Commission pursuant to paragraph (b) of this section, will be maintained in a non-public file.

[50 FR 48556, Nov. 26, 1985]

REGISTRATION OF GOVERNMENT SECURITIES BROKERS AND GOVERNMENT SECURITIES DEALERS

SOURCE: Sections 240.15.Ca1–1 through 240.15Cc1–1 appear at 52 FR 16839, May 6, 1987, unless otherwise noted.

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

(a) Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to section 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (§ 249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer. After July 25, 1987, every broker or dealer subject to this paragraph shall file notice that it is a government securities broker or government securities dealer prior to or on the date it begins acting as a government securities broker or government securities dealer.

(b) Every government securities broker or government securities dealer required to file notice under paragraph (a) of this section shall file with the Commission written notice on Form BD in accordance with the instructions contained therein when it ceases to be a government securities broker or government securities dealer. Notice shall be filed within 30 days after the date the broker or dealer has ceased acting as a government securities broker or a government securities dealer.

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with the Central Registration Depository operated by the National Association of Securities Dealers, Inc.

[52 FR 16839, May 6, 1987, as amended at 58 FR 14, Jan. 4, 1993]

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

(a) An application for registration, pursuant to Section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) on Form BD in accordance with the instructions contained therein.

(b) Temporary filing instructions. Every registered government securities broker or government securities dealer who is not a member of the National Association of Securities Dealers, Inc. shall file a complete Form BD (as revised November 16, 1992, and as amended) with the Central Registration Depository in accordance with the schedule set forth in § 240.15b3–1(b).

(c) Every application or amendment filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of Sections 15, 15C, 17(a), 18, 32(a), and other applicable provisions of the Act.

[58 FR 15, Jan. 4, 1993]

§ 240.15Ca2–2 [Reserved]

§ 240.15Ca2–3 Registration of successor to registered government securities broker or government securities dealer.

(a) In the event that a government securities broker or government securities dealer succeeds to and continues the business of a government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act, the registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form BD, and the predecessor files a notice of withdrawal from registration on Form BDW; *Provided, however,* That the registration of the predecessor government securities broker or government securities dealer will cease to be effective as the registration of the successor government securities broker or government securities dealer 45 days after

the application for registration on Form BD is filed by such successor.

(b) Notwithstanding paragraph (a) of this section, if a government securities broker or government securities dealer succeeds to and continues the business of a predecessor government securities broker or government securities dealer that is registered pursuant to section 15C(a)(1)(A) of the Act, and the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor broker or dealer on Form BD to reflect these changes. This amendment shall be deemed an application for registration filed by the predecessor and adopted by the successor.

[58 FR 11, Jan. 4, 1993]

§ 240.15Ca2–4 Registration of fiduciaries.

The registration of a government securities broker or government securities dealer pursuant to section 15C of the Act shall be deemed to be the registration 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 government securities broker or government securities dealer, provided that such fiduciary files with the Commission, no more than 30 days after entering upon the performance of its duties, a statement setting forth as to such fiduciary substantially the information required by Form BD.

§ 240.15Ca2–5 Consent to service of process to be furnished by non-resident government securities brokers or government securities dealers and by non-resident general partners or managing agents of government securities brokers or government securities dealers.

(a) Each non-resident government securities broker or government securities dealer applying for registration pursuant to section 15C(a)(1)(A) of the Act, each non-resident general partner of a government securities broker or government securities dealer partnership that is applying for such registration, and each non-resident managing agent of any other unincorporated government securities broker or government securities dealer that is applying for registration, shall furnish to the Commission, in a form acceptable to the Commission, a written irrevocable consent and power of attorney that—

(1) Designates the Securities and Exchange Commission as an agent of such government securities broker or government securities dealer 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) That accrues during the period beginning when such government securities broker or government securities dealer becomes registered pursuant to section 15C(a)(1)(A) of the Act and ending either when such registration is cancelled or revoked, or when a notice filed by such government securities broker or government securities dealer to withdraw from such registration becomes effective, whichever is earlier,

(ii) That arises out of any activity, in any place subject to the jurisdiction of the United States, occurring in connection with the conduct of the business of such government securities broker or government securities dealer, and

(iii) That is founded, directly or indirectly, upon 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 those Acts, and

(2) Stipulates and agrees that any such civil suit or action may be commenced against such government securities broker or government securities dealer 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 process service thereof had been made.

(b) Each government securities broker or government securities dealer registered pursuant to section 15C(a)(1)(A) of the Act that becomes a non-resident government securities broker or government securities dealer, and each general partner or managing agent of an unincorporated government securities broker or government securities dealer registered or applying for registration pursuant to section 15C(a)(1)(A) of the Act who becomes a non-resident after such registration or filing of an application for such registration, shall furnish such consent and power of attorney no more than 30 days thereafter.

(c) Service of any process, pleadings, or other papers on the Commission under this rule 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; but any failure by the Commission to forward such a copy shall have no effect on the validity of the service made upon 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 rule the following definitions shall apply:

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

(2) The term *non-resident government securities broker or government securities dealer* shall mean (i) in the case of an individual, one who is domiciled 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.

(3) A general partner or managing agent of a government securities broker or government securities dealer shall be deemed to be a non-resident if he is domiciled in any place not subject to the jurisdiction of the United States.

§ 240.15Cc1–1 Withdrawal from registration of government securities brokers or government securities dealers.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to section 15C(a)(1)(A) of the Act shall be filed on Form BDW in accordance with the instructions contained therein.

(b) Every notice of withdrawal from registration as a government securities broker or dealer that is filed on or after January 25, 1993, by a government securities broker or dealer who has previously filed an application for registration with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) shall be filed with the Central Registration Depository. Every other notice of withdrawal from registration as a government securities broker or dealer shall be filed with the Commission; except that such notice shall be filed with the Central Registration Depository beginning on September 30, 1993.

(c) Except as hereinafter provided, a notice to withdraw from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission shall determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to section 15C(c) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such

government securities broker or government securities dealer or if, before the effective date of the notice of withdrawal pursuant to this paragraph (b) of this section, the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) of this section except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) Every notice of withdrawal filed pursuant to this section shall constitute a ''report'' filed with the Commission within the meaning of sections 15, 15C, 32(a), and other applicable provisions of the Act.

[52 FR 16839, May 6, 1987, as amended at 58 FR 15, Jan. 4, 1993]

REPORTS OF DIRECTORS, OFFICERS, AND PRINCIPAL SHAREHOLDERS

SOURCE: Sections 240.16a–1 through 240.16a–10 appear at 56 FR 7265, Feb 21, 1991, unless otherwise noted.

§240.16a–1 Definition of Terms.

Terms defined in this rule shall apply solely to section 16 of the Act and the rules thereunder. These terms shall not be limited to section 16(a) of the Act but also shall apply to all other subsections under section 16 of the Act.

(a) The term *beneficial owner* shall have the following applications:

(1) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to section 12 of the Act, the term ''beneficial owner'' shall mean any person who is deemed a beneficial owner pursuant to section 13(d) of the Act and the rules thereunder; *provided, however*, that the following institutions or persons shall not be deemed the beneficial owner of securities of such class held for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business (or in the case of an employee benefit plan specified in paragraph (a)(1)(vi) of this section, of securities of such class allocated to plan participants where participants have voting power) as long as such shares are acquired by such institutions or persons without the purpose or effect of changing or influencing control of the issuer or engaging in any arrangement subject to Rule 13d–3(b) (§240.13d–3(b)):

(i) A broker or dealer registered under section 15 of the Act (15 U.S.C. 78o);

(ii) A bank as defined in section 3(a)(6) of the Act (15 U.S.C. 78c);

(iii) An insurance company as defined in section 3(a)(19) of the Act (15 U.S.C. 78c);

(iv) An investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(v) Any person registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3) or under the laws of any state;

(vi) An employee benefit plan as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001 *et seq.* (''ERISA'') that is subject to the provisions of ERISA, or any such plan that is not subject to ERISA that is maintained primarily for the benefit of the employees of a state or local government or instrumentality, or an endowment fund;

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in paragraphs (a)(1)(i) through (ix), does not exceed one percent of the securities of the subject class;

(viii) A savings association as defined in Section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ix) A church plan that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 (15 U.S.C. 80a–30; and

(x) A group, provided that all the members are persons specified in §240.16a–1(a)(1)(i) through (ix).

(xi) A group, provided that all the members are persons specified in §240.16a–1(a)(1) (i) through (vii).

NOTE TO PARAGRAPH (A). Pursuant to this section, a person deemed a beneficial owner of more than ten percent of any class of equity securities registered under section 12 of the Act would file a Form 3 (§ 249.103), but the securities holdings disclosed on Form 3, and changes in beneficial ownership reported on subsequent Forms 4 (§ 249.104) or 5 (§ 249.105), would be determined by the definition of ''beneficial owner'' in paragraph (a)(2) of this section.

(2) Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act, the term *beneficial owner* shall mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities, subject to the following:

(i) The term *pecuniary interest* in any class of equity securities shall mean the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.

(ii) The term *indirect pecuniary interest* in any class of equity securities shall include, but not be limited to:

(A) Securities held by members of a person's immediate family sharing the same household; provided, however, that the presumption of such beneficial ownership may be rebutted; *see* also § 240.16a–1(a)(4);

(B) A general partner's proportionate interest in the portfolio securities held by a general or limited partnership. The general partner's proportionate interest, as evidenced by the partnership agreement in effect at the time of the transaction and the partnership's most recent financial statements, shall be the greater of:

(*1*) The general partner's share of the partnership's profits, including profits attributed to any limited partnership interests held by the general partner and any other interests in profits that arise from the purchase and sale of the partnership's portfolio securities; or

(*2*) The general partner's share of the partnership capital account, including the share attributable to any limited partnership interest held by the general partner.

(C) A performance-related fee, other than an asset-based fee, received by any broker, dealer, bank, insurance company, investment company, investment adviser, investment manager, trustee or person or entity performing a similar function; *provided, however*, that no pecuniary interest shall be present where:

(*1*) The performance-related fee, regardless of when payable, is calculated based upon net capital gains and/or net capital appreciation generated from the portfolio or from the fiduciary's overall performance over a period of one year or more; and

(*2*) Equity securities of the issuer do not account for more than ten percent of the market value of the portfolio. A right to a nonperformance-related fee alone shall not represent a pecuniary interest in the securities;

(D) A person's right to dividends that is separated or separable from the underlying securities. Otherwise, a right to dividends alone shall not represent a pecuniary interest in the securities;

(E) A person's interest in securities held by a trust, as specified in § 240.16a–8(b); and

(F) A person's right to acquire equity securities through the exercise or conversion of any derivative security, whether or not presently exercisable.

(iii) A shareholder shall not be deemed to have a pecuniary interest in the portfolio securities held by a corporation or similar entity in which the person owns securities if the shareholder is not a controlling shareholder of the entity and does not have or share investment control over the entity's portfolio.

(3) Where more than one person subject to section 16 of the Act is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities, either separately or jointly, as provided in § 240.16a–3(j). In such cases, the amount of short-swing profit recoverable shall not be increased above the amount recoverable if there were only one beneficial owner.

(4) Any person filing a statement pursuant to section 16(a) of the Act may state that the filing shall not be deemed an admission that such person is, for purposes of section 16 of the Act

or otherwise, the beneficial owner of any equity securities covered by the statement.

(5) The following interests are deemed not to confer beneficial ownership for purposes of section 16 of the Act:

(i) Interests in portfolio securities held by any holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*);

(ii) Interests in portfolio securities held by any investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); and

(iii) Interests in securities comprising part of a broad-based, publicly traded market basket or index of stocks, approved for trading by the appropriate federal governmental authority.

(b) The term *call equivalent position* shall mean a derivative security position that increases in value as the value of the underlying equity increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.

(c) The term *derivative securities* shall mean any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security, but shall not include:

(1) Rights of a pledgee of securities to sell the pledged securities;

(2) Rights of all holders of a class of securities of an issuer to receive securities pro rata, or obligations to dispose of securities, as a result of a merger, exchange offer, or consolidation involving the issuer of the securities;

(3) Rights or obligations to surrender a security, or have a security withheld, upon the receipt or exercise of a derivative security or the receipt or vesting of equity securities, in order to satisfy the exercise price or the tax withholding consequences of receipt, exercise or vesting;

(4) Interests in broad-based index options, broad-based index futures, and broad-based publicly traded market baskets of stocks approved for trading by the appropriate federal governmental authority;

(5) Interests or rights to participate in employee benefit plans of the issuer;

(6) Rights with an exercise or conversion privilege at a price that is not fixed; or

(7) Options granted to an underwriter in a registered public offering for the purpose of satisfying over-allotments in such offering.

(d) The term *equity security of such issuer* shall mean any equity security or derivative security relating to an issuer, whether or not issued by that issuer.

(e) The term *immediate family* shall mean any child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships.

(f) The term ''officer'' shall mean an issuer's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer. In addition, when the issuer is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the issuer is a trust, officers or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust.

NOTE: ''Policy-making function'' is not intended to include policy-making functions that are not significant. If pursuant to Item 401(b) of Regulation S–K (§229.401(b)) the issuer identifies a person as an ''executive officer,'' it is presumed that the Board of Directors has made that judgment and that the persons so identified are the officers for purposes of Section 16 of the Act, as are such other persons enumerated in this paragraph (f) but not in Item 401(b).

(g) The term *portfolio securities* shall mean all securities owned by an entity, other than securities issued by the entity.

(h) The term *put equivalent position* shall mean a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

[56 FR 7265, Feb. 21, 1991, as amended at 56 FR 19927, May 1, 1991; 61 FR 30391, June 14, 1996; 63 FR 2868, Jan. 16, 1998]

§ 240.16a–2 Persons and transactions subject to section 16.

Any person who is the beneficial owner, directly or indirectly, of more than ten percent of any class of equity securities (''ten percent beneficial owner'') registered pursuant to section 12 of the Act, any director or officer of the issuer of such securities, and any person specified in section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940, including any person specified in § 240.16a–8, shall be subject to the provisions of section 16 of the Act. The rules under section 16 of the Act apply to any class of equity securities of an issuer whether or not registered under section 12 of the Act. The rules under section 16 of the Act also apply to non-equity securities as provided by the Public Utility Holding Company Act of 1935 and the Investment Company Act of 1940. With respect to transactions by persons subject to section 16 of the Act:

(a) A transaction(s) carried out by a director or officer in the six months prior to the director or officer becoming subject to section 16 of the Act shall be subject to section 16 of the Act and reported on the first required Form 4 only if the transaction(s) occurred within six months of the transaction giving rise to the Form 4 filing obligation and the director or officer became subject to section 16 of the Act solely as a result of the issuer registering a class of equity securities pursuant to section 12 of the Act.

(b) A transaction(s) following the cessation of director or officer status shall be subject to section 16 of the Act only if:

(1) Executed within a period of less than six months of an opposite transaction subject to section 16(b) of the Act that occurred while that person was a director or officer; and

(2) Not otherwise exempted from section 16(b) of the Act pursuant to the provisions of this chapter.

NOTE TO PARAGRAPH (B): For purposes of this paragraph, an acquisition and a disposition each shall be an opposite transaction with respect to the other.

(c) The transaction that results in a person becoming a ten percent beneficial owner is not subject to section 16 of the Act unless the person otherwise is subject to section 16 of the Act. A ten percent beneficial owner not otherwise subject to section 16 of the Act must report only those transactions conducted while the beneficial owner of more than ten percent of a class of equity securities of the issuer registered pursuant to section 12 of the Act.

(d)(1) Transactions by a person or entity shall be exempt from the provisions of section 16 of the Act for the 12 months following appointment and qualification, to the extent such person or entity is acting as:

(i) Executor or administrator of the estate of a decedent;

(ii) Guardian or member of a committee for an incompetent;

(iii) Receiver, trustee in bankruptcy, assignee for the benefit of creditors, conservator, liquidating agent, or other similar person duly authorized by law to administer the estate or assets of another person; or

(iv) Fiduciary in a similar capacity.

(2) Transactions by such person or entity acting in a capacity specified in paragraph (d)(1) of this section after the period specified in that paragraph shall be subject to section 16 of the Act only where the estate, trust or other entity is a beneficial owner of more than ten percent of any class of equity security registered pursuant to section 12 of the Act.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30392, June 14, 1996]

§ 240.16a–3 Reporting transactions and holdings.

(a) Initial statements of beneficial ownership of equity securities required

by section 16(a) of the Act shall be filed on Form 3. Statements of changes in beneficial ownership required by that section shall be filed on Form 4. Annual statements shall be filed on Form 5. At the election of the reporting person, any transaction required to be reported on Form 5 may be reported on an earlier filed Form 4. All such statements shall be prepared and filed in accordance with the requirements of the applicable form.

(b) A person filing statements pursuant to section 16(a) of the Act with respect to any class of equity securities registered pursuant to section 12 of the Act need not file an additional statement on Form 3:

(1) When an additional class of equity securities of the same issuer becomes registered pursuant to section 12 of the Act; or

(2) When such person assumes a different or an additional relationship to the same issuer (for example, when an officer becomes a director).

(c) Any issuer that has equity securities listed on more than one national securities exchange may designate one exchange as the only exchange with which reports pursuant to section 16(a) of the Act need be filed. Such designation shall be made in writing and shall be filed with the Commission and with each national securities exchange on which any equity security of the issuer is listed at the time of such election. The reporting person's obligation to file reports with each national securities exchange on which any equity security of the issuer is listed shall be satisfied by filing with the exchange so designated.

(d) Any person required to file a statement with respect to securities of a single issuer under both section 16(a) of the Act and either section 17(a) of the Public Utility Holding Company Act of 1935 or section 30(f) of the Investment Company Act of 1940 may file a single statement containing the required information, which will be deemed to be filed under both Acts.

(e) Any person required to file a statement under section 16(a) of the Act shall, not later than the time the statement is transmitted for filing with the Commission, send or deliver a duplicate to the person designated by the issuer to receive such statements, or, in the absence of such a designation, to the issuer's corporate secretary or person performing equivalent functions.

(f)(1) A Form 5 shall be filed by every person who at any time during the issuer's fiscal year was subject to section 16 of the Act with respect to such issuer, except as provided in paragraph (f)(2) of this section. The Form shall be filed within 45 days after the issuer's fiscal year end, and shall disclose the following holdings and transactions not reported previously on Forms 3, 4 or 5:

(i) All transactions during the most recent fiscal year that were exempt from section 16(b) of the Act, except:

(A) Exercises and conversions of derivative securities exempt under either § 240.16b–3 or § 240.16b–6(b) (these are required to be reported on Form 4);

(B) Transactions exempt from section 16(b) of the Act pursuant to § 240.16b–3(c), which shall be exempt from section 16(a) of the Act; and

(C) Transactions exempt from section 16(a) of the Act pursuant to another rule;

(ii) Transactions that constituted small acquisitions pursuant to § 240.16a–6(a);

(iii) All holdings and transactions that should have been reported during the most recent fiscal year, but were not; and

(iv) With respect to the first Form 5 requirement for a reporting person, all holdings and transactions that should have been reported in each of the issuer's last two fiscal years but were not, based on the reporting person's reasonable belief in good faith in the completeness and accuracy of the information.

(2) Notwithstanding the above, no Form 5 shall be required where all transactions otherwise required to be reported on the Form 5 have been reported before the due date of the Form 5.

Persons no longer subject to section 16 of the Act, but who were subject to the Section at any time during the issuer's fiscal year, must file a Form 5 unless paragraph (f)(2) is satisfied. *See also* § 240.16a–2(b) regarding the reporting obligations of persons ceasing to be officers or directors.

(g)(1) A Form 4 shall be filed to report all transactions not exempt from section 16(b) of the Act and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act.

(2) At the option of the reporting person, transactions that are reportable on Form 5 may be reported on Form 4, provided that the Form 4 is filed no later than the due date of the Form 5 with respect to the fiscal year in which the transaction occurred.

(h) The date of filing with the Commission shall be the date of receipt by the Commission; *Provided, however*, That a Form 3, 4, or 5 shall be deemed to have been timely filed if the filing person establishes that the Form had been transmitted timely to a third party company or governmental entity providing delivery services in the ordinary course of business, which guaranteed delivery of the filing to the Commission no later than the required filing date.

(i) *Signatures*. Where Section 16 of the Act, or the rules or forms thereunder, require a document filed with or furnished to the Commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(j) Where more than one person subject to section 16 of the Act is deemed to be a beneficial owner of the same equity securities, all such persons must report as beneficial owners of the securities, either separately or jointly. Where persons in a group are deemed to be beneficial owners of equity securities pursuant to § 240.16a–1(a)(1) due to the aggregation of holdings, a single Form 3, 4 or 5 may be filed on behalf of all persons in the group. Joint and group filings must include all required information for each beneficial owner, and such filings must be signed by each beneficial owner, or on behalf of such owner by an authorized person.

[56 FR 7265, Feb. 21, 1991, as amended at 60 FR 26622, May 17, 1995; 61 FR 30392, 30404, June 14, 1996]

§ 240.16a–4 Derivative securities.

(a) For purposes of section 16 of the Act, both derivative securities and the underlying securities to which they relate shall be deemed to be the same class of equity securities, *except that* the acquisition or disposition of any derivative security shall be separately reported.

(b) The exercise or conversion of a call equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A purchase of the underlying security; and

(2) A closing of the derivative security position.

(c) The exercise or conversion of a put equivalent position shall be reported on Form 4 and treated for reporting purposes as:

(1) A sale of the underlying security; and

(2) A closing of the derivative security position.

(d) The disposition or closing of a long derivative security position, as a result of cancellation or expiration, shall be exempt from section 16(a) of the Act if exempt from section 16(b) of the Act pursuant to § 240.16b–6(d).

NOTE TO § 240.16A–4: A purchase or sale resulting from an exercise or conversion of a derivative security may be exempt from section 16(b) of the Act pursuant to § 240.16b–3 or § 240.16b–6(b).

[56 FR 7265, Feb. 21, 1991, as amended at 56 FR 19927, May 1, 1991; 61 FR 30392, June 14, 1996]

§ 240.16a–5 Odd-lot dealers.

Transactions by an odd-lot dealer (a) in odd-lots as reasonably necessary to carry on odd-lot transactions, or (b) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of business, shall be exempt from the provisions of section

16(a) of the Act with respect to participation by such odd-lot dealer in such transaction.

§ 240.16a–6 Small acquisitions.

(a) Any acquisition of an equity security not exceeding $10,000 in market value, or of the right to acquire such securities, shall be reported on Form 5, subject to the following conditions:

(1) Such acquisition, when aggregated with other acquisitions of securities of the same class (including securities underlying derivative securities, but excluding acquisitions exempted by rule from section 16(b) or previously reported on Form 4 or Form 5) within the prior six months, does not exceed a total of $10,000 in market value; and

(2) The person making the acquisition does not within six months thereafter make any disposition, other than by a transaction exempt from section 16(b) of the Act.

(b) Should an acquisition no longer qualify for the reporting deferral in paragraph (a) of this section, all such acquisitions that have not yet been reported shall be reported on a Form 4 within ten days after the close of the calendar month in which the conditions of paragraph (a) of this section are no longer met.

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30392, June 14, 1996]

§ 240.16a–7 Transactions effected in connection with a distribution.

(a) Any purchase and sale, or sale and purchase, of a security that is made in connection with the distribution of a substantial block of securities shall be exempt from the provisions of section 16(a) of the Act, to the extent specified in this rule, subject to the following conditions:

(1) The person effecting the transaction is engaged in the business of distributing securities and is participating in good faith, in the ordinary course of such business, in the distribution of such block of securities; and

(2) The security involved in the transaction is:

(i) Part of such block of securities and is acquired by the person effecting the transaction, with a view to distribution thereof, from the issuer or other person on whose behalf such securities are being distributed or from a person who is participating in good faith in the distribution of such block of securities; or

(ii) A security purchased in good faith by or for the account of the person effecting the transaction for the purpose of stabilizing the market price of securities of the class being distributed or to cover an over-allotment or other short position created in connection with such distribution.

(b) Each person participating in the transaction must qualify on an individual basis for an exemption pursuant to this section.

§ 240.16a–8 Trusts.

(a) *Persons subject to section 16*—(1) *Trusts.* A trust shall be subject to section 16 of the Act with respect to securities of the issuer if the trust is a beneficial owner, pursuant to § 240.16a–1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (''ten percent beneficial owner'').

(i) The trust is a beneficial owner, pursuant to § 240.16a–1(a)(1), of more than ten percent of any class of equity securities of the issuer registered pursuant to section 12 of the Act (''ten percent beneficial owner''); or

(ii) The trustee otherwise is subject to section 16 of the Act and exercises or shares investment control over the issuer's securities held by the trust, and either the trustee or a member of the trustee's immediate family has a pecuniary interest in the issuer's securities held by the trust, except where the trustee is:

(A) An entity or person that in the ordinary course of business acts as trustee, and is specified in § 240.16a–1(a)(1) (i) through (viii); or

(B) An officer or director of the issuer serving as trustee for the issuer's employee benefit plan trust.

(2) *Trustees, beneficiaries, and settlors.* In determining whether a trustee, beneficiary, or settlor is a ten percent beneficial owner with respect to the issuer:

(i) Such persons shall be deemed the beneficial owner of the issuer's securities held by the trust, to the extent specified by § 240.16a–1(a)(1); and

(ii) Settlors shall be deemed the beneficial owner of the issuer's securities

held by the trust where they have the power to revoke the trust without the consent of another person.

(b) *Trust Holdings and Transactions.* Holdings and transactions in the issuer's securities held by a trust shall be reported by the trustee on behalf of the trust, if the trust is subject to section 16 of the Act, except as provided below. Holdings and transactions in the issuer's securities held by a trust (whether or not subject to section 16 of the Act) may be reportable by other parties as follows:

(1) *Trusts.* The trust need not report holdings and transactions in the issuer's securities held by the trust in an employee benefit plan subject to the Employee Retirement Income Security Act over which no trustee exercises investment control.

(2) *Trustees.* If, as provided by § 240.16a–1(a)(2), a trustee subject to section 16 of the Act has a pecuniary interest in any holding or transaction in the issuer's securities held by the trust, such holding or transaction shall be attributed to the trustee and shall be reported by the trustee in the trustee's individual capacity, as well as on behalf of the trust. With respect to performance fees and holdings of the trustee's immediate family, trustees shall be deemed to have a pecuniary interest in the trust holdings and transactions in the following circumstances:

(i) A performance fee is received that does not meet the proviso of § 240.16a–1(a)(2)(ii)(C); or

(ii) At least one beneficiary of the trust is a member of the trustee's immediate family. The pecuniary interest of the immediate family member(s) shall be attributed to and reported by the trustee.

(3) *Beneficiaries.* A beneficiary subject to section 16 of the Act shall have or share reporting obligations with respect to transactions in the issuer's securities held by the trust, if the beneficiary is a beneficial owner of the securities pursuant to § 240.16a–1(a)(2), as follows:

(i) If a beneficiary shares investment control with the trustee with respect to a trust transaction, the transaction shall be attributed to and reported by both the beneficiary and the trust;

(ii) If a beneficiary has investment control with respect to a trust transaction without consultation with the trustee, the transaction shall be attributed to and reported by the beneficiary only; and

(iii) In making a determination as to whether a beneficiary is the beneficial owner of the securities pursuant to § 240.16a–1(a)(2), beneficiaries shall be deemed to have a pecuniary interest in the issuer's securities held by the trust to the extent of their pro rata interest in the trust where the trustee does not exercise exclusive investment control.

NOTE TO PARAGRAPH (B)(3): Transactions and holdings attributed to a trust beneficiary may be reported by the trustee on behalf of the beneficiary, provided that the report is signed by the beneficiary or other authorized person. Where the transactions and holdings are attributed both to the trustee and trust beneficiary, a joint report may be filed in accordance with § 240.16a–3(j).

(4) *Settlors.* If a settlor subject to section 16 of the Act reserves the right to revoke the trust without the consent of another person, the trust holdings and transactions shall be attributed to and reported by the settlor instead of the trust; *Provided, however,* That if the settlor does not exercise or share investment control over the issuer's securities held by the trust, the trust holdings and transactions shall be attributed to and reported by the trust instead of the settlor.

(c) *Remainder interests.* Remainder interests in a trust are deemed not to confer beneficial ownership for purposes of section 16 of the Act, provided that the persons with the remainder interests have no power, directly or indirectly, to exercise or share investment control over the trust.

(d) A trust, trustee, beneficiary or settlor becoming subject to section 16(a) of the Act pursuant to this rule also shall be subject to sections 16(b) and 16(c) of the Act.

[56 FR 7265, Feb. 21, 1991, as amended at 56 FR 19927, May 1, 1991; 61 FR 30392, June 14, 1996]

§ 240.16a–9 Stock splits, stock dividends, and pro rata rights.

The following shall be exempt from section 16 of the Act:

(a) The increase or decrease in the number of securities held as a result of a stock split or stock dividend applying equally to all securities of a class, including a stock dividend in which equity securities of a different issuer are distributed; and

(b) The acquisition of rights, such as shareholder or pre-emptive rights, pursuant to a pro rata grant to all holders of the same class of equity securities registered under section 12 of the Act.

NOTE: The exercise or sale of a pro rata right shall be reported pursuant to § 240.16a–4 and the exercise shall be eligible for exemption from section 16(b) of the Act pursuant to § 240.16b–6(b).

[56 FR 7265, Feb. 21, 1991, as amended at 61 FR 30393, June 14, 1996]

§ 240.16a–10 Exemptions under section 16(a).

Except as provided in § 240.16a–6, any transaction exempted from the requirements of section 16(a) of the Act, insofar as it is otherwise subject to the provisions of section 16(b), shall be likewise exempt from section 16(b) of the Act.

§ 240.16a–11 Dividend or interest reinvestment plans.

Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from section 16 of the Act if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer, and operates on substantially the same terms for all plan participants.

[61 FR 30393, June 14, 1996]

§ 240.16a–12 Domestic relations orders.

The acquisition or disposition of equity securities pursuant to a domestic relations order, as defined in the Internal Revenue Code or Title I of the Employee Retirement Income Security Act, or the rules thereunder, shall be exempt from section 16 of the Act.

[61 FR 30393, June 14, 1996]

§ 240.16a–13 Change in form of beneficial ownership.

A transaction, other than the exercise or conversion of a derivative security or deposit into or withdrawal from a voting trust, that effects only a change in the form of beneficial ownership without changing a person's pecuniary interest in the subject equity securities shall be exempt from section 16 of the Act.

[61 FR 30393, June 14, 1996]

EXEMPTION OF CERTAIN TRANSACTIONS FROM SECTION 16(B)

SOURCE: Sections 240.16b–1 through 240.16b–8 appear at 56 FR 7270, Feb. 21, 1991, unless otherwise noted.

§ 240.16b–1 Transactions approved by a regulatory authority.

(a) Any purchase and sale, or sale and purchase, of a security shall be exempt from section 16(b) of the Act, if the transaction is effected by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) and both the purchase and sale of such security have been exempted from the provisions of section 17(a) (15 U.S.C. 80a–17(a)) of the Investment Company Act of 1940, by rule or order of the Commission.

(b) Any purchase and sale, or sale and purchase, of a security shall be exempt from the provisions of section 16(b) of the Act if:

(1) The person effecting the transaction is either a holding company registered under the Public Utility Holding Company Act of 1935 (15 U.S.C. 79a *et seq.*) or a subsidiary thereof; and

(2) Both the purchase and the sale of the security have been approved or permitted by the Commission pursuant to the applicable provisions of that Act and the rules and regulations thereunder.

[56 FR 7270, Feb. 21, 1991, as amended at 61 FR 30404, June 14, 1996]

§ 240.16b–2 [Reserved]

§ 240.16b–3 Transactions between an issuer and its officers or directors.

(a) *General.* A transaction between the issuer (including an employee benefit plan sponsored by the issuer) and an

officer or director of the issuer that involves issuer equity securities shall be exempt from section 16(b) of the Act if the transaction satisfies the applicable conditions set forth in this section.

(b) *Definitions.* (1) A *Discretionary Transaction* shall mean a transaction pursuant to an employee benefit plan that:

(i) Is at the volition of a plan participant;

(ii) Is not made in connection with the participant's death, disability, retirement or termination of employment;

(iii) Is not required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code; and

(iv) Results in either an intra-plan transfer involving an issuer equity securities fund, or a cash distribution funded by a volitional disposition of an issuer equity security.

(2) An *Excess Benefit Plan* shall mean an employee benefit plan that is operated in conjunction with a Qualified Plan, and provides only the benefits or contributions that would be provided under a Qualified Plan but for any benefit or contribution limitations set forth in the Internal Revenue Code of 1986, or any successor provisions thereof.

(3)(i) A *Non-Employee Director* shall mean a director who:

(A) Is not currently an officer (as defined in § 240.16a-1(f)) of the issuer or a parent or subsidiary of the issuer, or otherwise currently employed by the issuer or a parent or subsidiary of the issuer;

(B) Does not receive compensation, either directly or indirectly, from the issuer or a parent or subsidiary of the issuer, for services rendered as a consultant or in any capacity other than as a director, except for an amount that does not exceed the dollar amount for which disclosure would be required pursuant to § 229.404(a) of this chapter;

(C) Does not possess an interest in any other transaction for which disclosure would be required pursuant to § 229.404(a) of this chapter; and

(D) Is not engaged in a business relationship for which disclosure would be required pursuant to § 229.404(b) of this chapter.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, a *Non-Employee Director* of a closed-end investment company shall mean a director who is not an ''interested person'' of the issuer, as that term is defined in Section 2(a)(19) of the Investment Company Act of 1940.

(4) A *Qualified Plan* shall mean an employee benefit plan that satisfies the coverage and participation requirements of sections 410 and 401(a)(26) of the Internal Revenue Code of 1986, or any successor provisions thereof.

(5) A *Stock Purchase Plan* shall mean an employee benefit plan that satisfies the coverage and participation requirements of sections 423(b)(3) and 423(b)(5), or section 410, of the Internal Revenue Code of 1986, or any successor provisions thereof.

(c) *Tax-conditioned plans.* Any transaction (other than a Discretionary Transaction) pursuant to a Qualified Plan, an Excess Benefit Plan, or a Stock Purchase Plan shall be exempt without condition.

(d) *Grants, awards and other acquisitions from the issuer.* Any transaction involving a grant, award or other acquisition from the issuer (other than a Discretionary Transaction) shall be exempt if:

(1) The transaction is approved by the board of directors of the issuer, or a committee of the board of directors that is composed solely of two or more Non-Employee Directors;

(2) The transaction is approved or ratified, in compliance with section 14 of the Act, by either: the affirmative votes of the holders of a majority of the securities of the issuer present, or represented, and entitled to vote at a meeting duly held in accordance with the applicable laws of the state or other jurisdiction in which the issuer is incorporated; or the written consent of the holders of a majority of the securities of the issuer entitled to vote; *provided that* such ratification occurs no later than the date of the next annual meeting of shareholders; or

(3) The issuer equity securities so acquired are held by the officer or director for a period of six months following the date of such acquisition, *provided that* this condition shall be satisfied with respect to a derivative security if

at least six months elapse from the date of acquisition of the derivative security to the date of disposition of the derivative security (other than upon exercise or conversion) or its underlying equity security.

(e) *Dispositions to the issuer.* Any transaction involving the disposition to the issuer of issuer equity securities (other than a Discretionary Transaction) shall be exempt, *provided that* the terms of such disposition are approved in advance in the manner prescribed by either paragraph (d)(1) or paragraph (d)(2) of this section.

(f) *Discretionary Transactions.* A Discretionary Transaction shall be exempt only if effected pursuant to an election made at least six months following the date of the most recent election, with respect to any plan of the issuer, that effected a Discretionary Transaction that was:

(1) An acquisition, if the transaction to be exempted would be a disposition; or

(2) A disposition, if the transaction to be exempted would be an acquisition.

NOTES TO § 240.16B–3

Note (1): The exercise or conversion of a derivative security that does not satisfy the conditions of this section is eligible for exemption from section 16(b) of the Act to the extent that the conditions of § 240.16b–6(b) are satisfied.

Note (2): Section 16(a) reporting requirements applicable to transactions exempt pursuant to this section are set forth in § 240.16a–3(f) and (g) and § 240.16a–4.

Note (3): The approval conditions of paragraphs (d)(1), (d)(2) and (e) of this section require the approval of each specific transaction, and are not satisfied by approval of a plan in its entirety except for the approval of a plan pursuant to which the terms and conditions of each transaction are fixed in advance, such as a formula plan. Where the terms of a subsequent transaction (such as the exercise price of an option, or the provision of an exercise or tax withholding right) are provided for in a transaction as initially approved pursuant to paragraphs (d)(1), (d)(2) or (e), such subsequent transaction shall not require further specific approval.

[61 FR 30393, June 14, 1996]

§ 240.16b–4 [Reserved]

§ 240.16b–5 Bona fide gifts and inheritance.

Both the acquisition and the disposition of equity securities shall be exempt from the operation of section 16(b) of the Act if they are: (a) Bona fide gifts; or (b) transfers of securities by will or the laws of descent and distribution.

§ 240.16b–6 Derivative securities.

(a) The establishment of or increase in a call equivalent position or liquidation of or decrease in a put equivalent position shall be deemed a purchase of the underlying security for purposes of section 16(b) of the Act, and the establishment of or increase in a put equivalent position or liquidation of or decrease in a call equivalent position shall be deemed a sale of the underlying securities for purposes of section 16(b) of the Act: *Provided, however,* That if the increase or decrease occurs as a result of the fixing of the exercise price of a right initially issued without a fixed price, where the date the price is fixed is not known in advance and is outside the control of the recipient, the increase or decrease shall be exempt from section 16(b) of the Act with respect to any offsetting transaction within the six months prior to the date the price is fixed.

(b) The closing of a derivative security position as a result of its exercise or conversion shall be exempt from the operation of section 16(b) of the Act, and the acquisition of underlying securities at a fixed exercise price due to the exercise or conversion of a call equivalent position or the disposition of underlying securities at a fixed exercise price due to the exercise of a put equivalent position shall be exempt from the operation of section 16(b) of the Act: *Provided, however,* That the acquisition of underlying securities from the exercise of an out-of-the-money option, warrant, or right shall not be exempt unless the exercise is necessary to comport with the sequential exercise provisions of the Internal Revenue Code (26 U.S.C. 422A).

NOTE TO PARAGRAPH (B): The exercise or conversion of a derivative security that does not satisfy the conditions of this section is eligible for exemption from section 16(b) of the Act to the extent that the conditions of § 240.16b–3 are satisfied.

(c) In determining the short-swing profit recoverable pursuant to section 16(b) of the Act from transactions involving the purchase and sale or sale and purchase of derivative and other securities, the following rules apply:

(1) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities that have identical characteristics (*e.g.*, purchases and sales of call options of the same strike price and expiration date, or purchases and sales of the same series of convertible debentures) shall be measured by the actual prices paid or received in the short-swing transactions.

(2) Short-swing profits in transactions involving the purchase and sale or sale and purchase of derivative securities having different characteristics but related to the same underlying security (*e.g.*, the purchase of a call option and the sale of a convertible debenture) or derivative securities and underlying securities shall not exceed the difference in price of the underlying security on the date of purchase or sale and the date of sale or purchase. Such profits may be measured by calculating the short-swing profits that would have been realized had the subject transactions involved purchases and sales solely of the derivative security that was purchased or solely of the derivative security that was sold, valued as of the time of the matching purchase or sale, and calculated for the lesser of the number of underlying securities actually purchased or sold.

(d) Upon cancellation or expiration of an option within six months of the writing of the option, any profit derived from writing the option shall be recoverable under section 16(b) of the Act. The profit shall not exceed the premium received for writing the option. The disposition or closing of a long derivative security position, as a result of cancellation or expiration, shall be exempt from section 16(b) of the Act where no value is received from the cancellation or expiration.

[56 FR 7270, Feb. 21, 1991, as amended at 61 FR 30394, June 14, 1996]

§ 240.16b–7 Mergers, reclassifications, and consolidations.

(a) The following transactions shall be exempt from the provisions of section 16(b) of the Act:

(1) The acquisition of a security of a company, pursuant to a merger or consolidation, in exchange for a security of a company which, prior to the merger or consolidation, owned 85 percent or more of either

(i) The equity securities of all other companies involved in the merger or consolidation, or in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies involved in the merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation, or such shorter time as the company has been in existence.

(2) The disposition of a security, pursuant to a merger or consolidation, of a company which, prior to the merger or consolidation, owned 85 percent or more of either

(i) The equity securities of all other companies involved in the merger or consolidation or, in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies undergoing merger or consolidation, computed according to their book values prior to the merger or consolidation as determined by reference to their most recent available financial statements for a 12 month period prior to the merger or consolidation.

(b) A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) Notwithstanding the foregoing, if a person subject to section 16 of the Act makes any non-exempt purchase of a security in any company involved in

the merger or consolidation and any non-exempt sale of a security in any company involved in the merger or consolidation within any period of less than six months during which the merger or consolidation took place, the exemption provided by this Rule shall be unavailable to the extent of such purchase and sale.

§ 240.16b–8 Voting trusts.

Any acquisition or disposition of an equity security or certificate representing equity securities involved in the deposit or withdrawal from a voting trust or deposit agreement shall be exempt from section 16(b) of the Act if substantially all of the assets held under the voting trust or deposit agreement immediately after the deposit or immediately prior to the withdrawal consisted of equity securities of the same class as the security deposited or withdrawn: *Provided, however,* That this exemption shall not apply if there is a non-exempt purchase or sale of an equity security of the class deposited within six months (including the date of withdrawal or deposit) of a non-exempt sale or purchase, respectively, of any certificate representing such equity security (other than the actual deposit or withdrawal).

EXEMPTION OF CERTAIN TRANSACTIONS FROM SECTION 16(C)

SOURCE: Sections 240.16c–1 through 240.16c–4 appear at 56 FR 7273, Feb. 21, 1991, unless otherwise noted.

§ 240.16c–1 Brokers.

Any transaction shall be exempt from section 16(c) of the Act to the extent necessary to render lawful the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

§ 240.16c–2 Transactions effected in connection with a distribution.

Any transaction shall be exempt from section 16(c) of the Act to the extent necessary to render lawful any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, where the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on the dealer's behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be acquired is subject to a prior offering to existing security holders or some other class of persons.

§ 240.16c–3 Exemption of sales of securities to be acquired.

(a) Whenever any person is entitled, incident to ownership of an issued security and without the payment of consideration, to receive another security ''when issued'' or ''when distributed,'' the sale of the security to be acquired shall be exempt from the operation of section 16(c) of the Act: *Provided,* That:

(1) The sale is made subject to the same conditions as those attaching to the right of acquisition;

(2) Such person exercises reasonable diligence to deliver such security to the purchaser promptly after the right of acquisition matures; and

(3) Such person reports the sale on the appropriate form for reporting transactions by persons subject to section 16(a) of the Act.

(b) This section shall not exempt transactions involving both a sale of the issued security and a sale of a security ''when issued'' or ''when distributed'' if the combined transactions result in a sale of more securities than the aggregate of issued securities owned by the seller plus those to be received for the other security ''when issued'' or ''when distributed.''

§ 240.16c–4 Derivative securities.

Establishing or increasing a put equivalent position shall be exempt from section 16(c) of the Act, so long as the amount of securities underlying the put equivalent position does not exceed the amount of underlying securities otherwise owned.

ARBITRAGE TRANSACTIONS

§ 240.16e–1 Arbitrage transactions under section 16.

It shall be unlawful for any director or officer of an issuer of an equity security which is registered pursuant to section 12 of the Act to effect any foreign or domestic arbitrage transaction in any equity security of such issuer, whether registered or not, unless he shall include such transaction in the statements required by section 16(a) and shall account to such issuer for the profits arising from such transaction, as provided in section 16(b). The provision of section 16(c) shall not apply to such arbitrage transactions. The provisions of section 16 shall not apply to any bona fide foreign or domestic arbitrage transaction insofar as it is effected by any person other than such director or officer of the issuer of such security.

(Secs. 4, 12, 13, 15, 16, 19, 24, 48 Stat. 77, 892, 894, 895, 896, 85, as amended, 901; 15 U.S.C. 77d, 78*l*, 78m, 78*o*, 78p, 77s, 78x)
[30 FR 2025, Feb. 13, 1965]

PRESERVATION OF RECORDS AND REPORTS OF CERTAIN STABILIZING ACTIVITIES

§ 240.17a–1 Recordkeeping rule for national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

(a) Every national securities exchange, national securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity.

(b) Every national securities exchange, national securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a–6.

(c) Every national securities exchange, registered securities association, registered clearing agency and the Municipal Securities Rulemaking Board shall, upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (a) and (b) of this section.
[45 FR 79426, Dec. 1, 1980]

§ 240.17a–2 Recordkeeping requirements relating to stabilizing activities.

(a) *Scope of section.* This section shall apply to any person who effects any purchase of a security subject to § 242.104 of this chapter for the purpose of, or who participates in a syndicate or group that engages in, ''stabilizing,'' as defined in § 242.100 of this chapter, the price of any security; or effects a purchase that is a ''syndicate covering transaction,'' as defined in § 242.100 of this chapter; or imposes a ''penalty bid,'' as defined in § 242.100 of this chapter:

(1) With respect to which a registration statement has been, or is to be, filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(2) Which is being, or is to be, offered pursuant to an exemption from registration under Regulation A (§§ 230.251 through 230.263 of this chapter) adopted under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); or

(3) Which is being, or is to be, otherwise offered, if the aggregate offering price of the securities being offered exceeds $5,000,000.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) The term *manager* shall mean the person stabilizing or effecting syndicate covering transactions or imposing a penalty bid for its sole account or for the account of a syndicate or group in which it is a participant, and who, by contract or otherwise, deals with the issuer, organizes the selling effort,

receives some benefit from the underwriting that is not shared by other underwriters, or represents any other underwriters in such matters as maintaining the records of the distribution and arranging for allotments of the securities offered.

(2) The term *exempted security* means an exempted security as defined in section 3(a)(12) of the Act, including securities issued, or guaranteed both as to principal and interest, by the International Bank for Reconstruction and Development.

(c) *Records relating to stabilizing, syndicate covering transactions, and penalty bids required to be maintained by manager.* Any person subject to this section who acts as a manager and stabilizes or effects syndicate covering transactions or imposes a penalty bid shall:

(1) Promptly record and maintain the following separately retrievable information, for a period of not less than three years, the first two years in an easily accessible place; *Provided, however,* That if the information is in a record required to be made pursuant to § 240.17a–3 or § 240.17a–4, or otherwise preserved, such information need not be maintained in a separate file if the person can sort promptly and retrieve the information as if it had been kept in a separate file as a record made pursuant to, and preserves the information in accordance with the time periods specified in, this paragraph (c)(1):

(i) The name and class of any security stabilized or any security in which syndicate covering transactions have been effected or a penalty bid has been imposed;

(ii) The price, date, and time at which each stabilizing purchase or syndicate covering transaction was effected by the manager or by any participant in the syndicate or group, and whether any penalties were assessed;

(iii) The names and the addresses of the members of the syndicate or group;

(iv) Their respective commitments, or, in the case of a standby or contingent underwriting, the percentage participation of each member of the syndicate or group therein; and

(v) The dates when any penalty bid was in effect.

(2) Promptly furnish to each of the members of the syndicate or group the name and class of any security being stabilized, and the date and time at which the first stabilizing purchase was effected by the manager or by any participant in the syndicate or group; and

(3) Promptly notify each of the members of such syndicate or group of the date and time when stabilizing was terminated.

(d) *Notification to manager.* Any person who has a participation in a syndicate account but who is not a manager of such account, and who effects one or more stabilizing purchases or syndicate covering transactions for its sole account or for the account of a syndicate or group, shall within three business days following such purchase notify the manager of the price, date, and time at which such stabilizing purchase or syndicate covering transaction was effected, and shall in addition notify the manager of the date and time when such stabilizing purchase or syndicate covering transaction was terminated. The manager shall maintain such notifications in a separate file, together with the information required by paragraph (c)(1) of this section, for a period of not less than three years, the first two years in an easily accessible place.

(Secs. 9(a)(6), 10(b), 17(a) and 23(a) of the Act, 15 U.S.C. 78i(a)(6), 78j(b), 78q(a) and 78w(a))
[48 FR 41378, Sept. 15, 1983, as amended at 62 FR 544, Jan. 3, 1997]

§ 240.17a–3 Records to be made by certain exchange members, brokers and dealers.

(a) Every member of a national securities exchange who transacts a business in securities 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, (48 Stat. 895, 49 Stat. 1377, 52 Stat. 1075; 15 U.S.C. 78*o*) shall make and keep current the following books and records relating to his business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of

securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer and of such member, broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account.

(4) Ledgers (or other records) reflecting the following:

(i) Securities in transfer;

(ii) Dividends and interest received;

(iii) Securities borrowed and securities loaned;

(iv) Moneys borrowed and moneys loaned (together with a record of the collateral therefor and any substitutions in such collateral);

(v) Securities failed to receive and failed to deliver;

(vi) All long and all short securities record differences arising from the examination, count, verification and comparison pursuant to Rule 17a–13 and Rule 17a–5 hereunder (by date of examination, count, verification and comparison showing for each security the number of long or short count differences);

(vii) Repurchase and reverse repurchase agreements;

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all ''long'' or ''short'' positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such member, broker or dealer for his account of for the account of his customers or partners or others and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by such member, broker or dealer, or any employee thereof, shall be so designated. The term ''instruction'' shall be deemed to include instructions between partners and employees of a member, broker or dealer. The term ''time of entry'' shall be deemed to mean the time when such member, broker or dealer transmits the order or instruction for execution or, if it is not so transmitted, the time when it is received.

(7) A memorandum of each purchase and sale for the account of such member, broker, or dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.

(8) Copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such member, broker or dealer.

(9) A record in respect of each cash and margin account with such member, broker or dealer indicating (i) the name and address of the beneficial owner of such account, and

(ii) Except with respect to exempt employee benefit plan securities as defined in § 240.14a–1(d), but only to the

extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such members, brokers or dealers, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address and securities positions to issuers, and (iii) in the case of a margin account, the signature of such owner; *Provided*, That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

(10) A record of all puts, calls, spreads, straddles and other options in which such member, broker or dealer has any direct or indirect interest or which such members, broker or dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to § 240.15c3–1; *Provided, however*, (i) That such computation need not be made by any member, broker or dealer unconditionally exempt from § 240.15c3–1 by paragraph (b)(1) or (b)(3), thereof; and (ii) that any member of an exchange whose members are exempt from § 240.15c3–1 by paragraph (b)(2) thereof shall make a record of the computation of aggregate indebtedness and net capital as of the trial balance date in accordance with the capital rules of at least one of the exchanges therein listed of which he is a member. Such trial balances and computations shall be prepared currently at least once a month.

(12)(i) A questionnaire or application for employment executed by each ''associated person'' (as hereinafter defined) of such member, broker or dealer, which questionnaire or application shall be approved in writing by an authorized representative of such member, broker or dealer and shall contain at least the following information with respect to such person:

(*a*) His name, address, social security number, and the starting date of his employment or other association with the member, broker or dealer;

(*b*) His date of birth;

(*c*) A complete, consecutive statement of all his 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 him by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he 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 or dealer with which he was associated in any capacity when such action was taken;

(*f*) A record of any permanent or temporary injunction entered against him or any member, broker or dealer with which he was associated in any capacity at the time such injunction was entered;

(*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 or being associated with a broker-dealer, 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.

(*h*) A record of any other name or names by which he has been known or which he has used;

Provided, however, That if such associated person has been registered as a registered representative of such member, broker or dealer with, or his employment has been approved by, the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore 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 paragraph.

(ii) For purposes of this paragraph (a)(12) the term *associated person* shall mean a partner, officer, director, salesman, trader, manager, or any employee handling funds or securities or soliciting transactions or accounts for such member, broker or dealer.

(13) Records required to be maintained pursuant to paragraph (d) of § 240.17f–2.

(14) Copies of all Forms X–17F–1A filed pursuant to § 240.17f–1, all agreements between reporting institutions regarding registration or other aspects of § 240.17f–1, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

(15) Records required to be maintained pursuant to paragraph (e) of § 240.17f–2.

(b)(1) This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker, or dealer as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided,* That the clearing broker or dealer has and maintains net capital of not less than $25,000 and is otherwise in compliance with § 240.15c3–1 or the capital rules of the exchange of which such clearing broker or dealer is a member if the members of such exchange are exempt from § 240.15c3–1 by paragraph (b)(2) thereof.

(2) This section shall not be deemed to require a member of a national securities exchange, a broker, or dealer who transacts a business in securities through the medium of any such member, or a broker or dealer registered pursuant to section 15 of the Act, to make or keep such records of transactions cleared for such member, broker or dealer by a bank as are customarily made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 240.17a–4: *Provided,* That such member, broker, or dealer obtains from such bank an agreement in writing to the effect that the records made and kept by such bank are the property of the member, broker, or dealer: *And provided further,* That such bank files with the Commission a written undertaking in form acceptable to the Commission and signed by a duly authorized person, that such books and records are available for examination by representatives of the Commission as specified in section 17(a) of the Act, and that it will furnish to the Commission, upon demand, at its principal office in Washington, DC, or at any regional or district office of the Commission designated in such demand, true, correct, complete, and current copies of any or all of such records. Such undertaking shall include the following provisions:

> The undersigned hereby undertakes to maintain and preserve on behalf of [*BD*] the books and records required to be maintained and preserved by [*BD*] pursuant to Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 and to permit examination of such books and records at any time or from time to time during business hours by examiners or other representatives of the Securities and Exchange Commission, and to furnish to said Commission at its principal office in Washington, DC, or at any regional or district office of said Commission specified in a demand made by or on behalf of said Commission for copies of books and records, true, correct, complete, and current copies of any or all, or any part, of such books and records. This undertaking shall be binding upon the undersigned, and the successors and assigns of the undersigned.

Nothing herein contained shall be deemed to relieve such member, broker, or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in §§ 240.17a–3 and 240.17a–4.

(c) This section shall not be deemed to require a member of a national securities exchange, or a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78*o*) as amended, to make or keep such records as are required by paragraph (a) reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.

(d) The records specified in paragraph (a) of this section shall not be required with respect to any cash transaction of $100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.

(e) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G–8 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.

(Secs. 2, 17, 23a, 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78q; secs. 12, 14, 17, 23(a), 48 Stat. 892, 895, 897, 901; secs. 1, 4, 8, 49 Stat. 1375, 1379; sec. 203(a), 49 Stat. 704; sec. 5, 52 Stat. 1076; sec. 202, 68 Stat. 686; secs. 3, 5, 10, 78 Stat. 565–568, 569, 570, 580; secs. 1, 3, 82 Stat. 454, 455; secs. 28(c), 3–5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 14, 18, 89 Stat. 117, 118, 137, 155; 15 U.S.C. 781, 78n, 78q, 78w(a))
[13 FR 8212, Dec. 22, 1948]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.17a–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

CROSS REFERENCE: For interpretative release applicable to § 240.17a–3, see No. 3040 in tabulation, part 241 of this chapter.

§ 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 shall preserve for a period of not less than 6 years, the first 2 years in an easily accessible place, all records required to be made pursuant to § 240.17a–3(a) (1), (2), (3), and (5).

(b) Every such broker and dealer shall preserve for a period of not less than 3 years, the first two years in an accessible place:

(1) All records required to be made pursuant to § 240.17a–3(a) (4), (6), (7), (8), (9), and (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 by such member, broker or dealer (including inter-office memoranda and communications) relating to his business as such.

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such member, broker or dealer, as such.

(6) All guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(7) All written agreements (or copies thereof) entered into by such member, broker or dealer relating to his business as such, including agreements with respect to any account.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X–17A–5 (§ 249.617 of this chapter) Part II or Part IIA and in annual audited financial statements required by § 240.17a–5(i)(xv):

(i) Money balance position, long or short, including description, quantity, price and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;

(ii) Money balance and position, long or short, including description, quantity, price and valuation of each security including contractual commitments in non-customers' accounts, in cash and fully secured accounts, partly secured and unsecured accounts, and in securities accounts payable to non-customers;

(iii) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(iv) Amount of secured demand note, description of collateral securing such secured demand note including quantity, price and valuation of each security and cash balance securing such secured demand note;

(v) Description of futures commodity contracts, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(vi) Description of futures commodity contracts, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

(vii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price and valuation of each spot commodity position or commitments in trading and investment accounts;

(ix) Number of shares, description of security, exercise price, cost and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(x) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(xi) Description, quantity, price and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the broker or dealer has an interest, including each participant's interest and margin deposit;

(xii) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.15c3–1;

(xiii) Detail relating to information for possession or control requirements under § 240.15c3–3 and reported on the schedule in Part II or IIA of Form X–17A–5 (§ 249.617 of this chapter);

(xiv) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.15c3–1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences and insurance claims receivable; and

(xv) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by § 240.17a–5.

(9) The records required to be made pursuant to § 240.15c3–3(d)(4).

(c) Every such member, broker and dealer shall preserve for a period of not less than 6 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 such account.

(d) Every such member, broker and dealer 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.

(e) Every such member, broker and dealer shall maintain and preserve in an easily accessible place:

(1) All records required under paragraph (a)(12) of § 240.17a–3 until at least three years after the ''associated person'' has terminated his employment and any other connection with the member, broker or dealer.

(2) All records required under paragraph (a)(13) 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; and

(3) All records required pursuant to paragraph (a)(15) of § 240.17a–3 for the life of the enterprise.

(4) All records required pursuant to paragraph (a)(14) of § 240.17a–3 for three years.

(f) 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 paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche, or any similar medium; and

(ii) The term *electronic storage media* means any digital storage medium or system and, in the case of both paragraphs (f)(1)(i) and (f)(1)(ii) of this section, that meets the applicable conditions set forth in this paragraph (f).

(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)(2).

(ii) The electronic storage media must:

(A) Preserve the records exclusively in a non-rewriteable, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

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

(3) If a member, broker, or dealer uses micrographic media or electronic storage media, it shall:

(i) At all times have available, for examination by the staffs of the Commission and self-regulatory organizations of which it is a member, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images and for producing easily readable images.

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission or its representatives may request.

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under §240.17a–4 for the time required.

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(A) At all times, a member, broker, or dealer must be able to have such indexes available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) The member, broker, or dealer must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §§240.17a–3 and 240.17a–4 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times, a member, broker, or dealer must be able to have the results of such audit system available for examination by the staffs of the Commission and the self-regulatory organizations of which the broker or dealer is a member.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The member, broker, or dealer must maintain, keep current, and provide promptly upon request by the staffs of the Commission or the self-regulatory organizations of which the member, broker, or broker-dealer is a member all information necessary to access records and indexes stored on the electronic storage media; or place

in escrow and keep current a copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every member, broker, or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (''the undersigned''), who has access to and the ability to download information from the member's, broker's, or dealer's electronic storage media to any acceptable medium under this section, shall file with the designated examining authority for the member, broker, or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, upon reasonable request, such information as is deemed necessary by the Commission's or designee's staff to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under Rule 17a–4.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934 in a format acceptable to the Commission's staff or its designee. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the Commission's staff or its designee may request.

(g) If a person who has been subject to § 240.17a–3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78*o*), such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

(h) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G–9 of the Municipal Securities Rulemaking Board will be deemed to be in compliance with this section.

(i) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.17a–3 and 240.17a–4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to § 240.17a–3(b)(2), or other recordkeeping service on behalf of the member, broker or dealer required to maintain and preserve such records, such outside entity shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the member, broker or dealer required to maintain and preserve such records and will be surrendered promptly on request of the member, broker or dealer and including the following provision:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

Agreement with an outside entity shall not relieve such member, broker or dealer from the responsibility to prepare and maintain records as specified in this section or in § 240.17a–3.

(j) Every member, broker or dealer subject to this section shall furnish promptly to a representative of the Commission such legible, true and complete copies of those records of the member, broker or dealer, which are required to be preserved under this section, as are requested by the representative of the Commission.

(Secs. 2, 17, 23(a), 48 Stat. 897, as amended; 15 U.S.C. 78d–1, 78d–2, 78a; sec. 14, Pub. L. 94–29, 89 Stat. 137 (15 U.S.C. 78a; sec. 18, Pub. L. 94–29, 89 Stat. 155 (15 U.S.C. 78w))
[13 FR 8212, Dec. 22, 1948]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.17a–4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

CROSS REFERENCE: For interpretative releases applicable to § 240.17a–4, see No. 3040 and No. 8024 in tabulation, part 241 of this chapter.

§ 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) Every broker or dealer subject to this paragraph (a) who clears or carries customer accounts shall file Part I of Form X–17A–5 (§ 249.617 of this chapter) within 10 business days after the end of each month.

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts shall file Part II of Form X–17A–5 (§ 249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business days after the date selected for the annual audit of financial statements where said date is other than a calendar quarter. Certain of such brokers or dealers shall file Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X–17A–5 (§ 249.617 of this chapter).

(iii) Every broker or dealer who does not carry nor clear transactions nor carry customer accounts 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) Upon receiving written notice from the Commission or the examining authority designated pursuant to section 17(d) of the Act, a broker or dealer who receives such notice shall file monthly, or at such times as shall be specified, Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) and such other financial or operational information as shall be required by the Commission or the designated examining authority.

(3) The reports provided for in this paragraph (a) shall be considered filed when received at the Commission's principal office in Washington, DC, and 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. All reports filed pursuant to this paragraph (a) shall be deemed to be confidential.

(4) The provisions of paragraphs (a)(2) and (3) of this section shall not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by Part I, Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter), as to such member, and transmits to the Commission a copy of the applicable parts of Form X–17A–5 (§ 249.617 of this chapter) as to such member, pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one specified national securities exchange or registered national securities association. For the purposes of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association shall not become effective unless the Commission, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its

effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties and responsibilities under the Act.

(5) Upon written application by a broker or dealer to its designated examining authority, the designated examining authority may extend the time for filing the information required by this paragraph (a). 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.

(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, DC, 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 if 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 requirement: *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) Attached to the report required by paragraph (b)(1) of this section shall be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the report is true and correct. The oath or affirmation shall be made before a person duly authorized to administer such oath or affirmation. If the broker or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation by the chief executive officer, or, in his absence, by the person authorized to act in his place.

(3) For the purposes of this paragraph (b) ''membership interest'' shall include the following: full membership, allied membership, associated membership, floor privileges, and any other interest that entitles a broker or dealer to the exercise of any privilege on an exchange or with an association.

(4) For the purposes of this paragraph (b), any broker or dealer shall be deemed to have ceased to be a member in good standing of such exchange or association when he has resigned, withdrawn, or been suspended or expelled from a membership interest in such exchange or association, or has directly or through any associated person sold or entered into an agreement for the sale of a membership interest which would on consummation thereof result in the termination of the broker's or dealer's membership interest in such exchange or association.

(5) Whenever any national securities exchange or registered national securities association takes any action which causes any broker or dealer which is a member of such exchange or association to cease to be a member in good standing of such exchange or association or when such exchange or association learns of any action by such member of any other person which causes such broker or dealer to cease to be a member in good standing of such exchange or association, such exchange or associaton shall report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event, and shall send a copy of such notification to the broker or dealer and notify such broker or dealer of its responsibilities under this paragraph (b).

(6) One copy of the annual audit report shall be filed at the regional office of the Commission for the region in which the broker or dealer has its principal place of business and the principal office of the designated examining authority for said broker or dealer. Two copies of said report shall be filed at the Commission's principal office in Washington, DC. Copies thereof shall

be provided to all self-regulatory organizations of which said broker or dealer is a member.

(c) *Customer Statements*—(1) *Who must furnish the statements.* Every broker or dealer shall file with the Commission at its principal office in Washington, DC, 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, and with each national securities exchange and registered national securities association of which it is a member, and shall send to its customers the statements prescribed by paragraphs (c) (2) and (3) of this section, except if the activities of such broker or dealer are limited to any one or combination of the following and are conducted in the manner prescribed herein:

(i) As introducing broker or dealer, the forwarding of all the transactions of his customers to a clearing broker or dealer on a fully disclosed basis: *Provided,* That such clearing broker or dealer reflects such transactions on its books and records in accounts it carries in the names of such customers and that the introducing broker or dealer does not hold funds or securities for, or owe funds or securities to, customers other than funds and securities promptly forwarded to the clearing broker or dealer or to customers;

(ii) The prompt forwarding of subscriptions for securities to the issuer, underwriter or other distributor of such securities and of receiving checks, drafts, notes, or other evidences of indebtedness payable solely to the issuer, underwriter or other distributor who delivers the security directly to the subscriber or to a custodian bank, if the broker or dealer does not otherwise hold funds or securities for, or owe money or securities to, customers;

(iii) The sale and redemption of redeemable shares of registered investment companies or the solicitation of share accounts of savings and loan associations in the manner contemplated by the $2,500 minimum net capital requirement of § 240.15c3–1 or the offering to extend any credit to or participate in arranging a loan for a customer to purchase insurance in connection with the sale of redeemable shares of registered investment companies; or

(iv) Conduct which would exempt the broker or dealer from the provisions of § 240.17a–13 by reason of the provisions of paragraph (a) of that section.

(2) *Audited statements to be furnished.* The following statements shall be furnished as required by paragraph (c)(1) of this section within 105 days after the date of the audited report required by paragraph (d) of this section:

(i) A balance sheet with appropriate notes prepared in accordance with generally accepted accounting principles which shall be audited if the financial statements furnished in accordance with paragraph (d) of this section are required to be certified;

(ii) A footnote containing a statement of the amount of the broker's or dealer's net capital and its required net capital, computed in accordance with § 240.15c3–1. Such statement shall include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.15c3–1, where material, and the effect thereof on the net capital and required net capital of the broker or dealer;

(iii) If in connection with the most recent annual audit report pursuant to § 240.17a–5, the independent accountant commented on any material inadequacies in accordance with paragraphs (g) and (h) of this section, and § 240.17a–11(e), there shall be a statement by the broker or dealer that a copy of such report and comments is currently available for the customer's inspection at the principal office of the Commission in Washington, DC, and 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

(iv) A statement indicating that the Statement of Financial Condition of the most recent annual audit report of the broker or dealer pursuant to § 240.17a–5 is available for examination at the principal office of the broker or dealer and at 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.

(3) *Unaudited statements to be furnished.* The statements shall contain the information specified in paragraphs (c)(2) (i) and (ii) of this section. Said unaudited statements shall be as of the

date 6 months from the date of the audited statements required to be furnished pursuant to paragraphs (c) (1) and (2) of this section. Said unaudited statements shall be furnished not later than 65 days after the date as of which the statements are prepared.

(4) *Definition of ''customer.''* For purposes of this paragraph (c), the term ''customer'' includes any person other than:

(i) Another broker or dealer who is exempted by paragraph (c)(1) of this section;

(ii) A general, special or limited partner or director or officer of a broker or dealer; or

(iii) Any person to the extent that such person has a claim for property or funds which by contract, agreement or understanding, or by operation of law, is part of the capital of the broker or dealer or is subordinated to the claims of creditors of the broker or dealer, for or with whom a broker or dealer has effected a securities transaction in a particular month, which month shall be either the month preceding the balance sheet date or the month following the balance sheet date in which the statement is sent.

The term ''customer'' also includes any person for whom the broker or dealer holds securities for safekeeping or as collateral or for whom the broker or dealer carries a free credit balance in the month in which customers are determined for purposes of this paragraph (c).

(d) *Annual filing of audited financial statements.* (1)(i) Every broker or dealer registered pursuant to section 15 of the Act shall file annually, on a calendar or fiscal year basis, a report which shall be audited by an independent public accountant. Reports pursuant to this paragraph (d) shall be as of the same fixed or determinable date each year, unless a change is approved in writing by the designated examining authority for the broker or dealer. A copy of such written approval should be sent 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.

(ii) A broker or dealer succeeding to and continuing the business of another broker or dealer need not file a report under this paragraph as of a date in the fiscal or calendar year in which the succession occurs if the predecessor broker or dealer has filed a report in compliance with this paragraph as of a date in such fiscal or calendar year.

(iii) A broker or dealer which is a member of a national securities exchange and has transacted a business in securities solely with or for other members of a national securities exchange, and has not carried any margin account, credit balance or security for any person who is defined as a ''customer'' in paragraph (c)(4) of this section, shall not be required to file a report under this paragraph.

(2) The annual audited report shall contain a Statement of Financial Condition (in a format and on a basis which is consistent with the total reported on the Statement of Financial Condition contained in Form X–17A–5 (§ 249.617 of this chapter) Part II or IIA), a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities Subordinated to Claims of General Creditors. Such statements shall be in a format 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–17A–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 (§ 249.617 of this chapter) a Computation of Net Capital Under § 240.15c3–1, a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.15c3–3 and Information Relating to the Possession or Control Requirements Under § 240.15c3–3 and shall be filed with said report.

(4) A reconciliation, including appropriate explanations, of the Computation of Net Capital under §240.15c3–1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of §240.15c3–3 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.

(5) The annual audit report shall be filed not more than sixty (60) days after the date of the financial statements.

(6) The annual audit report shall be filed at 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, DC, and the principal office of the designated examining authority for said broker or dealer. Copies thereof shall be provided to all self-regulatory organizations of which said broker or dealer is a member.

(e) *Nature and form of reports*. The financial statements filed pursuant to paragraph (d) of this section 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) of this section 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 of the report filed pursuant to §240.15b1–2 or this section:

(A) The securities business of such broker or dealer has been limited to acting as broker (agent) for the 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 for 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.

(ii) A broker or dealer who files a report which is not covered by an accountant's opinion shall include in the oath or affirmation required by paragraph (e)(2) of this section a statement of the facts and circumstances relied upon as a basis for exemption from the requirement that financial statements and schedules filed pursuant to paragraph (d) of this section be covered by the opinion of an accountant.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, (i) the financial statements and schedules are true and correct and (ii) neither the broker or dealer, nor any partner, officer, or director, as the case may be has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) All of the statements filed pursuant to paragraph (d) of this section shall be public, except that, if the Statement of Financial Condition in a format which is consistent with Form X–17A–5 (§249.617 of this chapter), Part II or Part IIA, is bound separately from the balance of the annual audited financial statements filed pursuant to paragraph (d)(1) of this section, the balance of the annual audited financial 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.

(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 statements 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 specifies 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).

(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) *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.

(l) *Extentions 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.

(m) *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 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.

(n) *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.

[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]

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

§ 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 paragraph (b) 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 place within the United States designated in a notice from him as provided in paragraph (a)(2) of this section, true, correct, complete and current copies of the books and records which he is required to make, keep current, maintain or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the act.

(2) Except as provided in paragraph (b) of this section, each non-resident broker or dealer subject to this section shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by him pursuant to paragraph (a)(1) of this section are located. Each non-resident broker or dealer registered or applying for registration when this section becomes effective shall file such notice within 30 days after such rule becomes effective. Each non-resident broker or dealer who files an application for registration after this section becomes effective shall file such notice with such application for registration.

(b) Notwithstanding the provisions of paragraph (a) of this section, a non-resident broker or dealer subject to this section need not keep or preserve within the United States copies of the books and records referred to in said paragraph (a) of this section, if:

(1) Such broker or dealer files with the Commission, at the time or within the period provided by paragraph (a)(2) of this section, a written undertaking in form acceptable to the Commission and signed by a person thereunto duly authorized, to furnish to the Commission, upon demand, at its principal office in Washington, DC, or at any Regional or District Office of the Commission designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain, or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the act, or any part of such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at his own expense to the Securities and Exchange Commission at its principal office in Washington, DC, or at any Regional or District Office of said Commission specified in a demand for copies of books and records made by or on behalf of said Commission, true, correct, complete, and current copies of any or all, or any part, of the books and records which the undersigned is required to

make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Securities Exchange Act of 1934. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with § 240.17a–7 (Rule X–17A–7) under the Securities Exchange Act of 1934. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce same.

and

(2) Such broker or dealer furnishes to the Commission at his own expense within 14 days after written demand therefor forwarded to him by registered mail at his last address of record filed with the Commission and signed by the Secretary of the Commission or such other person as the Commission may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such broker or dealer is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the Commission at its principal office in Washington, DC, or at any Regional or District Office of the Commission which may be specified in said written demand.

(c) 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 *non-resident 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 of other unincorporated organization or association, one having its principal place of business in any place not subject to the jurisdiction of the United States.

[21 FR 5524, July 24, 1956, as amended at 59 FR 5945, Feb. 9, 1994]

§ 240.17a–8 Financial recordkeeping and reporting of currency and foreign transactions.

Every registered broker or dealer who is subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 shall comply with the reporting, recordkeeping and record retention requirements of part 103 of title 31 of the Code of Federal Regulations. Where part 103 of title 31 of the Code of Federal Regulations and § 240.17a–4 of this chapter require the same records or reports to be preserved for different periods of time, such records or reports shall be preserved for the longer period of time.

[46 FR 61455, Dec. 17, 1981]

§ 240.17a–10 Report on revenue and expenses.

(a)(1) Every broker or dealer exempted from the filing requirements of paragraph (a) of § 240.17a–5 shall, not later than 17 business days after the close of each calendar year, 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 Schedule I of Form X–17A–5 (§ 249.617 of this chapter) for such calendar year.

(2) Every broker or dealer subject to the filing requirements of paragraph (a) of § 240.17a–5 shall submit Schedule I of Form X–17A–5 (§ 249.617 of this chapter) with its Form X–17A–5 (§ 249.617 of this chapter) for the calendar quarter ending December 31 of each year.

(b) The provisions of paragraph (a) of this section shall not apply to a member of a national securities exchange or a registered national securities association which maintains records containing the information required by Form X–17A–5 (§ 249.617 of this chapter) as to each of its members, and which transmits to the Commission a copy of the record as to each such member, pursuant to a plan the procedures and

provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be transmitted by only one specified national securities exchange or registered national securities association. For the purpose of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association shall not become effective unless the Commission, having due regard for the public interest, for the protection of investors, and for the fulfillment of the Commission's functions under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties under the Act.

(c) Individual reports filed by, or on behalf of, brokers, dealers, or members of national securities exchanges pursuant to this section are to be considered nonpublic information, except in cases where the Commission determines that it is in the public interest to direct otherwise.

(d) In the event any broker or dealer finds that it cannot file the annual report required by paragraph (a) of this section within the time specified without undue hardship, it may file with the Commission's principal office in Washington, DC, prior to the date upon which the report is due, an application for an extension of time to a specified date which shall not be later than 60 days after the close of the calendar year for which the report is to be made. The application shall state the reasons for the requested extension and shall contain an agreement to file the report on or before the specified date.

(Sec. 17, 48 Stat. 897; 15 U.S.C. 78q)

[33 FR 10390, July 20, 1968, as amended at 35 FR 3804, Feb. 27, 1970; 35 FR 7644, May 16, 1970; 37 FR 13615, July 12, 1972; 40 FR 59717, Dec. 30, 1975; 42 FR 23789, May 10, 1977; 46 FR 60193, Dec. 9, 1981]

§ 240.17a–11 Notification provisions for brokers and dealers.

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

(b) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1 shall give notice of such deficiency that same day in accordance with paragraph (g) of this section. The notice shall specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this § 240.17a–11, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, shall give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2) or (c)(3) of this section in accordance with paragraph (g) of this section:

(1) If a computation made by a broker or dealer subject to the aggregate indebtedness standard of § 240.15c3–1 shows that its aggregate indebtedness is in excess of 1,200 percent of its net capital; or

(2) If a computation made by a broker or dealer, which has elected the alternative standard of § 240.15c3–1, shows that its net capital is less than 5 percent of aggregate debit items computed in accordance with § 240.15c3–3a Exhibit A: Formula for Determination Reserve Requirement of Brokers and Dealers under § 240.15c3–3; or

(3) If a computation made by a broker or dealer pursuant to § 240.15c3–1 shows that its total net capital is less

than 120 percent of the broker or dealer's required minimum net capital.

(d) Every broker or dealer who fails to make and keep current the books and records required by § 240.17a–3, shall give notice of this fact that same day in accordance with paragraph (g) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer shall also transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) Whenever any broker or dealer discovers, or is notified by an independent public accountant, pursuant to § 240.17a–5(h)(2) of the existence of any material inadequacy as defined in § 240.17a–5(g), the broker or dealer shall:

(1) Give notice, in accordance with paragraph (g) of this section, of the material inadequacy within 24 hours of such discovery or notification; and

(2) Transmit a report in accordance with paragraph (g) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(f) Every national securities exchange or national securities association that learns that a member broker or dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of this section.

(g) Every notice or report required to be given or transmitted by this section shall be given or transmitted to the principal office of the Commission in Washington, D.C., 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 designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, ''notice'' shall be given or transmitted by telegraphic notice or facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

(h) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(iv), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(c)(2)(x)(F)(*3*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i) and § 240.17a–5(h)(2).

[58 FR 37657, July 13, 1993, as amended at 59 FR 5945, Feb. 9, 1994]

§ 240.17a–13 Quarterly security counts to be made by certain exchange members, brokers, and dealers.

(a) This section 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 all of the following conditions shall be exempt from the provisions of this section:

(1) His dealer transactions (as principal for his own account) are limited to the purchase, sale, and redemption of redeemable shares of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company; except that a broker or dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(2) His transactions as broker (agent) are limited to:

(i) The sale and redemption of redeemable securities of registered investment companies or of interests or participations in an insurance company separate account, whether or not registered as an investment company;

(ii) The solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and

(iii) The sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(3) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker or dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

Notwithstanding the foregoing, this rule shall not apply to any insurance company which is a registered broker-dealer, and which otherwise meets all of the conditions in paragraphs (a)(1), (2), and (3) of this section, solely by reason of its participation in transactions that are a part of the business of insurance, including the purchasing, selling, or holding of securities for or on behalf of such company's general and separate accounts.

(b) Any member, broker, or dealer who is subject to the provisions of this rule shall at least once in each calendar quarter-year:

(1) Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledge, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said status for longer than thirty days;

(4) Compare the results of the count and verification with his records; and

(5) Record on the books and records of the member, broker, or dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than 7 business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (c) of this section. *Provided, however,* That no examination, count, verification, and comparison for the purpose of this section shall be within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made hereunder.

(c) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than 1 calendar quarter-year, and no security shall be examined, counted, verified, or compared for the purpose of this rule less than 2 months or more than 4 months after a prior examination, count, verification, and comparison.

(d) The examination, count, verification, and comparison shall be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

(e) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any member, broker, or dealer who satisfies the Commission that it is not necessary in the public interest and for the protection of investors to subject the particular member, broker, or dealer to certain or all of the provisions of this section, because of the special nature of his business, the safeguards he has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

[36 FR 21179, Nov. 4, 1971, as amended at 42 FR 23790, May 10, 1977; 52 FR 22299, June 11, 1987]

§ 240.17a–18 [Reserved]

§ 240.17a–19 Form X–17A–19 Report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

Every national securities exchange and every registered national securities association shall file with the Commission at its principal office in Washington, DC, and with the Securities Investor Protection Corporation such information as is required by § 249.635 of this chapter on Form X–17A–19 within 5 business days of the occurrence of the initiation of the membership of any person or the suspension or termination of the membership of any member. Nothing in this section shall be deemed to relieve a national securities exchange or a registered national securities association of its responsibilities under § 240.17a–5(b)(5) except that, to the extent a national securities exchange or a registered national securities association promptly files a report on Form X–17A–19 including therewith, inter alia, information sufficient to satisfy the requirements of § 240.17a–5(b)(5), it shall not be required to file a report pursuant to § 240.17a–5(b). Upon the occurrence of the events described in this paragraph, every national securities exchange and every registered national securities association shall notify in writing such member of its responsibilities under § 240.17a–5(b).

[45 FR 39841, June 12, 1980]

§ 240.17a–21 Reports of the Municipal Securities Rulemaking Board.

(a) *Annual Report of the Municipal Securities Rulemaking Board.* The Municipal Securities Rulemaking Board shall file annual reports with the Commission as follows:

(1) Prior to October 1 of 1976, the Municipal Securities Rulemaking Board shall file with the Commission an annual report for the period from its formation until June 30, 1976 and shall include whatever information, data and recommendations it considers advisable with regard to matters within its jurisdiction.

(2) Prior to December 1 of 1977, the Municipal Securities Rulemaking Board shall file with the Commission an annual report for the period from July 1, 1976 until September 30, 1977 and shall include whatever information, data and recommendations it considers advisable with regard to matters within its jurisdiction.

(3) Prior to December 1 of each year beginning in 1978, the Municipal Securities Rulemaking Board shall file with the Commission an annual report for the twelve months immediately preceding October 1 of that year and shall include whatever information, data and recommendations it considers advisable with regard to matters within its jurisdiction.

(4) The Municipal Securities Rulemaking Board shall include in its annual report a statement and an analysis of its expenses and operations including:

(i) A balance sheet as of the end of the period covered by the report and a statement of revenues and expenses for the Board for that period;

(ii) The rules of the Board including any written interpretations of the rules or staff interpretive letters, except that this information may be included in the annual report once every three years and shall be up to date as of the latest practicable date within 3 months of the date on which this information is filed. If the Board publishes or cooperates in the publication of this information on an annual or more frequent basis, in lieu of including such information in the annual report the Board may:

(A) Identify the publication in which such information is available, the name, address, and telephone number of the person from whom such publication may be obtained, and the price thereof; and

(B) Certify to the accuracy of such information as of its date. If the Board keeps this information up to date and makes it available to the Commission and the public upon request, in lieu of filing such information the Board may certify that the information is kept up to date and is available to the Commission and the public upon request;

(iii) The following information concerning members of the Board:

(A) Name;

(B) Dates of commencement and termination of present term of office;

(C) Length of time each member has held such office;

(D) Name of principal organization with which connected;

(E) Title; and

(F) City wherein the principal office of such organization is located;

(iv) Address of the Board, the name and address of each person authorized to receive notices on behalf of the Board from the Commission, and the name and address of counsel to the Board, if any; and

(v) A list, including addresses, as of the latest practicable date, alphabetically arranged, of all municipal securities brokers and municipal securities dealers which have paid to the Board fees and charges to defray the costs and expenses of operating the Board.

(5) Within 10 days after the discovery of any material inaccuracy in its annual report or in any amendment thereto the Municipal Securities Rulemaking Board shall file with the Commission an amendment correcting such inaccuracy.

(b) *Supplemental reports of the Municipal Securities Rulemaking Board*. The Municipal Securities Rulemaking Board shall file supplemental reports to the Commission as follows:

(1) Within 10 days after issuing or making generally available to municipal securities brokers and municipal securities dealers any materials (including notices, circulars, bulletins, lists, periodicals, etc.), the Municipal Securities Rulemaking Board shall file with the Commission three copies of such material (unless such material is filed with the Commission pursuant to Rule 19b–4).

(2) Within 10 days after any action is taken which renders no longer accurate any of the information required by paragraphs (a)(3) (iii), (iv), (v), and (vi) of this section to be contained in the annual report of the Municipal Securities Rulemaking Board (except action reported to the Commission pursuant to Rule 19b–4), the Board shall file with the Commission written notification in triplicate setting forth the nature of such action and the effective date thereof. Such notice may be filed either in the form of a letter or in the form of a notice made generally available to municipal securities brokers and municipal securities dealers.

[41 FR 36200, Aug. 27, 1976, as amended at 59 FR 66701, Dec. 28, 1994]

§ 240.17a–22 Supplemental material of registered clearing agencies.

Within ten days after issuing, or making generally available, to its participants or to other entities with whom it has a significant relationship, such as pledgees, transfer agents, or self-regulatory organizations, any material (including, for example, manuals, notices, circulars, bulletins, lists, or periodicals), a registered clearing agency shall file three copies of such material with the Commission. A registered clearing agency for which the Commission is not the appropriate regulatory agency shall at the same time file one copy of such material with its appropriate regulatory agency.

[45 FR 73914, Nov. 7, 1980]

§ 240.17a–23 Recordkeeping and reporting requirements relating to broker-dealer trading systems.

(a) *Scope of section*. This section shall apply to any registered broker or dealer that acts as the sponsor of a broker-dealer trading system.

(b) *Definitions*. For purposes of this section:

(1) The term *registered broker or dealer* shall have the meaning ascribed to it in Section 3(a)(48) of the Act.

(2) The term *broker-dealer trading system* means any facility that provides a mechanism, automated in full or in part, for:

(i) Collecting, receiving, disseminating, or displaying system orders; and

(ii) Matching, crossing, or executing system orders, or otherwise facilitating agreement to the basic terms of a purchase or sale of a security between system participants, or between a system participant and the system sponsor, through use of the system or through the system sponsor.

(3) The term *sponsor* means any entity that organizes, operates, administers, or otherwise directly controls a broker-dealer trading system; and, if the system operator of such broker-dealer trading system is not a registered broker or dealer, any registered

broker or dealer that, pursuant to contract, affiliation, or other agreement with the system operator, is involved materially on a regular basis with executing transactions in connection with use of the broker-dealer trading system, other than solely for its own account or as a participant in the broker-dealer trading system.

(4) The term *system order* means any order or other communication or indication submitted by any system participant for entry into a trading system announcing an interest in purchasing or selling a security. The term ''system order'' does not include inquiries or indications of interest that are not entered into a trading system.

(5) The term *system participant* means any person that is provided access to a trading system (whether through computer terminal, access codes, or other means) by a system sponsor for the purpose of effecting the purchase or sale of securities through use of such system.

(c) *Recordkeeping*. Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(1) Make and keep current the following records relating to the broker-dealer trading system:

(i) A record of participants in the broker-dealer trading system (identifying any affiliations between system participants and the system sponsor);

(ii) Daily summaries of trading in the broker-dealer trading system, including:

(A) Securities for which transactions have been executed through use of such system;

(B) Transaction volume (separately stated for trading occurring during hours when consolidated trade reporting facilities are and are not in operation), expressed with respect to stock in trades, shares and in dollar value, and expressed with respect to other securities in trades, number of units of securities and in par value, dollar value, or other appropriate commonly used measure of value of such securities; and

(C) Number of system orders, or other identifiable indicator that accurately reflects participant trading interest, as appropriate in light of configuration of the broker-dealer trading system (expressed separately for priced and unpriced orders, if applicable in light of system configuration);

(iii) Time-sequenced records of each transaction effected through the broker-dealer trading system, including date and time executed, price, size, security traded, counterparty identification information, and method of execution (if broker-dealer trading system allows alternative means or locations for execution, such as routing to another market, matching with limit orders, or executing against the system sponsor's quotations); and

(2) Preserve, for a period of not less than three years, the first two years in an easily accessible place, the following records relating to the broker-dealer trading system:

(i) All records required to be made pursuant to paragraph (c)(1) of this section; and

(ii) All notices provided by the system sponsor to system participants generally (or to one or more classes of system participant), whether written or communicated through the broker-dealer trading system or other automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the broker-dealer trading system.

(d) *Reporting*. (1) Every registered broker or dealer subject to this section pursuant to paragraph (a) of this section shall:

(i) File the information required by Part I of Form 17A–23 (§ 249.636 of this chapter) at least 20 calendar days prior to operating a broker-dealer trading system, or, if the sponsor is operating the broker-dealer trading system on June 1, 1995, no later than July 1, 1995;

(ii) During the operation of a broker-dealer trading system of which the broker or dealer is the sponsor, file the information described in Part IA of Form 17A–23 (§ 249.636 of this chapter) regarding a material change to operation of the broker-dealer trading system as described in any filing previously made with the Commission pursuant to paragraph (d)(1)(i) of this section, at least 20 calendar days prior

to implementing such material change, or, where it is commercially impracticable to do so, as soon as possible thereafter when the sponsor determines that it will implement such material change, and in any event no later than 10 calendar days following the implementation of such change;

(iii) During the operation of a broker-dealer trading system of which the broker or dealer is the sponsor, file the information described in Part II of Form 17A–23 (§ 249.636 of this chapter) within 30 calendar days after the end of each calendar quarter in which the broker-dealer trading system has operated after July 1, 1995; and

(iv) Within 10 calendar days after a broker-dealer trading system of which the broker or dealer is the sponsor ceases to operate, file the notice described in Part III of Form 17A–23 (§ 249.636 of this chapter).

(2) The reports provided for in paragraph (d) of this section shall be considered filed upon receipt at the Commission's principal office in Washington, DC. Duplicate originals of the reports provided for in paragraphs (d)(1)(i), (ii), and (iv) of this section must be filed with surveillance personnel designated as such by the self-regulatory organization that is the designated examining authority for the broker or dealer pursuant to § 240.17d-1 simultaneously with filing with the Commission. Duplicates of the reports required by paragraphs (d)(1)(iii) of this section must be provided to such surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (d) shall be deemed to be confidential.

(e) *Maintenance of records in alternative form.* The records required to be maintained and preserved pursuant to this section may be produced, reproduced and maintained pursuant to the provisions of § 240.17a-4(f).

(f) *Compliance with other recordkeeping and reporting rules.* Nothing in this section obviates the need for any broker or dealer to comply with any other applicable recordkeeping or reporting requirement in the Act and the rules and regulations thereunder. If the information in a record required to be made pursuant to this section is preserved in a record made pursuant to § 240.17a-3 or § 240.17a-4, or otherwise preserved by the sponsor (whether in summary or other form), paragraph (c) of this section shall not require the sponsor to maintain such information in a separate file, provided that the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section, and preserves the information in accordance with the time periods specified in paragraph (c)(2) of this section.

(g) *Maintenance of records by others.* The records required to be maintained and preserved pursuant to this section may be prepared or maintained by a service bureau, depository, or other recordkeeping service on behalf of the sponsor of a broker-dealer trading system, provided such entity complies with the provisions of § 240.17a-4(i). Agreement with such an entity shall not relieve the sponsor of a broker-dealer trading system from the responsibility to prepare and maintain records as specified in this section.

(h) *Furnishing copies of records.* Every broker or dealer subject to this section pursuant to paragraph (a) of this section shall furnish to any representative of the Commission promptly upon request, legible, true and complete copies of those records of the sponsor that are required to be preserved under this section.

(i) *Exemption from this section.* The Commission, by rule or order, may exempt any sponsor of a broker-dealer trading system from all or any of the provisions of this section, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest or the protection of investors.

[59 FR 66709, Dec. 28, 1994]

§ 240.17a–24 Reports of lost securityholders.

(a) Each recordkeeping transfer agent shall file with the Commission on Form TA–2 (17 CFR 249b.102) the following aggregate information with respect to lost securityholder accounts contained on such transfer agent's master securityholder files:

(1) The total number of lost securityholder accounts and the percentage of lost securityholder accounts compared to total number of accounts contained on the transfer agent's master securityholder files.

(2) The information required by paragraph (a)(1) of this section shall be provided separately for securityholders lost one year or less, three years or less, five years or less, and more than five years and for securityholders whose assets which have escheated to unclaimed property administrators within the last calendar year.

(b) For purpose of this section, *lost securityholder* means a securityholder:

(1) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the re-sent item is returned as undeliverable and

(2) For whom the transfer agent has not received information regarding the securityholder's new address.

[62 FR 52236, Oct. 7, 1997]

§ 240.17d–1 Examination for compliance with applicable financial responsibility rules.

(a) Where a member of SIPC is a member of more than one self-regulatory organization, the Commission shall designate by written notice to one of such organizations responsibility for examining such member for compliance with applicable financial responsibility rules. In making such designations the Commission shall take into consideration the regulatory capabilities and procedures of the self-regulatory organizations, availability of staff, convenience of location, unnecessary regulatory duplication, and such other factors as the Commission may consider germane to the protection of investors, the cooperation and coordination among self-regulatory organizations, and the development of a national market system and a national system for the clearance and settlement of securities transactions.

(b) Upon designation of responsibility pursuant to paragraph (a) of this section, all other self-regulatory organizations of which such person is a member shall be relieved of such responsibility to the extent specified.

(c) After the Commission has acted pursuant to paragraphs (a) and (b) of this section, any self-regulatory organization relieved of responsibility with respect to a member may notify customers of, and persons doing business with, such member of the limited nature of its responsibility for such member's compliance with applicable financial responsibility rules.

[41 FR 18809, May 7, 1976]

§ 240.17d–2 Program for allocation of regulatory responsibility.

(a) Any two or more self-regulatory organizations may file with the Commission within ninety (90) days of the effective date of this rule, and thereafter as changes in designation are necessary or appropriate, a plan for allocating among the self-regulatory organizations the responsibility to receive regulatory reports from persons who are members or participants of more than one of such self-regulatory organizations to examine such persons for compliance, or to enforce compliance by such persons, with specified provisions of the Securities Exchange Act of 1934, the rules and regulations thereunder, and the rules of such self-regulatory organizations, or to carry out other specified regulatory functions with respect to such persons.

(b) Any plan filed hereunder may contain provisions for the allocation among the parties of expenses reasonably incurred by the self-regulatory organization having regulatory responsibilities under the plan.

(c) After appropriate notice and opportunity for comment, the Commission may, by written notice, declare such a plan, or any part of the plan, effective if it finds the plan, or any part thereof, necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among self-regulatory organizations, or to remove impediments to and foster the development of the national market system and a national

system for the clearance and settlement of securities transactions and in conformity with the factors set forth in section 17(d) of the Securities Exchange Act of 1934.

(d) Upon the effectiveness of such a plan or part thereof, any self-regulatory organization which is a party to the plan shall be relieved of responsibility as to any person for whom such responsibility is allocated under the plan to another self-regulatory organization to the extent of such allocation.

(e) Nothing herein shall preclude any self-regulatory organization from entering into more than one plan filed hereunder.

(f) After the Commission has declared a plan or part thereof effective pursuant to paragraph (c) of this section or acted pursuant to paragraph (g) of this section, a self-regulatory organization relieved of responsibility may notify customers of, and persons doing business with, such member or participant of the limited nature of its responsibility for such member's or participant's acts, practices, and course of business.

(g) In the event that plans declared effective pursuant to paragraph (c) of this section do not provide for all members or participants or do not allocate all regulatory responsibilities, the Commission may, after due consideration of the factors enumerated in section 17(d)(1) and notice and opportunity for comment, designate one or more of the self-regulatory organizations responsible for specified regulatory responsibilities with respect to such members or participants.

[41 FR 49093, Nov. 8, 1976]

§ 240.17f–1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) *Definitions.* For purposes of this section:

(1) The term *reporting institution* shall include every national securities exchange, member thereof, registered securities association, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, registered transfer agent, registered clearing agency, participant therein, member of the Federal Reserve System and bank whose deposits are insured by the Federal Deposit Insurance Corporation;

(2) The term *uncertificated security* shall mean a security not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(3) The term *global certificate securities issue* shall mean a securities issue for which a single master certificate representing the entire issue is registered in the nominee name of a registered clearing agency and for which beneficial owners cannot receive negotiable securities certificates;

(4) The term *customer* shall mean any person with whom the reporting institution has entered into at least one prior securities-related transaction; and

(5) The term *securities-related transaction* shall mean a purpose, sale or pledge of investment securities, or a custodial arrangement for investment securities.

(b) Every reporting institution shall register with the Commission or its designee in accordance with instructions issued by the Commission except:

(1) A member of a national securities exchange who effects securities transactions through the trading facilities of the exchange and has not received or held customer securities within the last six months;

(2) A reporting institution that, within the last six months, limited its securities activities exclusively to uncertificated securities, global securities issues or any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificate; or

(3) A reporting institution whose business activities, within the last six months, did not involve the handling of securities certificates.

(c) *Reporting requirements*—(1) *Stolen securities.*

(i) Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the theft or loss of any securities certificates where there is substantial basis for believing that criminal activity was involved. Such report shall be made within one business day of the

discovery and, if the certificate numbers of the securities cannot be ascertained at that time, they shall be reported as soon thereafter as possible.

(ii) Every reporting institution shall promptly report to the Federal Bureau of Investigation upon the discovery of the theft or loss of any securities certificate where there is substantial basis for believing that criminal activity was involved.

(2) *Missing or lost securities.* Every reporting institution shall report to the Commission or its designee, and to a registered transfer agent for the issue, the discovery of the loss of any securities certificate where criminal actions are not suspected when the securities certificate has been missing or lost for a period of two business days. Such report shall be made within one business day of the end of such period except that:

(i) Securities certificates lost in transit to customers, transfer agents, banks, brokers or dealers shall be reported by the delivering institution by the later of two business days after notice of non-receipt or as soon after such notice as the certificate numbers of the securities can be ascertained.

(ii) Securities certificates considered lost or missing as a result of securities counts or verifications required by rule, regulation or otherwise (*e.g.*, dividend record date verification made as a result of firm policy or internal audit function report) shall be reported by the later of ten business days after completion of such securities count or verification or as soon after such count or verification as the certificate numbers of the securities can be ascertained.

(iii) Securities certificates not received during the completion of delivery, deposit or withdrawal shall be reported in the following manner:

(A) Where delivery of the securities certificates is through a clearing agency, the delivering institution shall supply to the receiving institution the certificate number of the security within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(B) Where the delivery of securities certificates is in person and where the delivering institution has a receipt, the delivering institution shall supply the receiving institution the certificate numbers of the securities within two business days from the date of request from the receiving institution. The receiving institution shall report within one business day of notification of the certificate number;

(C) Where the delivery of securities certificates is in person and where the delivering institution has no receipt, the delivering institution shall report within two business days of notification of non-receipt by the receiving institution; or

(D) Where delivery of securities certificates is made by mail or via draft, if payment is not received within ten business days, the delivering institution shall confirm with the receiving institution the failure to receive such delivery; if confirmation shows non-receipt, the delivering institution shall report within two business days of such confirmation.

(3) *Counterfeit securities.* Every reporting institution shall report the discovery of any counterfeit securities certificate to the Commission or its designee, to a registered transfer agent for the issue, and to the Federal Bureau of Investigation within one business day of such discovery.

(4) *Transfer agent reporting obligations.* Every transfer agent shall make the reports required above only if it receives notification of the loss, theft or counterfeiting from a non-reporting institution or if it receives notification other than on a Form X–17F–1A or if the certificate was in its possession at the time of the loss.

(5) *Recovery.* Every reporting institution that originally reported a lost, missing or stolen securities certificate pursuant to this Section shall report recovery of that securities certificate to the Commission or its designee and to a registered transfer agent for the issue within one business day of such recovery or finding. Every reporting institution that originally made a report in which criminality was indicated also shall notify the Federal Bureau of Investigation that the securities certificate has been recovered.

(6) *Information to be reported.* All reports made pursuant to this Section shall include, if applicable or available, the following information with respect to each securities certificate:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) Maturity date;

(v) Denomination;

(vi) Interest rate;

(vii) Certificate number, including alphabetical prefix or suffix;

(viii) Name in which registered;

(ix) Distinguishing characteristics, if counterfeit;

(x) Date of discovery of loss or recovery;

(xi) CUSIP number;

(xii) Financial Industry Numbering System (''FINS'') Number; and

(xiii) Type of loss.

(7) *Forms.* Reporting institutions shall make all reports to the Commission or its designee and to a registered transfer agent for the issue pursuant to this section on Form X–17F–1A. Reporting institutions shall make reports to the Federal Bureau of Investigation pursuant to this Section on Form X–17F–1A, unless the reporting institution is a member of the Federal Reserve System or a bank whose deposits are insured by the Federal Deposit Insurance Corporation, in which case reports may be made on the form required by the institution's appropriate regulatory agency for reports to the Federal Bureau of Investigation.

(d) *Required inquiries.* (1) Every reporting institution (except a reporting institution that, acting in its capacity as transfer agent, paying agent, exchange agent or tender agent for an equity issue, or registrar for a bond or other debt issue, compares all transactions against a shareholder or bondholder list and a current list of stop transfers) shall inquire of the Commission or its designee with respect to every securities certificate which comes into its possession or keeping, whether by pledge, transfer or otherwise, to ascertain whether such securities certificate has been reported as missing, lost, counterfeit or stolen, unless:

(i) The securities certificate is received directly from the issuer or issuing agent at issuance;

(ii) The securities certificate is received from another reporting institution or from a Federal Reserve Bank or Branch;

(iii) The securities certificate is received from a customer of the reporting institution; and

(A) Is registered in the name of such customer or its nominee; or

(B) Was previously sold to such customer, as verified by the internal records of the reporting institution;

(iv) The securities certificate is received as part of a transaction which has an aggregate face value of $10,000 or less in the case of bonds, or market value of $10,000 or less in the case of stocks; or

(v) The securities certificate is received directly from a drop which is affiliated with a reporting institution for the purposes of receiving or delivering certificates on behalf of the reporting institution.

(2) *Form of inquiry.* Inquiries shall be made in such manner as prescribed by the Commission or its designee.

(e) *Permissive reports and inquiries.* Every reporting insitution may report to or inquire of the Commission or its designee with respect to any securities certificate not otherwise required by this section to be the subject of a report or inquiry. The Commission on written request or upon its own motion may permit reports to and inquiries of the system by any other person or entity upon such terms and conditions as it deems appropriate and necessary in the public interest and for the protection of investors.

(f) *Exemptions.* The following types of securities are not subject to paragraphs (c) and (d) of this section:

(1) Security issues not assigned CUSIP numbers;

(2) Bond coupons;

(3) Uncertificated securities;

(4) Global securities issues; and

(5) Any securities issue for which neither record nor beneficial owners can obtain a negotiable securities certificates.

(g) *Recordkeeping.* Every reporting institution shall maintain and preserve in an easily accessible place for three

years copies of all Forms X–17F–1A filed pursuant to this section, all agreements between reporting institutions regarding registration or other aspects of this section, and all confirmations or other information received from the Commission or its designee as a result of inquiry.

(Secs. 2, 17, and 23, 15 U.S.C. 78b, 78q, 78w)
[44 FR 31503, May 31, 1979; 45 FR 14022, Mar. 3, 1980, as amended at 53 FR 37289, Sept. 26, 1988; 53 FR 40721, Oct. 18, 1988]

§ 240.17f–2 Fingerprinting of securities industry personnel.

(a) *Exemptions for the fingerprinting requirement*. Except as otherwise provided in paragraph (a)(1) or (2) of this section, every member of a national securities exchange, 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) *Permissive exemptions*. Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency may claim one or more of the exemptions in paragraph (a)(1) (i), (ii), (iii) or (iv) of this section; *Provided,* That all the requirements of paragraph (e) of this section are also satisfied.

(i) *Member of a national securities exchange, broker, dealer or registered clearing agency*. Every person who is a partner, director, officer or employee of a member of a national securities exchange, broker, dealer, or registered clearing agency shall be exempt if that person:

(A) Is not engaged in the sale of securities;

(B) Does not regularly have access to the keeping, handling or processing of *(1)* securities, *(2)* monies, or *(3)* the original books and records relating to the securities or the monies; and

(C) Does not have direct supervisory responsibility over persons engaged in the activities referred to in paragraphs (a)(1)(i) (A) and (B) of this section.

(ii) *Registered transfer agents*. Every person who is a partner, director, officer or employee of a registered transfer agent shall be exempt if that person:

(A) Is not engaged in transfer agent functions (as defined in section 3(a)(25) of the Securities Exchange Act of 1934) or activities incidental thereto; or

(B) Meets the conditions in paragraphs (a)(1)(i) (B) and (C) of this section.

(iii) *Registered broker-dealers engaged in sales of certain securities*. Every partner, director, officer and employee of a registered broker or dealer who satisfies paragraph (a)(1)(i)(B) of this section shall be exempt if that broker or dealer:

(A) Is engaged exclusively in the sale of shares of registered open-end management investment companies, variable contracts, or interests in limited partnerships, unit investment trusts or real estate investment trusts; *Provided,* That those securities ordinarily are not evidenced by certificates;

(B) Is current in its continuing obligation under §§ 240.15b1–1 and 15b3–1(b) to update Item 10 of Form BD to disclose the existence of any statutory disqualification set forth in sections 3(a)(39), 15(b)(4) and 15(b)(6) of the Securities Exchange Act of 1934;

(C) Has insurance or bonding indemnifying it for losses to customers caused by the fraudulent or criminal acts of any of its partners, directors, officers or employees for whom an exemption is being claimed under paragraph (a)(1)(iii) of this section; and

(D) Is subject to the jurisdiction of a state insurance department with respect to its sale of variable contracts.

(iv) *Illegible fingerprint cards*. Every person who is a partner, director, officer or employee shall be exempt if that member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, on at least three occasions:

(A) Attempts in good faith to obtain from such person a complete set of fingerprints acceptable to the Attorney General or its designee for identification and appropriate processing by requiring that person to be fingerprinted, by having that person's fingerprints rolled by a person competent to do so and by submitting the fingerprint cards for that person to the Attorney

General of the United States or its designee in accordance with proper procedures;

(B) Has that person's fingerprint cards returned to it by the Attorney General of the United States or its designee without that person's fingerprints having been identified because the fingerprints were illegible; and

(C) Retains the returned fingerprint cards and any other required records in accordance with paragraph (d) of this section and §§ 240.17a–3(a)(13), 17a–4(e)(2) and 240.17Ad–7(e)(1) under the Securities Exchange Act of 1934.

(2) *Other exemptions by application to the Commission*. The Commission, upon specified terms, conditions and periods, may grant exemptions to any class of partners, directors, officers or employees of any member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, if the Commission finds that such action is not inconsistent with the public interest or the protection of investors.

(b) *Fingerprinting pursuant to other law*. Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency may satisfy the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 as to any partner, director, officer or employee, if:

(1) The person, in connection with his or her present employment with such organization, has been fingerprinted pursuant to any other law, statute, rule or regulation of any state or federal government or agency thereof;

(2) The fingerprint cards for that person are submitted, or are caused to be submitted, to the Attorney General of the United States or its designee for identification and appropriate processing, and the Attorney General or its designee has processed those fingerprint cards; and

(3) The processed fingerprint cards or any substitute records, together with any information received from the Attorney General or its designee, are maintained in accordance with paragraph (d) of this section.

(c) *Fingerprinting plans of self-regulatory organizations*. The fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 may be satisfied by submitting appropriate and complete fingerprint cards to a registered national securities exchange or to a registered national securities association which, pursuant to a plan filed with, and declared effective by, the Commission, forwards such fingerprint cards to the Attorney General of the United States or its designee for identification and appropriate processing. Any plan filed by a registered national securities exchange or a registered national securities association shall not become effective, unless declared effective by the Commission as not inconsistent with the public interest or the protection of investors; and, in declaring any such plan effective, the Commission may impose any terms and conditions relating to the provisions of the plan and the period of its effectiveness as it may deem necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

(d) *Record maintenance*—(1) *Maintenance of processed fingerprint cards and other related information*. Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency shall maintain the processed fingerprint card or any substitute record when such card is not returned after processing, together with any information received from the Attorney General or its designee, for every person required to be fingerprinted under section 17(f)(2) of the Securities Exchange Act of 1934 and for persons who have complied with this section pursuant to paragraph (b) or (c) of this section. Every substitute record shall state the name of the person whose fingerprint card was submitted to the Attorney General of the United States, the name of the member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency that submitted the fingerprint card, the name of the person or organization that rolled the fingerprints, the date on which the fingerprints were rolled, and the date the fingerprint card was submitted to the Attorney General of the United States. The processed fingerprint card and every other

substitute record containing the information required by this paragraph, together with any information received from the Attorney General of the United States, shall be kept in an easily accessible place at the organization's principal office and shall be made available upon request to the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority. The organization's principal office must provide to the regional, branch or satellite office actually employing the person written evidence that the person's fingerprints have been processed by the FBI, and must provide to that office a copy of any criminal history record information received from the FBI. All fingerprint cards, records and information required to be maintained under this paragraph shall be retained for a period of not less than three years after termination of that person's employment or relationship with the organization.

(2) *Record maintenance by designated examining authorities.* The records required to be maintained and preserved by a member of a national securities exchange, broker, or dealer pursuant to the requirements of paragraph (d)(1) of this section may be maintained and preserved on behalf of that member, broker, or dealer by a self-regulatory organization that is also the designated examining authority for that member, broker or dealer, *Provided* That the self-regulatory organization has filed in accordance with § 240.17f–2(c) a fingerprinting plan or amendments to an existing plan concerning the storage and maintenance of records and that plan, as amended, has been declared effective by the Commission, and *Provided Further* That:

(i) Such records are subject at any time, or from time to time, to reasonable periodic, special or other examinations by representatives of the Commission; and

(ii) The self-regulatory organization furnishes to the Commission, upon demand, at either the principal office or at the regional office complete, correct and current hard copies of any and all such records.

(3) *Reproduction of records on microfilm.* The records required to be maintained pursuant to paragraph (d)(1) of this section may be produced or reproduced on microfilm and preserved in that form. If such microfilm substitution for hard copy is made by a member of a national securities exchange, broker, dealer, registered transfer agent or registered clearing agency, or by a self-regulatory organization maintaining and storing records pursuant to paragraph (d)(2) of this section, it shall at all times:

(i) Have available for examination by the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority, facilities for the immediate, easily readable projection of the microfilm and for the production of easily readable and legible facsimile enlargements;

(ii) File and index the films in such a manner as to permit the immediate location and retrieval of any particular record;

(iii) Be ready to provide, and immediately provide, any facsimile enlargement which the Commission, the appropriate regulatory agency (if not the Commission) or other designated examining authority by their examiners or other representatives may request; and

(iv) For the period for which the microfilm records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(e) *Notice requirement.* Every member of a national securities exchange, broker, dealer, registered transfer agent and registered clearing agency that claims one or more of the exemptions in paragraph (a)(1) of this section shall make and keep current a statement entitled ''Notice Pursuant to Rule 17f–2'' containing the information specified in paragraph (e)(1) of this section.

(1) *Contents of statement.* The Notice required by paragraph (e) of this section shall:

(i) State the name of the organization and state whether it is a member of a national securities exchange, broker, dealer, registered transfer agent, or registered clearing agency;

(ii) Identify by division, department, class, or name and position within the organization all persons who are

claimed to have satisfied the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 pursuant to paragraph (b) of this section;

(iii) Identify by division, department, class, title or position within the organization all persons claimed to be exempt under paragraphs (a)(1)(i) through (iii) of this section, and identify by name all persons claimed to be exempt under paragraph (a)(1)(iv). Persons identified under this paragraph (e)(1)(iii) shall be exempt from the requirement of section 17(f)(2) of the Securities Exchange Act of 1934 unless notified to the contrary by the Commission;

(iv) Describe, in generic terms, the nature of the duties of the person or classes of persons, and the nature of the functions and operations of the divisions and departments, identified as exempt in paragraph (e)(1)(iii) of this section; and

(v) Describe the security measures utilized to ensure that only those persons who have been fingerprinted in accordance with the fingerprinting requirement of section 17(f)(2) of the Securities Exchange Act of 1934 or who are exempt under paragraph (a)(1)(iv) of this section have access to the keeping, handling or processing of securities or monies or the original books and records relating thereto.

(2) *Record maintenance.* A copy of the Notice required to be made and kept current under paragraph (e) of this section shall be kept in an easily accessible place at the organization's principal office and at the office employing the persons for whom exemptions are claimed and shall be made available upon request for inspection by the Commission, appropriate regulatory agency (if not the Commission) or other designated examining authority.

(3) *Exemption from the notice requirement.* A registered transfer agent that performs transfer agent functions only on behalf of itself as an issuer and that receives fewer than 500 items for transfer and fewer than 500 items for processing during any six consecutive months shall be exempt from the notice requirement of paragraph (c) of this section.

[47 FR 54060, Dec. 1, 1982]

§ 240.17h–1T Risk assessment recordkeeping requirements for associated persons of brokers and dealers.

(a) *Requirement to maintain and preserve information.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities dealer registered pursuant to Section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (d) of this section, shall maintain and preserve the following information:

(i) An organizational chart which includes the broker or dealer and all its associated persons. Included in the organizational chart shall be a designation of which associated persons are Material Associated Persons as that term is used in paragraph (a)(2) of this section;

(ii) Written policies, procedures, or systems concerning the broker or dealer's:

(A) Method(s) for monitoring and controlling financial and operational risks to it resulting from the activities of any of its associated persons, other than a natural person;

(B) Financing and capital adequacy, including information regarding sources of funding, together with a narrative discussion by management of the liquidity of the material assets, the structure of debt capital, and sources of alternative funding; and

(C) Trading positions and risks, such as records regarding reporting responsibilities for trading activities, policies relating to restrictions or limitations on trading securities and financial instruments or products, and a description of the types of reviews conducted to monitor existing positions, and limitations or restrictions on trading activities.

(iii) A description of all material pending legal or arbitration proceedings involving a Material Associated Person or the broker or dealer that are required to be disclosed by the ultimate holding company under generally accepted accounting principles on a consolidated basis;

(iv) Consolidated and consolidating balance sheets, prepared in accordance with generally accepted accounting

principles, which may be unaudited and which shall include the notes to the financial statements, as of quarter end for the broker or dealer and its ultimate holding company;

(v) Quarterly consolidated and consolidating income statements and consolidated cash flow statements, prepared in accordance with generally accepted accounting principles, which may be unaudited and which shall include the notes to the financial statements, for the broker or dealer and its ultimate holding company;

(vi) The amount as of quarter end, and at month end if greater than quarter end, of the aggregate long and short securities and commodities positions held by each Material Associated Person, including a separate listing of each single unhedged securities or commodities position, other than U.S. government or agency securities, that exceeds the Materiality Threshold at any month end;

(vii) The notional or contractual amounts, and in the case of options, the value of the underlying instruments, as of quarter end, of financial instruments with off-balance sheet risk and financial instruments with concentrations of credit risk (as those terms are used in Statement of Financial Accounting Standards No. 105) where the Material Associated Person operates a trading book, with a separate entry of each commitment where the credit risk (as that term is used in Statement of Financial Accounting Standards No. 105) with respect to a counterparty exceeds the Materiality Threshold at quarter end;

(viii) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of all bridge loans and those other material unsecured extensions of credit (not including intra-group receivables) with an initial or remaining maturity of less than one year by each Material Associated Person, together with the allowance for losses for such transactions, including a specific description of any extensions of credit to a single borrower exceeding the Materiality Threshold at any month end;

(ix) The aggregate amount as of quarter end, and the amount at month end if greater than quarter end, of commercial paper, secured and other unsecured borrowing, bank loans, lines of credit, or any other borrowings, and the principal installments of long-term or medium-term debt, scheduled to mature within twelve months from the most recent fiscal quarter for the broker or dealer and each Material Associated Person; and

(x) Data relating to real estate activities, including mortgage loans and investments in real estate, but not including trading positions in whole loans, conducted by each Material Associated Person, including:

(A) Real estate loans and investments by type of property, such as construction and development, residential, commercial and industrial or farmland;

(B) The geographic distribution, as of quarter end, by type of loan or investment where the amount exceeds the Materiality Threshold at quarter end;

(C) The aggregate carrying value of loans which each Material Associated Person deems to be not current as to interest or principal, together with the Material Associated Person's criteria for the determination of which loans are not current, or which are in the process of foreclosure or that have been restructured;

(D) The allowance for losses on loans and on investment real estate by type of loan or investment, and the activity in the allowance for losses account; and

(E) Information about risk concentration in the real estate investment and loan portfolio, including information about risk concentration to a single borrower or location of property if the risk concentration exceeds the Materiality Threshold at quarter end.

(2) The determination of whether an associated person of a broker or dealer is a Material Associated Person shall involve consideration of all aspects of the activities of, and the relationship between, both entities, including without limitation, the following factors:

(i) The legal relationship between the broker or dealer and the associated person;

(ii) The overall financing requirements of the broker or dealer and the associated person, and the degree, if any, to which the broker or dealer and

the associated person are financially dependent on each other;

(iii) The degree, if any, to which the broker or dealer or its customers rely on the associated person for operational support or services in connection with the broker's or dealer's business;

(iv) The level of risk present in the activities of the broker's or dealer's associated persons; and

(v) The extent to which the associated person has the authority or the ability to cause a withdrawal of capital from the broker or dealer.

(3) The information, reports and records required by the provisions of this section shall be maintained and preserved in accordance with the provisions of §240.17a–4 and shall be kept for a period of not less than three years in an easily accessible place.

(4) For the purposes of this section and §240.17h–2T, the term ''Materiality Threshold'' shall mean the greater of:

(i) $100 million; or

(ii) 10 percent of the broker or dealer's tentative net capital based on the most recently filed Form X–17A–5 or 10 percent of the Material Associated Person's tangible net worth, whichever is greater.

(b) *Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators.* A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by, or the reporting requirements of, a Federal banking agency and the broker or dealer maintains in accordance with the provisions of this section copies of all reports submitted by such Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956 other than the Form FR 2068; or

(2) If such Material Associated Person is subject to the supervision of an insurance commissioner or other similar official or agency of a state, and the broker or dealer maintains in accordance with the provisions of this section copies of the Annual and Quarterly Statements with Schedules and Exhibits prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners; or

(3) In the event an insurance company is not required to prepare Quarterly Statements on forms prescribed by the National Association of Insurance Commissioners, the broker or dealer must maintain and preserve the records required by paragraph (a) of this section on a quarterly basis; or

(4) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer maintains in accordance with the provisions of this section copies of the reports filed on Forms 1 FR–FCM or 1 FR–IB by such Material Associated Person with the Commodity Futures Trading Commission.

(c) *Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority.* A broker or dealer shall be deemed to be in compliance with the recordkeeping requirements of paragraph (a) of this section with respect to a Material Associated Person if such broker or dealer maintains in accordance with the provisions of this section copies of the reports filed by such Material Associated Persons with a Foreign Financial Regulatory Authority. The broker or dealer shall maintain a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(d) *Exemptions.* (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of §240.15c3–3:

(i) Pursuant to paragraph (k)(1) of §240.15c3–3; or

(ii) Pursuant to paragraph (k)(2) of §240.15c3–3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of §240.15c3–3 and such broker

or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3–1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of section 240.15c3–1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital for the purposes of this paragraph, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (d)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with such Reporting Broker or Dealer. The term ''Reporting Broker or Dealer'' shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently fixed Form X–17A–5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to this section concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to § 240.17h–2T.

(e) *Location of records.* A broker or dealer required to maintain records concerning a Material Associated Person pursuant to this section may maintain those records either at the Material Associated Person or at a records storage facility provided that the records are located within the boundaries of the United States and the records are kept in an easily accessible place, as that term is used in § 240.17a–4. In order to operate pursuant to the provisions of this paragraph, the Material Associated Person or other entity maintaining the records shall file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that the records will be treated as if the broker or dealer was maintaining the records pursuant to this section and that the entity maintaining the records undertakes to permit examination of such records at any time or from time to time during business hours by representatives or designees of the Commission and to promptly furnish the Commission or its designee true, correct, complete and current hard copy of any or all or any part of such records. The election to operate pursuant to the provisions of this paragraph shall not relieve the broker or dealer required to maintain and preserve such records from any of its responsibilities under this section or section 240.17h–2T.

(f) *Confidentiality.* All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(g) *Temporary implementation schedule.* Every broker or dealer subject to the requirements of this section shall maintain and preserve the information required by paragraphs (a)(1)(i), (ii), and (iii) of this section commencing September 30, 1992. Commencing December 31, 1992, the provisions of this section shall apply in their entirety.

[57 FR 32168, July 21, 1992, as amended at 58 FR 25774, Apr. 28, 1993]

§ 240.17h–2T Risk assessment reporting requirements for brokers and dealers.

(a) *Reporting requirements of risk assessment information required to be maintained by section 240.17h–1T.* (1) Every broker or dealer registered with the Commission pursuant to section 15 of the Act, and every municipal securities

dealer registered pursuant to section 15B of the Act for which the Commission is the appropriate regulatory agency, unless exempt pursuant to paragraph (b) of this section, shall file a Form 17–H within 60 calendar days after the end of each fiscal quarter. The Form 17–H for the fourth fiscal quarter shall be filed within 60 calendar days of the end of the fiscal year. The cumulative year-end financial statements required by section 240.17h–1T may be filed separately within 105 calendar days of the end of the fiscal year.

(2) The reports required to be filed pursuant to paragraph (a)(1) of this section shall be considered filed when received at the Commission's principal office in Washington, DC.

(3) For the purposes of this section, the term Material Associated Person shall have the meaning used in § 240.17h–1T.

(b) *Exemptions*. (1) The provisions of this section shall not apply to any broker or dealer which is exempt from the provisions of section 240.15c3–3:

(i) Pursuant to paragraph (k)(1) of § 240.15c3–3; or

(ii) Pursuant to paragraph (k)(2) of § 240.15c3–3; or

(iii) If the broker or dealer does not qualify for an exemption from the provisions of § 240.15c3–3 and such broker or dealer does not hold funds or securities for, or owe money or securities to, customers and does not carry the accounts of or for customers; unless

(iv) In the case of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section, the broker or dealer maintains capital including debt subordinated in accordance with appendix D of § 240.15c3–1 equal to or greater than $20,000,000.

(2) The provisions of this section shall not apply to any broker or dealer which maintains capital including debt subordinated in accordance with appendix D of § 240.15c3–1 of less than $250,000, even if the broker or dealer hold funds or securities for, or owes money or securities to, customers or carries the accounts of or for customers.

(3) In calculating capital and subordinated debt for the purposes of this section, a broker or dealer shall include the equity capital and subordinated debt of any other registered brokers or dealers that are associated with the broker or dealer and are not otherwise exempt from the provisions pursuant to paragraph (b)(1)(i) of this section.

(4) The Commission may, upon written application by a Reporting Broker or Dealer, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any brokers or dealers associated with the Reporting Broker or Dealer. The term ''Reporting Broker or Dealer'' shall mean, in the case of a broker or dealer that is associated with other registered brokers or dealers, the broker or dealer which maintains the greatest amount of net capital as reported on its most recently filed Form X–17A–5. In granting exemptions under this section, the Commission shall consider, among other factors, whether the records and other information required to be maintained pursuant to § 240.17h–1T concerning the Material Associated Persons of the broker or dealer associated with the Reporting Broker or Dealer will be available to the Commission pursuant to the provisions of this section.

(c) *Special provisions with respect to material associated persons subject to the supervision of certain domestic regulators*. A broker or dealer shall be deemed to be in compliance with the reporting requirements of paragraph (a) of this section with respect to a Material Associated Person if:

(1) Such Material Associated Person is subject to examination by or the reporting requirements of a Federal banking agency and the broker or dealer or such Material Associated Person furnishes in accordance with paragraph (a) of this section copies of reports filed on Form FR Y–9C, Form FR Y–6, Form FR Y–7, and Form FR 2068 by the Material Associated Person with the Federal banking agency pursuant to section 5211 of the Revised Statutes, section 9 of the Federal Reserve Act, section 7(a) of the Federal Deposit Insurance Act, section 10(b) of the Home Owners' Loan Act, or section 5 of the Bank Holding Company Act of 1956; or

(2) If the Material Associated Person is subject to the supervision of an insurance commissioner or other similar official agency of a state; and

(i) In the case of a Material Associated Person organized as a public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the filings made by the insurance company pursuant to sections 13 or 15 of the Act and the Investment Company Act of 1940; or

(ii) In the case of Material Associated Person organized as a mutual insurance company or a non-public stock company, the broker or dealer furnishes in accordance with the provisions of this section copies of the Annual and Quarterly Statements prepared by the insurance company on forms prescribed by the National Association of Insurance Commissioners. The Annual Statement furnished to the Commission pursuant to this section shall include: The classification (distribution by state) section from the schedule of real estate; distribution by state, the interest overdue (more than three months), in process of foreclosure, and foreclosed properties transferred to real estate during the year sections from the schedule of mortgages; and the quality and maturity distribution of all bonds at statement values and by major types of issues section from the schedule of bonds and stocks. All other Schedules and Exhibits to such Annual and Quarterly Statements shall be maintained at the broker-dealer pursuant to the provisions of § 240.17h–1T but not furnished to the Commission.

(iii) In the event an insurance company organized as a stock or mutual company is not required to prepare Quarterly Statements, the broker or dealer must file with the Commission a Form 17–H in accordance with the provisions of this section on a quarterly basis.

(3) In the case of a Material Associated Person that is subject to the supervision of the Commodity Futures Trading Commission, the broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by the Material Associated Person with the Commodity Futures Trading Commission on Forms 1 FR–FCM or 1 FR–IB.

(4) No broker or dealer shall be required to furnish to the Commission any examination report of any Federal banking agency or any supervisory recommendations or analyses contained therein with respect to a Material Associated Person that is subject to the regulation of a Federal banking agency. All information received by the Commission pursuant to this section concerning a Material Associated Person that is subject to examination by or the reporting requirements of a Federal banking agency shall be deemed confidential for the purposes of section 24(b) of the Act.

(5) The furnishing of any information or documents by a broker or dealer pursuant to this section shall not constitute an admission for any purpose that a Material Associated Person is otherwise subject to the Act. Any documents or information furnished to the Commission by a broker or dealer pursuant to this rule shall not be deemed to be ''filed'' for the purposes of the liabilities set forth in section 18 of the Act.

(d) *Special provisions with respect to material associated persons subject to the supervision of a foreign financial regulatory authority*. A broker or dealer shall be deemed to be in compliance with the reporting requirements of this section with respect to a Material Associated Person if such broker or dealer furnishes in accordance with the provisions of this section copies of the reports filed by such Material Associated Person with a Foreign Financial Regulatory Authority. The broker or dealer shall file a copy of the original report and a copy translated into the English language. For the purposes of this section, the term Foreign Financial Regulatory Authority shall have the meaning set forth in section 3(a)(51) of the Act.

(e) *Confidentiality*. All information obtained by the Commission pursuant to the provisions of this section from a broker or dealer concerning a Material Associated Person shall be deemed confidential information for the purposes of section 24(b) of the Act.

(f) *Temporary implementation schedule*. Every broker or dealer subject to the requirements of this section shall file the information required by Items 1, 2 and 3 of Form 17–H by October 31, 1992. Commencing December 31, 1992, the

provisions of this section shall apply in their entirety.

[57 FR 32170, July 21, 1992]

§ 240.17Ab2–1 Registration of clearing agencies.

(a) An application for registration or for exemption from registration as a clearing agency, as defined in section 3(a)(23) of the Act, or an amendment to any such application shall be filed with the Commission on Form CA–1, in accordance with the instructions thereto.

(b) Any applicant for registration or for exemption from registration as a clearing agency whose application is filed with the Commission on or before November 24, 1975, on and in accordance with the instructions to Form CA–1, with respect to the clearing agency activities described in the application shall, during the period from December 1, 1975 until the Commission grants registration, denies registration or grants an exemption from registration, be exempt from the registration provisions of section 17A(b) of the Act and the rules and regulations thereunder and, unless the Commission shall otherwise provide by rule or by order, the provisions of the Act and the rules and regulations thereunder which would be applicable to clearing agencies as a result of registration under the Act.

(c)(1) The Commission, upon the request of a clearing agency, may grant registration of the clearing agency in accordance with sections 17A(b) and 19(a)(1) of the Act but exempt the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to paragraphs (A) through (I) of section 17A(b)(3) of the Act, provided that any such registration shall be effective only for eighteen months from the date the registration is made effective (or such longer period as the Commission may provide by order).

(2) In the case of any clearing agency registered in accordance with paragraph (c)(1) of this section, not later than nine months from the date such registration is made effective the Commission either will grant registration in accordance with sections 17A(b) and 19(a)(1) of the Act, without exempting the registrant from one or more of the requirements as to which the Commission is directed to make a determination pursuant to subparagraphs (A) through (I) of section 17A(b)(3) of the Act, or will institute proceedings in accordance with section 19(a)(1)(B) of the Act to determine whether registration should be denied at the expiration of the registration granted in accordance with paragraph (c)(1) of this section.

(d) The filing of an amendment to an application for registration or for exemption from registration as a clearing agency, which registration or exemption has not been granted, or the filing of additional information or documents prior to the granting of registration or an exemption from registration shall extend to ninety days from the date such filing is made (or to such longer period as to which the applicant consents) the period within which the Commission shall grant registration, institute proceedings to determine whether such registration shall be denied, or conditionally or unconditionally exempt registrant from the registration and other provisions of section 17A of the Act or the rules or regulations thereunder.

(e) If any information reported at items 1–3 of Form CA–1 is or becomes inaccurate, misleading or incomplete for any reason, whether before or after registration or an exemption from registration has been granted, the registrant shall file promptly an amendment on Form CA–1 correcting the inaccurate, misleading or incomplete information.

(f) Every application for registration or for exemption from registration as a clearing agency or amendment to, or additional information or document filed in connection with, any such application shall constitute a ''report'' or ''application'' within the meaning of sections 17, 17A, 19 and 32(a) of the Act.

[40 FR 52358, Nov. 10, 1975]

§ 240.17Ac2–1 Application for registration of transfer agents.

(a) An application for registration, pursuant to section 17A(c) of the Act, of a transfer agent for which the Commission is the appropriate regulatory agency, as defined in section 3(a)(34)(B)

of the Act, shall be filed with the Commission on Form TA–1, in accordance with the instructions contained therein and shall become effective on the thirtieth day following the date on which the application is filed, unless the Commission takes affirmative action to accelerate, deny or postpone such registration in accord- ance with the provisions of section 17A(c) of the Act.

(b) The filing of any amendment to an application for registration as a transfer agent pursuant to paragraph (a) of this section, which registration has not become effective, shall postpone the effective date of the registration until the thirtieth day following the date on which the amendment is filed, unless the Commission takes affirmative action to accelerate, deny or postpone the registration in accordance with the provisions of section 17A(c) of the Act.

(c) If any of the information reported on Form TA–1 or on the SEC Supplement becomes inaccurate, misleading, or incomplete, the registrant shall correct the information by filing an amendment within sixty days following the date on which the information became inaccurate, misleading, or incomplete.

(d) Every registration and amendment filed pursuant to this section shall constitute a ''report'' or ''application'' within the meaning of sections 17, 17A(c), and 32(a) of the Act.

[40 FR 51184, Nov. 4, 1975, as amended at 51 FR 12127, Apr. 9, 1986]

§ 240.17Ac2–2 Annual reporting requirement for registered transfer agents.

Every registered transfer agent shall file and annual report on Form TA–2 in accordance with the instructions contained therein by August 31 of each calendar year. A registered transfer agent that received fewer than 500 items for transfer and fewer than 500 items for processing in the six months ending June 30 of the calendar year for which the form is being filed, and did not maintain master security holder files for more than 1000 individual security holder accounts as of June 30 of the calendar year for which the form is being filed, is only required to complete Items one through four and the execution section of Form TA–2. A registered transfer agent is not required to file Form TA–2 if it engages a service company to perform all of its transfer and processing functions.

[51 FR 12127, Apr. 9, 1986]

§ 240.17Ac3–1 Withdrawal from registration with the Commission.

(a) Notice of withdrawal from registration as a transfer agent with the Commission pursuant to section 17A(c)(3)(C) of the Act shall be filed on Form TA–W in accordance with the instructions contained thereon.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by a transfer agent pursuant to section 17A(c)(3)(C) of the Act shall become effective on the sixtieth day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If a notice to withdraw from registration is filed with the Commission at any time subsequent to the date of issuance of a Commission order instituting proceedings pursuant to section 17A(c)(3)(A) of the Act, or if prior to the effective date of the notice of withdrawal the Commission institutes such a proceeding or a proceeding to impose terms and conditions upon such withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of section 17A.

(c) Every notice of withdrawal filed pursuant to this rule shall constitute a ''report'' within the meaning of sections 17 and 32(a) of the Act.

(Secs. 2, 17, 17A, and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 44984, Sept. 8, 1977]

§ 240.17Ad–1 Definitions.

As used in this section and §§ 240.17Ad–2, 240.17Ad–3, 240.17Ad–4, 240.17Ad–5, 240.17Ad–6, and 240.17Ad–7:

(a)(1) The term *item* means:

(i) A certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presentor) presented for transfer, or an instruction to a transfer

agent which holds securities registered in the name of the presentor to transfer or to make available all or a portion of those securities;

(ii) Each line on a ''deposit shipment control list'' or a ''withdrawal shipment control list'' submitted by a registered clearing agency; or

(iii) In the case of an outside registrar, each certificate to be countersigned.

(2) If a ''deposit shipment control list'' or ''withdrawal shipment control list'' contains both routine and non-routine transfer instructions, a registered transfer agent shall at its option:

(i) Retain all transfer instructions listed on the shipment control list and treat each line on the shipment control list as a routine item; or

(ii) Return promptly to the registered clearing agency a shipment control list line containing non-routine transfer instructions (together with a copy of the shipment control list, an explanation for the return instructions and all routine transfer instructions reflected on the same line) and treat each line on the shipment control list that reflects retained transfer instructions as a routine item.

(3) A *deposit shipment control list* means a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a registered clearing agency.

(4) A *withdrawal shipment control list* means a list of instructions (either in paper or electronic medium) that:

(i) Directs issuance of certificates in the names of persons or entities other than the registered clearing agency; and

(ii) Accompanies certificates to be cancelled which are registered in the nominee name of a registered clearing agency, or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a registered clearing agency under that clearing agency's transfer agent custody program

(b) The term *outside registrar* with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(c) An item is *made available* when

(1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presentor or a person designated by the presentor, or

(2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or

(3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

(d) The *transfer* of an item is accomplished when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or when, in accordance with the presentor's instructions, a transfer agent which holds securities registered in the name of the presentor completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor or, with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(e) The *turnaround* of an item is completed when transfer is accomplished or, when an outside registrar is involved, the transfer agent in accordance with the presentor's instructions completes all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(f) The term *process* means the accomplishing by an outside registrar of all acts necessary to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed.

(g) The *receipt* of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in section 3(a)(25) of the Act.

(h) A *business day* is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays, and legal holidays, or other holidays normally observed by the transfer agent.

(i) An item is *routine* if it does not (1) require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; (2) include a certificate as to which the transfer agent has received notice of a stop order, adverse claim, or any other restriction on transfer; (3) require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations, or opinions of counsel before transfer may be effected; (4) require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature, or other common and ordinary guarantees, or appropriate tax, or tax waivers; (5) involve a transfer in connection with a reorganization, tender offer, exchange, redemption, or liquidation; (6) include a warrant, right, or convertible security presented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change; (7) include a warrant, right, or convertible security presented for exercise or conversion; or (8) include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

(j) The term *depository-eligible securities issue* means an issue of securities that is eligible for deposit at any securities depository that is registered with the Commission under the Securities Exchange Act of 1934 as a clearing agency.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)); secs. 3, 17A and 23(a), 15 U.S.C. 78c, 78q–1 and 78w(a))

[42 FR 32411, June 24, 1977, as amended at 49 FR 40575, Oct. 17, 1984; 51 FR 36551, Oct. 14, 1986]

§ 240.17Ad–2 Turnaround, processing, and forwarding of items.

(a) Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month. For the purposes of this paragraph, items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(b) Every registered transfer agent acting as an outside registrar shall process at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of this section, ''items received'' shall not include any item enumerated in § 240.17Ad–1(i) (5), (6), (7), or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(c) Any registered transfer agent which fails to comply with paragraph (a) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph

(h) of this section. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turnaround in accordance with the requirements of paragraph (a) of this section, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(d) Any registered transfer agent which fails to comply with paragraph (b) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of items received for processing during the month, the number of items which the registered transfer agent failed to process in accordance with the requirements of paragraph (b) of this section, the percentage that such items represent of all items received during the month, the reasons for such failure and the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of items which as of the close of business on the last business day of the month have been in the transfer agent's possession for more than the time allowed for processing and have not been processed.

(e)(1) Except as provided in paragraph (e)(2) of this section, all routine items not turned around within three business days of receipt as required by paragraph (a) of this section and all items not processed within the periods required by paragraph (b) of this section shall be turned around promptly, and all nonroutine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(2) A transfer agent that is exempt under § 240.17Ad–4(b) and that has received 30 days notice of depository-eligibility of an issue for which it performs transfer agent functions shall turnaround ninety percent of all routine items received during a month within five business days of receipt. Such transfer agent shall devote diligent and continuous attention to the remaining ten percent of routine items and shall turnaround these items as soon as possible.

(f) A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(g) A registered transfer agent which receives processed items from an outside registrar shall have appropriate procedures to assure, and shall assure, that such items are made available promptly to the presentor.

(h) Any notice required by this section or § 240.17Ad–4 shall be filed as follows:

(1) Any notice required to be filed with the Commission shall be filed in triplicate with the principal office of the Commission in Washington, DC 20549 and, in the case of a registered transfer agent for which the Commission is the appropriate regulatory agency, an additional copy shall be filed with the Regional or District Office of the Commission for the region or district in which the registered transfer agent has its principal office for transfer agent activities.

(2) Any notice required to be filed with the Comptroller of the Currency shall be filed with the Office of the Comptroller of the Currency, Administrator of National Banks, Washington, DC 20219.

(3) Any notice required to be filed with the Board of Governors of the Federal Reserve System shall be filed with the Board of Governors of the Federal Reserve System, Washington, DC 20251 and with the Federal Reserve Bank of the district in which the registered transfer agent's principal banking operations are conducted.

(4) Any notice required to be filed with the Federal Deposit Insurance

Corporation shall be filed with the Federal Deposit Insurance Corporation, Washington, DC 20429.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)); secs. 3, 17A and 23(a), 15 U.S.C. 78c, 78q–1, and 78w(a))

[42 FR 32412, June 24, 1977, as amended at 49 FR 40575, Oct. 17, 1984; 59 FR 5946, Feb. 9, 1994]

§ 240.17Ad–3 Limitations on expansion.

(a) Any registered transfer agent which is required to file any notice pursuant to § 240.17Ad–2 (c) or (d) for each of three consecutive months shall not from the fifth business day after the end of the third such month until the end of the next following period of three successive months during which no such notices have been required:

(1) Initiate the performance of any transfer agent function or activity for an issue for which the transfer agent does not perform, or is not under agreement to perform, transfer agent functions prior to such fifth business day; and

(2) With respect to an issue for which transfer agent functions are being performed on such fifth business day, initiate for that issue the performance of an additional transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to such fifth business day.

(b) Any registered transfer agent which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of § 240.17Ad–2(a) or to process at least 75% of all items in accordance with the requirements of § 240.17Ad–2(b) shall be subject to the limitations imposed by paragraph (a) of this section and further shall, within twenty business days after the close of the second such month, send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice filed pursuant to § 240.17Ad–2 (c) or (d) with respect to the second such month.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32412, June 24, 1977]

§ 240.17Ad–4 Applicability of §§ 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11).

(a) Sections 240.17Ad–2, 240.17Ad–3 and 240.17Ad–6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(b)(1) For purposes of this section, *exempt transfer agent* means a transfer agent that during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing.

(2) Except as provided in paragraph (c) of this section, an exempt transfer agent that satisfies the requirements of paragraph (b)(3) shall be exempt from the provisions of §§ 240.17Ad–2 (a), (b), (c), (d) and (h), 240.17Ad–3 and 240.17Ad–6(a) (2) through (7) and (11).

(3) Within ten business days following the close of the sixth consecutive month described in paragraph (b)(1) of this section, an exempt transfer agent shall:

(i) If its appropriate regulatory agency is either the Commission or the Office of the Comptroller of the Currency, prepare and maintain in its possession a document certifying that the transfer agent qualifies as exempt under paragraph (b)(1) of this section; or

(ii) If its appropriate regulatory agency is either the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation, file with the appropriate regulatory agency a notice certifying that it qualifies as exempt under paragraph (b)(1) of this section.

(c) Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent no longer qualifies as such under paragraph (b)(1), within ten business days after the end of such month: (1) It shall prepare and maintain in its possession a document so stating, if subject to paragraph (b)(3)(i) of this section; or (2)

it shall file with its appropriate regulatory agency a notice to that effect, if subject to paragraph (b)(3)(ii) of this section. Thereafter, beginning with the first month following the month in which such document is required to be prepared or such notice is required to be filed, the registered transfer agent no longer shall be exempt under paragraph (b) of this section. Any registered transfer agent which has ceased to be an exempt transfer agent under this paragraph shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing sections for six consecutive months following the month in which it was required to prepare the document or prepare and file the notice specified in this paragraph.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))
[42 FR 32413, June 24, 1977, as amended at 48 FR 28246, June 21, 1983]

§ 240.17Ad–5 Written inquiries and requests.

(a) When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(b) When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket with respect to such security and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall, within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(c) When any person, or anyone acting under his authority, requests in writing that a transfer agent confirm possession as of a given date of a certificate presented by such person during the 30 days before the date the inquiry is received and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which the certificate was registered, every registered transfer agent shall, within ten business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available a written response to such person, or anyone acting under his authority, confirming or denying possession of such security as of such given date.

(d) When any person requests in writing a transcript of such person's account with respect to a particular issue, either as the account appears currently or as it appeared on a specific date not more than six months

prior to the date the registered transfer agent receives the request, every registered transfer agent shall, within twenty business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available to such person a transcript, ledger or statement of account in sufficient detail to permit reconstruction of such account as of the date for which the transcript was requested.

(e)(1) *Response to written inquiries concerning dividend and interest payments.* A registered transfer agent shall respond, within ten business days of receipt, to current claims that contain sufficient detail. A registered transfer agent shall respond, within twenty business days of receipt, to aged claims that contain sufficient detail. The response shall indicate in writing that the inquiry has been received, whether the claim requires further research and, if so, a reasonable estimate of how long that research may take. If no further research is required, the response shall indicate whether that claim is being or will be paid and, if not, the reason for not paying the claim. A registered transfer agent shall devote diligent attention to unresolved inquiries and shall resolve all inquiries as soon as possible.

(2) *Misdirected written inquiries concerning dividend and interest payments.* In the event that a transfer agent is not the dividend disbursing or interest paying agent for an issue that is the subject of a claim under this section, but performed those or any transfer agent services for that issue within the preceding three years, the transfer agent shall provide in writing to the inquirer, within ten business days of receipt of the inquiry, the name and address of the current dividend disbursing or interest paying agent. If the transfer agent did not perform those or other transfer agent services for the issue within the preceding three years, the transfer agent must respond to the inquiry and may respond by returning the inquiry with a statement that the transfer agent is not the current dividend disbursing or interest paying agent and that it does not know the name and address of the current dividend disbursing or interest paying agent.

(3) As used in this paragraph:

(i) A *current claim* means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred within the preceding six months.

(ii) An *aged claim* means a written inquiry concerning non-payment or incorrect payment of dividends or interest, the payment date for which occurred more than six months before the inquiry.

(iii) *Sufficient detail* means a written inquiry or request that identifies: The issue; the name(s) in which the securities are registered; the number of shares (or principal amount of debt securities or number of units for any other kind of security) involved; the approximate record date(s) or payment date(s) relating to the claim; and, with respect to registered broker-dealers, registered clearing agencies, or banks, certificate numbers.

(f) *Telephone response.* (1) A transfer agent may satisfy the written response requirements of this section by a telephone response to the inquirer if:

(i) The telephone response resolves that inquiry; and

(ii) The inquirer does not request a written response.

(2) When any person makes a written inquiry or request that would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii) of this section, a registered transfer agent may telephone the inquirer to obtain the necessary additional detail within the time periods specified in paragraph (e)(1) of this section. If the transfer agent does not receive the additional detail within ten business days, the transfer agent immediately shall make a written request for the additional information.

(g)(1) When any person makes a written inquiry or request which would qualify under paragraph (a), (b), (c), or (d) of this section except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent

shall confirm promptly receipt of the inquiry or request and respond to it as soon as possible.

(2) When any person makes a written inquiry or request which would qualify under paragraph (e) of this section except that it fails to provide sufficient detail as specified in paragraph (e)(3)(iii) of this section, a registered transfer agent must respond to the inquiry within the time periods specified in paragraph (e)(1) of this section. A registered transfer agent may respond to such an inquiry in accordance with paragraph (e)(1) of this section as though sufficient detail had been provided, or may return it to the inquirer, requesting the additional necessary details.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32413, June 24, 1977, as amended at 51 FR 5707, Feb. 18, 1986]

§ 240.17Ad–6 Recordkeeping.

(a) Every registered transfer agent shall make and keep current the following:

(1) A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presentor and, if applicable, from the outside registrar and (ii) made available to the presentor and, if applicable, to the outside registrar;

(2) A log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the month that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month;

(3) With respect to items for which the registered transfer agent acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (*1*) received from the presenting transfer agent and (*2*) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by § 240.17Ad–2(b); and

(C) The number of items not processed within the time required by § 240.17Ad–2(b);

(4) A record of calculations demonstrating the registered transfer agent's monitoring of its performance under § 240.17Ad–2 (a) and (b);

(5) A copy of any written notice filed pursuant to § 240.17Ad–2;

(6) Any written inquiry or request, including those not subject to the requirements of § 240.17Ad–5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request under § 240.17Ad–5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry;

(7) A log, journal, schedule or other record showing the number of inquiries subject to § 240.17Ad–5 (a), (b), (c) and (d) received during each month but not responded to within the required time

frames and the number of such inquiries pending as of the close of business on the last business day of each month;

(8) Any document, resolution, contract, appointment or other writing, any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer;

(9) Any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer;

(10) A copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

(11) Any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under § 240.17Ad–1(i) (5) or (8).

(b) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization.

(c) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presentor.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))

[42 FR 32413, June 24, 1977]

§ 240.17Ad–7 Record retention.

(a) The records required by § 240.17Ad–6(a)(1), (3)(i), (6) or (11) shall be maintained for a period of not less than two years, the first six months in an easily accessible place.

(b) The records required by § 240.17Ad–6(a) (2), (3)(ii), (4), (5) or (7) shall be maintained for a period of not less than two years, the first year in an easily accessible place.

(c) The records required by § 240.17Ad–6(a) (8), (9) and (10) and (b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(d) The records required by § 240.17Ad–6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(e) Every registered transfer agent shall maintain in an easily accessible place:

(1) All records required under § 240.17f–2(d) until at least three years after the termination of employment of those persons required by § 240.17f–2 to be fingerprinted; and

(2) All records required pursuant to § 240.17f–2(e).

(f) The records required to be maintained pursuant to § 240.17Ad–6 may be produced or reproduced on microfilm and be preserved in that form for the time required by § 240.17Ad–7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other representatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(g) If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of §§ 240.17Ad–6 and 240.17Ad–7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent if it is not the Commission; and

(2) The outside service bureau, recordkeeping service, or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad–7 to retain the records required to be made and kept current under § 240.17Ad–6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(i) The records required by § 240.17Ad–17(c) shall be maintained for a period of not less than three years, the first year in an easily accessible place.

(Secs. 2, 17, 17A and 23(a) (15 U.S.C. 78b, 78q, 78q–1 and 78w(a)))
[42 FR 32414, June 24, 1977, as amended at 47 FR 54063, Dec. 1, 1982; 62 FR 52237, Oct. 7, 1997]

§ 240.17Ad–8 Securities position listings.

(a) For purposes of this section, the term *securities position listing* means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

(Secs. 2, 17A, and 23(a) (15 U.S.C. 78b, 78q–1, and 78w(a)))
[44 FR 76777, Dec. 28, 1979]

§ 240.17Ad–9 Definitions.

As used in this section and §§ 240.17Ad–10, 240.17Ad–11, 240.17Ad–12 and 240.17Ad–13:

(a) *Certificate detail*, with respect to certificated securities, includes, at a minimum, all of the following, and with respect to uncertificated securities, includes items (2) through (8):

(1) The certificate number.

(2) The number of shares for equity securities or the principal dollar amount for debt securities;

(3) The securityholder's registration;

(4) The address of the registered securityholder;

(5) The issue date of the security;

(6) The cancellation date of the security;

(7) In the case of redeemable securities of investment companies, an appropriate description of each debit and credit (*i.e.*, designation indicating purchase, redemption, or transfer); and

(8) Any other identifying information about securities and securityholders the transfer agent reasonably deems essential to its recordkeeping system for the efficient and effective research of record differences.

(b) *Master securityholder file* is the official list of individual securityholder accounts. With respect to uncertificated securities of companies registered under the Investment Company Act of 1940, the master securityholder file may consist of multiple, but linked, automated files.

(c) A *subsidiary file* is any list or record of accounts, securityholders, or certificates that evidences debits or credits that have not been posted to the master securityholder file.

(d) A *control book* is the record or other document that shows the total number of shares (in the case of equity securities) or the principal dollar amount (in the case of debt securities) authorized and issued by the issuer.

(e) A *credit* is an addition of appropriate certificate detail to the master securityholder file.

(f) A *debit* is a cancellation of appropriate certificate detail from the master securityholder file.

(g) A *record difference* occurs when either:

(1) The total number of shares or total principal dollar amount of securities in the master securityholder file does not equal the number of shares or principal dollar amount in the control book; or

(2) The security transferred or redeemed contains certificate detail different from the certificate detail currently on the master securityholder file, which difference cannot be immediately resolved.

(h) A *recordkeeping transfer agent* is the registered transfer agent that maintains and updates the master securityholder file.

(i) A *co-transfer agent* is the registered transfer agent that transfers securities but does not maintain and update the master securityholder file.

(j) A *named transfer agent* is the registered transfer agent that is engaged by an issuer to perform transfer agent functions for an issue of securities but has engaged a service company to perform some or all of those functions.

(k) A *service company* is the registered transfer agent engaged by a named transfer agent to perform transfer agent functions for that named transfer agent.

(l) A *file* includes automated and manual records.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))
[48 FR 28246, June 21, 1983]

§ 240.17Ad–10 Prompt posting of certificate detail to master securityholder files, maintenance of accurate securityholder files, communications between co-transfer agents and recordkeeping transfer agents, maintenance of current control book, retention of certificate detail and "buy-in" of physical overissuance.

(a)(1) Every recordkeeping transfer agent shall promptly and accurately post to the master securityholder file debits and credits containing minimum and appropriate certificate detail representing every security transferred, purchased, redeemed or issued; *Provided, however,* That if a security transferred or redeemed contains certificate detail different from that currently posted to the master securityholder file, the credit shall be posted to the master securityholder file and the debit and related certificate detail shall be maintained in a subsidiary file until resolved. The recordkeeping transfer agent shall exercise diligent and continuous attention to resolve the resulting record difference and, once resolved, shall post to the master securityholder file the debit maintained in the subsidiary file. Postings of certificate detail shall remain on the master securityholder file until a debit to a securityholder acount is appropriate.

(2) As used in this paragraph, the term *promptly* means the following number of days after issuance, purchase, transfer, or redemption of a security:

(i) With respect to recordkeeping transfer agents (other than transfer agents that perform transfer agent functions with respect to redeemable securities issued by investment companies registered under section 8 of the Investment Company Act of 1940) that are exempt transfer agents under § 240.17Ad–4(b), 30 calendar days;

(ii) With respect to recordkeeping transfer agents (other than transfer agents that perform transfer agent functions with respect to redeemable securities issued by investment companies registered under section 8 of the Investment Company Act of 1940) that:

(A) Perform transfer agent functions solely for their own or their affiliated companies' securities issues, and

(B) Employ batch posting systems, ten business days; and

(iii) With respect to all other recordkeeping transfer agents, five business days;

Provided, however, That all securities transferred, purchased, redeemed or issued prior to record date, but posted subsequent thereto, shall be posted as of the record date.

(3) With respect to posting certificate detail from transfer journals received by the recordkeeping transfer agent from a co-transfer agent, the time frames set forth in paragraph (a)(2) shall commence upon receipt of those journals by the recordkeeping transfer agent.

(b) Every recordkeeping transfer agent shall maintain and keep current an accurate master securityholder file and subsidiary files. If such transfer agent has any record difference, its master securityholder file and subsidiary files must accurately represent all relevant debits and credits until the record difference is resolve. The recordkeeping transfer agent shall exercise diligent and continuous attention to resolve all record differences.

(c)(1) Every co-transfer agent shall dispatch or mail promptly to the recordkeeping transfer agent a record of debits and credits for every security transferred or issued. For the purposes of this paragraph, ''promptly'' means within two business days following transfer of each security, and, with respect to transfers occurring within five business days of record date, daily.

(2) Within three business days following the end of each month, every co-transfer agent shall mail to the recordkeeping transfer agent for each issue of securities for which it acts as a co-transfer agent, a report setting forth:

(i) The principal dollar amount of debt securities or the number of shares and related market value of equity securities comprising any buy-in executed by the co-transfer agent during the preceding month pursuant to paragraph (g) of this section; and

(ii) The reason for the buy-in.

(d) Every co-transfer agent shall respond promptly to all inquiries from the recordkeeping transfer agent regarding records required to be dispatched or mailed by the co-transfer agent pursuant to §240.17Ad–10(c). For the purposes of this paragraph, ''promptly'' means within five business days of receipt of an inquiry from a recordkeeping transfer agent.

(e) Every recordkeeping transfer agent shall maintain and keep current an accurate control book for each issue of securities. A change in the control book shall not be made except upon written authorization from a duly authorized agent of the issuer.

(f) Every recordkeeping transfer agent shall retain a record of all certificate detail deleted from the master securityholder file for a period of six years from the date of deletion. In lieu of maintaining a hard copy, a recordkeeping transfer agent may comply with this paragraph by complying with §240.17Ad–7(f) or §240.17Ad–7(g).

(g)(1) A registered transfer agent, in the event of any actual physical overissuance that such transfer agent caused and of which it has knowledge, shall, within 60 days of the discovery of such overissuance, buy in securities equal to the number of shares in the case of equity securities or the principal dollar amount in the case of debt securities. During the sixty-day period, the registered transfer agent shall devote diligent attention to resolving the overissuance and recovering the certificates. This paragraph requires a buy-in only by the transfer agent that erroneously issued the certificate(s) giving rise to the physical overissuance, and applies only to those physical overissuances created by transfers or issuances subsequent to September 30, 1983.

(2) If a transfer agent obtains a letter from the party holding the overissued certificates that confirms that the overissued certificate(s) will be returned to the transfer agent not later than thirty days after the expiration of the sixty-day period, the transfer agent need not buy in securities by the sixtieth day. If, however, the certificate(s) are not returned to the transfer agent within the additional thirty-day period, the transfer agent immediately must execute the buy-in in accordance with paragraph (g)(1) of this section.

(3) If the certificates involved are covered by a surety bond indemnifying

the transfer agent for all expenses incurred as a result of actual overissuance, the transfer agent need not buy in the securities. The transfer agent, however, shall devote diligent attention to resolving the overissuance and recovering the certificates.

(4) For purposes of this paragraph, *discovery of the overissuance* occurs when the transfer agent identifies the erroneously issued certificate(s) and the registered securityholder(s).

(h) Subsequent to the effective date of this section, registered transfer agents that:

(1) Assume the maintenance and updating of master securityholder files from predecessor transfer agents,

(2) Establish a new master securityholder file for a particular issue, or

(3) Convert from manual to automated systems,

must carry over any existing certificate detail required by this section on the master securityholder file.

A recordkeeping transfer agent shall not be required to add certificate detail to the master securityholder file respecting certificates issued prior to the effective date of this section.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28246, June 21, 1983, as amended at 51 FR 5708, Feb. 18, 1986]

240.17Ad–11 Reports regarding aged record differences, buy-ins and failure to post certificate detail to master securityholder and subsidiary files.

(a) *Definitions.* (1) *Issuer capitalization* means the market value of the issuer's authorized and outstanding equity securities or, with respect to a municipal securities issuer, the market value of all debt issues for which the transfer agent performs recordkeeping functions on behalf of that issuer, determined by reference to the control book and current market prices.

(2) An *aged record difference* is a record difference that has existed for more than thirty calendar days.

(b) *Reports to Issuers.* (1) Within ten business days following the end of each month, every recordkeeping transfer agent shall report the information specified in paragraph (d)(1) of this section to the persons specified in paragraph (b)(3) of this section, when the aggregate market value of aged record differences in all equity securities issues or debt securities issues maintained on behalf of a particular issuer exceeds the thresholds set forth in the table below.

Issuer capitalization	Aggregate market value of aged record differences exceeds	
	For equity securities	For debt securities
(1) $5 million or less	$50,000	$100,000
(2) Greater than $5 million but less than $50 million	250,000	500,000
(3) Greater than $50 million but less than $150 million	500,000	1,000,000
(4) Greater than $150 million	1,000,000	2,000,000

(2) Within ten business days following the end of each month (or within ten days thereafter in the case of a named transfer agent that receives a report from a service company pursuant to paragraph (b)(3)(i)(C)), every recordkeeping transfer agent shall report the information specified in paragraph (d)(2) of this section to the persons specified in paragraph (b)(3) of this section, with respect to each issue of securities for which it acts as recordkeeping transfer agent, concerning any securities bought-in pursuant to §240.17Ad–10(g) or reported as bought-in pursuant to §240.17Ad–10(c) during the preceding month.

(3) The report shall be sent:

(i) By every recordkeeping transfer agent (other than a recordkeeping transfer agent that performs transfer agent functions solely for its own securities):

(A) To the official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists or for which the buy-in occurred;

(B) With respect to an issue of municipal securities, to the chief financial officer of the issuer of the securities for which the aged record difference exists or for which the buy-in occurred; or

(C) If it acts as a service company, to the named transfer agent; and

(ii) By every named transfer agent that is engaged by an issuer to maintain and update the master securityholder file:

(A) To the official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists or for which the buy-in occurred; or

(B) With respect to an issue of municipal securities, to the chief financial officer of the issuer of the securities for which the aged record difference exists or for which the buy-in occurred.

(c) *Reports to appropriate regulatory agencies* (1) Within ten business days following the end of each calendar quarter, every recordkeeping transfer agent shall report the information specified in paragraph (d)(1) of this section to its appropriate regulatory agency in accordance with §240.17Ad–2(h), when the aggregate market value of aged record differences for all issues for which it performs recordkeeping functions exceeds the thresholds specified below:

(i) $300,000 if it is a recordkeeping transfer agent for 5 or fewer issues;

(ii) $500,000 for 6–24 issues;

(iii) $800,000 for 25–49 issues;

(iv) $1 million for 50–74 issues;

(v) $1.2 million for 75–99 issues;

(vi) $1.4 million for 100–499 issues;

(vii) $1.6 million for 500–999 issues;

(viii) $2.6 million for 1,000–1,999 issues; and

(ix) An additional $1 million for each additional 1,000 issues.

(2) Within ten business days following the end of each calendar quarter, every recordkeeping transfer agent shall report the information specified in paragraph (d)(2) of this section to its appropriate regulatory agency in accordance with §240.17Ad–2(h), concerning buy-ins of all issues for which it acts as recordkeeping transfer agent, when the aggregate market value of all buy-ins executed pursuant to §240.17Ad–10(g) during that calendar quarter exceeds $100,000.

(3) When the recordkeeping transfer agent has any debits or credits for securities transferred, purchased, redeemed or issued that are unposted to the master securityholder and/or subsidiary files for more than five business days after debits and credits are required to be posted to the master securityholder file or subsidiary files pursuant to §240.17Ad–10, it shall immediately report such fact to its appropriate regulatory agency in accordance with §240.17Ad–2(h) and shall state in that report what steps have been, and are being, taken to correct the situation.

(d) *Content of reports.* (1) Each report pursuant to paragraphs (b)(1) and (c)(1) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount and related market value of debt securities or the number of shares and related market value of equity securities comprising the aged record difference (including information concerning aged record differences existing as of the effective date of this section);

(ii) The reasons for the aged record difference; and

(iii) The steps being taken or to be taken to resolve the aged record difference.

(2) Each report pursuant to paragraphs (b)(2) and (c)(2) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount of debt securities and related market value or the number of shares and related market value of equity securities comprising any buy-in executed pursuant to §240.17Ad–10(g);

(ii) The party that executed the buy-in; and

(iii) The reason for the buy-in.

(e) For purposes of this section, the market value of an issue shall be determined as of the last business day on which market value information is available during the reporting period.

(f) A copy of any report required under this section shall be retained by the reporting transfer agent for a period of not less than three years, the first year in an easily accessible place.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28247, June 21, 1983]

§240.17Ad–12 Safeguarding of funds and securities.

(a) Any registered transfer agent that has custody or possession of any funds or securities related to its transfer agent activities shall assure that:

(1) All such securities are held in safekeeping and are handled, in light of

all facts and circumstances, in a manner reasonably free from risk of destruction, theft or other loss; and

(2) All such funds are protected, in light of all facts and circumstances, against misuse. In evaluating which particular safeguards and procedures must be employed, the cost of the various safeguards and procedures as well as the nature and degree of potential financial exposure are two relevant factors.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))
[48 FR 28248, June 21, 1983]

§ 240.17Ad–13 Annual study and evaluation of internal accounting control.

(a) *Accountant's report.* Every registered transfer agent, except as provided in paragraph (d) of this section, shall file annually with the Commission and the transfer agent's appropriate regulatory agency in accordance with § 240.17Ad–2(h), a report specified in paragraph (a)(1) of this section prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That report shall be filed within 90 calendar days of the date of the study and evaluation set forth in paragraph (a)(1).

(1) The accountant's report shall:

(i) State whether the study and evaluation was made in accordance with generally accepted auditing standards using the criteria set forth in paragraph (a)(3) of this section;

(ii) Describe any material inadequacies found to exist as of the date of the study and evaluation and any corrective action taken, or if no material inadequacy existed, the report shall so state;

(iii) Comment on the current status of any material inadequacy described in the immediately preceding report; and

(iv) Indicate the date of the study and evaluation.

(2) The study and evaluation of the transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds shall cover the following:

(i) Transferring securities related to changes of ownership (*i.e.*, cancellation of certificates or other instruments evidencing prior ownership and issuance of certificates or instruments evidencing current ownership);

(ii) Registering changes of ownership on the books and records of the issuer;

(iii) Transferring record ownership as a result of corporate actions (*e.g.*, issuance, retirement, redemption, liquidation, conversion, exchange, tender offer or other types of reorganization);

(iv) Dividend disbursement or interest paying-agent activities;

(v) Administering dividend reinvestment programs; and

(vi) Distributing statements respecting initial offerings of securities.

(3) For purposes of this report, the objectives of a transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds should be to provide reasonable, but not absolute, assurance that securities and funds are safeguarded against loss from unauthorized use or disposition and that transfer agent activities are performed promptly and accurately. For purposes of this report, a material inadequacy is a condition for which the independent accountant believes that the prescribed procedures or the degree of compliance with them do not reduce to a relatively low level the risk that errors or irregularities, in amounts that would have a significant adverse effect on the transfer agent's ability promptly and accurately to transfer record ownership and safeguard related securities and funds, would occur or not be detected within a timely period by employees in the normal coruse of performing their assigned functions. Occurrence of errors or irregularities more frequently than in isolated instances may be evidence that the system has a material inadequacy. A significant adverse effect on a transfer agent's ability promptly and accurately to transfer record ownership and safeguard related securities and funds could result from any condition or conditions that individually, or taken as a whole, would reasonably be expected to:

(i) Inhibit the transfer agent from promptly and accurately discharging its responsibilities under its contractual agreement with the issuer;

(ii) Result in material financial loss to the transfer agent; or

(iii) Result in a violation of §240.17Ad–2, 17Ad–10 or 17Ad–12(a).

(b) *Notice of corrective action.* If the accountant's report describes any material inadequacy, the transfer agent shall, within sixty calendar days after receipt of the report, notify the Commission and its appropriate regulatory agency in writing regarding the corrective action taken or proposed to be taken.

(c) *Record retention.* The accountant's report and any documents required by paragraph (b) of this section shall be maintained by the transfer agent for at least three years, the first year in an easily accessible place.

(d) *Exemptions.* The requirements of §240.17Ad–13 shall not apply to registered transfer agents that qualify for exemptions pursuant to this paragraph, 17Ad–13(d).

(1) A registered transfer agent shall be exempt if it performs transfer agent functions solely for:

(i) Its own securities;

(ii) Securities issued by a subsidiary in which it owns 51% or more of the subsidiary's capital stock; and

(iii) Securities issued by another corporation that owns 51% or more of the capital stock of the registered transfer agent.

(2) A registered transfer agent shall be exempt if it:

(i) Is an exempt transfer agent pursuant to §240.17AD–4(b); and

(ii) In the case of a transfer agent that performs transfer agent functions for redeemable securities issued by companies registered under section 8 of the Investment Company Act of 1940, maintains master securityholder files consisting of fewer than 1000 shareholder accounts, in the aggregate, for each of such issues for which it performs transfer agent functions.

(3) A registered transfer agent shall be exempt if it is a bank or financial institution subject to regulation by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, provided that it is not notified to the contrary by its appropriate regulatory agency and provided that a report similar in scope to the requirements of §240.17Ad–13(a) is prepared for either the bank's board of directors or an audit committee of the board of directors.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q–1(d) and 78w(a))

[48 FR 28248, June 21, 1983]

§240.17Ad–14 Tender agents.

(a) *Establishing book-entry depository accounts.* When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depositary, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation and for purposes of allowing tender agents to return to depository participants by book-entry movement securities withdrawn from the offer.

(b) *Exclusions.* The rule shall not apply to tender or exchange offers (1) that are made for a class of securities of a subject company that has fewer than (i) 500 security holders of record for that class, or (ii) 500,000 shares of that class outstanding; or (2) that are made exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this rule, (1) the terms *subject company*, *business day*, *security holders*, and *transmittal letter* shall be given the meanings

provided in § 240.14d–1(b); (2) unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d–2; (3) the term *bidder* shall mean any person who makes a tender or exchange offer or on whose behalf a tender or exchange offer is made; (4) a *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Securities Exchange Act of 1934 to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository; and (5) the term *depositary* refers to that agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer.

(d) *Exemptions*. The Commission may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any registered transfer agent, tender or exchange offer, or class of tender or exchange offers, if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of impediments to a national clearance and settlement system.

(Secs. 2, 11A(a)(1)(B), 14(d)(4), 15(c)(3), 15(c)(6), 17A(a), 17A(d)(1), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78k–1(a)(1)(B), 78n(d)(4), 78o(c)(3), 78o(c)(6), 78q–1(a), 78q–1(d)(1) and 78w(a)))
[49 FR 3071, Jan. 25, 1984]

§ 240.17Ad–15 Signature guarantees.

(a) *Definitions*. For purposes of this section, the following terms shall mean:

(1) *Act* means the Securities Exchange Act of 1934;

(2) *Eligible Guarantor Institution* means:

(i) Banks (as that term is defined in section 3(a) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)]);

(ii) Brokers, dealers municipal securities dealers, municipal securities brokers, government securities dealers, and government securities brokers, as those terms are defined under the Act;

(iii) Credit unions (as that term is defined in Section 19 (b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]);

(iv) National securities exchanges, registered securities associations, clearing agencies, as those terms are used under the Act; and

(v) Savings associations (as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]).

(3) *Guarantee* means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security or instructions concerning transfer of securities.

(b) *Acceptance of signature guarantees*. A registered transfer agent shall not, directly or indirectly, engage in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution or a class of institutions.

(c) *Transfer agent's standards and procedures*. Every registered transfer agent shall establish:

(1) Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and

(2) Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions. Such standards and procedures shall not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type specified in paragraphs (a)(2)(i)–(a)(2)(v) of this section.

(d) *Rejection of items presented for transfer*. (1) No registered transfer agent shall reject a request for transfer

of a certificated or uncertificated security because the certificate, instruction, or documents accompanying the certificate or instruction includes an unacceptable guarantee, unless the transfer agent determines that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

(2) A registered transfer agent shall notify the guarantor and the presentor of the rejection and the reasons for the rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. Notification to the presentor may be accomplished by making the rejected item available to the presentor. Notification to the guarantor may be accomplished by telephone, facsimile, or ordinary mail.

(e) *Record retention.* (1) Every registered transfer agent shall maintain a copy of the standards and procedures specified in paragraph (c) of this section in an easily accessible place.

(2) Every registered transfer agent shall make available a copy of the standards and procedures specified in paragraph (c) of this section to any person requesting a copy of such standards and procedures. The registered transfer agent shall respond within three days of a request for such standards and procedures by sending the requesting party a copy of the requested transfer agent's standards and procedures.

(3) Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

(f) *Exclusions.* Nothing in this section shall prohibit a transfer agent from rejecting a request for transfer of a certificated or uncertificated security:

(1) For reasons unrelated to acceptance of the guarantor institution;

(2) Because the person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution; or

(3) Because the eligible guarantor institution of a type specified in paragraph (a)(2)(ii) of this section is neither a member of a clearing corporation nor maintains net capital of at least $100,000.

(g) *Signature guarantee program.* (1) A registered transfer agent shall be deemed to comply with paragraph (c) of this section if its standards and procedures include:

(i) Rejecting a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program; or

(ii) Accepting a guarantee from an eligible guarantor institution who, at the time of issuing the guarantee, is a member of or participant in a signature guarantee program.

(2) Within the first six months after revising its standards and procedures to include a signature guarantee program, the transfer agent shall not reject a request for transfer because the guarantor is neither a member of nor participant in a signature guarantee program, unless the transfer agent has given that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or nonmember guarantors.

(3) For purposes of paragraph (g) of this section, the term ''signature guarantee program,'' means a program, the terms and conditions of which the transfer agent reasonably determines:

(i) To facilitate the equitable treatment of eligible guarantor institutions; and

(ii) To promote the prompt, accurate and safe transfer of securities by providing:

(A) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and

(B) Adequate protection to the transfer agent against the issuance of unauthorized guarantees.

[57 FR 1095, Jan. 10, 1992]

§ 240.17Ad–16 Notice of assumption or termination of transfer agent services.

(a) A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities, including a registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities because of a merger or acquisition by another transfer agent, shall send written notice of such termination to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such termination or the day the transfer agent is notified of the effective date of such termination. Such notice shall include the full name, address, telephone number, and Financial Industry Number Standard (''FINS'') number of the transfer agent ceasing to perform the transfer agent services for the issuer; the issuer's name; the issue or issues handled and their CUSIP number(s); and if known, the name, address, and telephone number of the transfer agent that thereafter will provide transfer services for the issuer. If no successor transfer agent is known, the notice shall include the name and address of a contact person at the issuer.

(b) A registered transfer agent that changes its name or address or that assumes transfer agent services on behalf of an issuer of securities, including a transfer agent that assumes transfer agent services on behalf of an issuer of securities because of a merger or acquisition of another transfer agent, shall send written notice of such to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such change in status or the day the transfer agent is notified of the effective date of such change in status. A notice regarding a change of name or address shall include the full name, address, telephone number, and FINS number of the transfer agent and the location where certificates are received for transfer. A notice regarding the assumption of transfer agent services on behalf of an issuer of securities, including assumption of transfer agent services resulting from the merger or acquisition of another transfer agent, shall include the full name, address, telephone number, and FINS number of the transfer agent assuming the transfer agent services for the issuer; the issuer's name; and the issue or issues handled and their CUSIP number(s).

(c) The notice described in paragraphs (a) and (b) of this section shall be delivered by means of secure communication. For purposes of this section, secure communication shall include telegraph, overnight mail, facsimile, or any other form of secure communication.

(d)(1) The appropriate qualified registered securities depository that receives notices pursuant to paragraphs (a) and (b) of this section shall deliver within 24 hours a copy of such notices to each qualified registered securities depository. A qualified registered securities depository that receives notice pursuant to this section shall deliver a copy of such notices to its own participants within 24 hours.

(2) A qualified registered securities depository may comply with its notice requirements under paragraph (d)(1) of this section by making available the notice of all material information from the notice within 24 hours in a manner set forth in the rules of the qualified registered securities depository.

(3) A qualified registered securities depository shall maintain such notices for a period of not less than two years, the first six months in an easily accessible place. Such notice shall be made available to the Commission or other persons as the Commission may designate by order.

(4) A registered transfer agent that provides notice pursuant to paragraphs (a) and (b) of this section shall maintain such notice for a period of not less than two years, the first six months in an easily accessible place.

(e) For purposes of this section, a *qualified registered securities depository* shall mean a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) that performs clearing agency functions as described in section 3(a)(23)(A)(i) of the Act (15 U.S.C. 78c(a)(23)(A)(i)) and that has rules and

procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to this section.

(f) For purposes of this section, an *appropriate qualified registered securities depository* shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date.

[59 FR 63661, Dec. 8, 1994]

§240.17Ad–17 Transfer agents' obligation to search for lost securityholders.

(a)(1) Every recordkeeping transfer agent whose master securityholder file includes accounts of lost securityholders shall exercise reasonable care to ascertain the correct addresses of such securityholders. In exercising reasonable care to ascertain for its master securityholder file such lost securityholders' current addresses, each recordkeeping transfer agent shall conduct two data base searches using at least one information data base service. The transfer agent shall search by taxpayer identification number or by name if a search based on taxpayer identification number is not reasonably likely to locate the securityholder. Such data base searches must be conducted without charge to a lost securityholder and with the following frequency:

(i) Between three and twelve months of such securityholder becoming a lost securityholder and

(ii) Between six and twelve months after the transfer agent's first search for such lost securityholder.

(2) A transfer agent may not use a search method or service to establish contact with lost securityholders that results in a charge to a lost securityholder prior to completing the searches set forth in paragraph (a)(1) of this section.

(3) A transfer agent need not conduct the searches set forth in paragraph (a)(1) of this section for a lost securityholder if:

(i) It has received documentation that such securityholder is deceased or

(ii) The aggregate value of assets listed in the lost securityholder and all securities owned by the lost securityholder as recorded in the transfer agent's master securityholder files, is less than $25; or

(iii) The securityholder is not a natural person.

(b) For purposes of this section:

(1) *Information data base service* means either:

(i) Any automated data base service that contains addresses from the entire United States geographic area, contains the names of at least 50% of the United States geographic area, contains the names of at least 50% of the United States adult population, is indexed by taxpayer identification number or name, and is updated at least four times a year; or

(ii) Any service or combination of services which produces results comparable to those of the service described in paragraph (b)(1)(i) of this section in locating lost securityholders.

(2) *Lost securityholder* means a securityholder:

(i) To whom an item of correspondence that was sent to the securityholder at the address contained in the transfer agent's master securityholder file has been returned as undeliverable; provided, however, that if such item is re-sent within one month to the lost securityholder, the transfer agent may deem the securityholder to be a lost securityholder as of the day the resent item is returned as undeliverable; and

(ii) For whom the transfer agent has not received information regarding the securityholder's new address.

(c) Every recordkeeping transfer agent shall maintain records to demonstrate compliance with the requirements set forth in this section which shall include written procedures which describe the transfer agent's methodology for complying with this section.

[62 FR 52237, Oct. 7, 1997; 63 FR 1884, Jan. 12, 1998]

SUSPENSION AND EXPULSION OF EXCHANGE MEMBERS

§ 240.19a3–1 [Reserved]

§ 240.19b–3 [Reserved]

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

(a) Filings with respect to proposed rule changes by a self-regulatory organization shall be made on Form 19b–4.

(b) The term *stated policy, practice, or interpretation* means:

(1) Any material aspect of the operation of the facilities of the self-regulatory organization; or

(2) Any statement made generally available to the membership of, to all participants in, or to persons having or seeking access (including, in the case of national securities exchanges or registered securities associations, through a member) to facilities of, the self-regulatory organization (''specified persons''), or to a group or category of specified persons, that establishes or changes any standard, limit, or guideline with respect to:

(i) The rights, obligations, or privileges of specified persons or, in the case of national securities exchanges or registered securities associations, persons associated with specified persons; or

(ii) The meaning, administration, or enforcement of an existing rule.

(c) A stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization.

(d) Regardless of whether it is made generally available, an interpretation of an existing rule of the self-regulatory organization shall be deemed to be a proposed rule change if (1) it is approved or ratified by the governing body of the self-regulatory organization and (2) it is not reasonably and fairly implied by that rule.

(e) A proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), if properly designated by the self-regulatory organization as:

(1) Constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule;

(2) Establishing or changing a due, fee, or other charge;

(3) Concerned solely with the administration of the self-regulatory organization;

(4) Effecting a change in an existing service of a registered clearing agency that:

(i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible; and

(ii) Does not significantly affect the respective rights or obligations of the clearing agency or persons using the service;

(5) Effecting a change in an existing order-entry or trading system of a self-regulatory organization that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not have the effect of limiting the access to or availability of the system; or

(6) Effecting a change that:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) By its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

(f) After instituting a proceeding to determine whether a proposed rule change should be disapproved, the Commission will afford the self-regulatory organization and interested persons an opportunity to submit additional written data, views, and arguments and may afford, in the discretion of the Commission, an opportunity to make oral presentations.

(g) Notice of orders issued pursuant to section 19(b) of the Act will be given by prompt publication thereof, together with a statement of written reasons therefor.

(h) Self-regulatory organizations shall retain at their principal place of business a file, available to interested persons for public inspection and copying, of all filings made pursuant to this section and all correspondence and other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning any such filing, whether such correspondence and communications are received or prepared before or after the filing of the proposed rule change.

[45 FR 73914, Nov. 7, 1980, as amended at 59 FR 66701, Dec. 28, 1994]

§ 240.19c–1 Governing certain off-board agency transactions by members of national securities exchanges.

The rules of each national securities exchange shall provide as follows:

No rule, stated policy, or practice of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of any member acting as agent to effect any transaction otherwise than on this exchange with another person (except when such member also is acting as agent for such other person in such transaction), in any equity security listed on this exchange or to which unlisted trading privileges on this exchange have been extended.

(Secs. 2, 3, 6, 11, 17, 19, 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 891, 897, 898, 901, as amended by secs. 2, 3, 6, 14, 16, 18, Pub. L. 94–29, 89 Stat. 97, 104, 110, 137, 146, 155 (15 U.S.C. 78b, 78c, 78f, 78k, 78q, 78s, 78w, as amended by Pub. L. 94–29 (June 4, 1975)); sec. 7 Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1))

[43 FR 1328, Jan. 9, 1978]

§ 240.19c–3 Governing off-board trading by members of national securities exchanges.

The rules of each national securities exchange shall provide as follows:

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any reported security listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended (other than a put option or call option issued by the Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule,

(1) The term *Act* shall mean the Securities Exchange Act of 1934, as amended.

(2) The term *exchange* shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act.

(3) The term *covered security* shall mean (i) Any equity security or class of equity securities which

(A) Was listed and registered on an exchange on April 26, 1979, and

(B) Remains listed and registered on at least one exchange continuously thereafter;

(ii) Any equity security or class of equity securities which

(A) Was traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by section 12(f)(1)(A) of the Act, and

(B) Remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter; and

(iii) Any equity security or class of equity securities which

(A) Is issued in connection with a statutory merger, consolidation or similar plan or reorganization (including a reincorporation or change of

domicile) in exchange for an equity security or class of equity securities described in paragraph (b)(3)(i) or (ii) of this rule,

(B) Is listed and registered on an exchange after April 26, 1979, and

(C) Remains listed and registered on at least one exchange continuously thereafter.

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term *transaction report* shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term *effective transaction reporting plan* shall mean any plan approved by the Commission pursuant to § 240.11Aa3–1 (Rule 11Aa3–1 under the Act) for collecting, processing and making available transaction reports with respect to transactions in an equity security or class of equity securities.

[45 FR 41134, June 18, 1980]

§ 240.19c–4 Governing certain listing or authorization determinations by national securities exchanges and associations.

(a) The rules of each exchange shall provide as follows: No rule, stated policy, practice, or interpretation of this exchange shall permit the listing, or the continuance of the listing, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(b) The rules of each association shall provide as follows: No rule, stated policy, practice, or interpretation of this association shall permit the authorization for quotation and/or transaction reporting through an automated interdealer quotation system (''authorization''), or the continuance of authorization, of any common stock or other equity security of a domestic issuer, if the issuer of such security issues any class of security, or takes other corporate action, with the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to section 12 of the Act.

(c) For the purposes of paragraphs (a) and (b) of this section, the following shall be presumed to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(1) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the number of shares held by such beneficial or record holder;

(2) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(3) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of the common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock, in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(d) For the purpose of paragraphs (a) and (b) of this section, the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(1) The issuance of securities pursuant to an initial registered public offering;

(2) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer;

(3) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer.

(4) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporation's independent shareholders.

(e) *Definitions*. The following terms shall have the following meanings for purposes of this section, and the rules of each exchange and association shall include such definitions for the purposes of the prohibition in paragraphs (a) and (b), respectively, of this section:

(1) The term *Act* shall mean the Securities Exchange Act of 1934, as amended.

(2) The term *common stock* shall include any security of an issuer designated as common stock and any security of an issuer, however designated, which, by statute or by its terms, is a common stock (*e.g.*, a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote).

(3) The term *equity security* shall include any equity security defined as such pursuant to Rule 3a11–1 under the Act (17 CFR 240.3a11–1).

(4) The term *domestic issuer* shall mean an issuer that is not a ''foreign private issuer'' as defined in Rule 3b–4 under the Act (17 CFR 240.3b–4).

(5) The term *security* shall include any security defined as such pursuant to section 3(a)(10) of the Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligations to the holders of that class of securities.

(6) The term *exchange* shall mean a national securities exchange, registered as such with the Securities and Exchange Commission pursuant to section 6 of the Act, which makes transaction reports available pursuant to Rule 11Aa3–1 under the Act (17 CFR 240.11Aa3–1); and

(7) The term *association* shall mean a national securities association registered as such with the Securities and Exchange Commission pursuant to section 15A of the Act.

(f) An exchange or association may adopt a rule, stated policy, practice, or interpretation, subject to the procedures specified by section 19(b) of the Act, specifying what types of securities issuances and other corporate actions are covered by, or excluded from, the prohibition in paragraphs (a) and (b) of this section, respectively, if such rule, stated policy, practice, or interpretation is consistent with the protection of investors and the public interest, and otherwise in furtherance of the purposes of the Act and this section.

[53 FR 26394, July 12, 1988]

240.19c–5 Governing the multiple listing of options on national securities exchanges.

(a) The rules of each national securities exchange that provides a trading market in standardized put or call options shall provide as follows:

(1) On and after January 22, 1990, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class first listed on an exchange on or after January 22, 1990, because that options class is listed on another options exchange.

(2) During the period from January 22, 1990, to January 21, 1991, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability

of this exchange to list up to ten classes of standardized stock options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990. These ten classes shall be in addition to any option on an exchange-listed stock trading on this exchange that was traded on more than one options exchange before January 22, 1990.

(3) On and after January 21, 1991, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class because that options class is listed on another options exchange.

(b) For purposes of paragraph (a)(2) of this Rule, if any options class is delisted from an options exchange as a result of a merger of the equity security underlying the option or a failure of the underlying security to satisfy that exchange's options listing standards, then the exchange is permitted to select a replacement option from among those standardized options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990.

(c) For purposes of this Rule, the term *exchange* shall mean a national securities exchange, registered as such with the Commission pursuant to Section 6 of the Securities Exchange Act of 1934, as amended.

(d) For purposes of this Rule, the term *standardized option* shall have the same meaning as that term is defined in Rule 9b–1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b–1.

(e) For purposes of this Rule, the term *options class* shall have the same meaning as that term is defined in Rule 9b–1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b–1.

[54 FR 23976, June 5, 1989]

§ 240.19d–1 Notices by self-regulatory organizations of final disciplinary actions, denials, bars, or limitations respecting membership, association, participation, or access to services, and summary suspensions.

(a) *General.* If any self-regulatory organization for which the Commission is the appropriate regulatory agency takes any action described in this rule to which the person affected thereby has consented and such action:

(1) Conditions or limits membership or participation in, association with a member of, or access to services offered by, such organization or a member thereof and

(2) Is based upon a statutory disqualification defined in section 3(a)(39) of the Act, notice thereof shall be filed under Rule 19h–1 and not under this rule.

(b) The notice requirement of section 19(d)(1) of the Act, concerning an action subject to such section taken by a self-regulatory organization for which the Commission is the appropriate regulatory agency, shall be satisfied by any notice with respect to such action (including a notice filed pursuant to this rule) which contains the information required in the statement supporting the organization's determination required by section 6(d) (1) or (2), section 15A(h) (1) or (2), or section 17A(b)(5) (A) or (B) of the Act, as appropriate.

(c)(1) Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final disciplinary action with respect to any person shall promptly file a notice thereof with the Commission in accordance with paragraph (d) of this section. For the purposes of this rule, a ''final disciplinary action'' shall mean the imposition of any final disciplinary sanction pursuant to section 6(b)(6), 15A(b)(7), or 17A(b)(3)(G) of the Act or other action of a self-regulatory organization which, after notice and opportunity for hearing, results in any final disposition of charges of:

(i) One or more violations of—

(A) The rules of such organization;

(B) The provisions of the Act or rules thereunder; or

(C) In the case of a municipal securities broker or dealer, the rules of the Municipal Securities Rulemaking Board;

(ii) Acts or practices constituting a statutory disqualification of a type defined in subparagraph (D) or (E) (except prior convictions) of section 3(a)(39) of the Act; or

(iii) In the case of a proceeding by a national securities exhange or registered securities association based on section 6(c)(3)(A)(ii), 6(c)(3)(B)(ii), 15A(g)(3)(A)(ii), or 15A(g)(3)(B)(ii) of the Act, acts or practices inconsistent with just and equitable principles of trade.

Provided, however, That in the case of a disciplinary action in which a national securities exchange imposes a fine not exceeding $1000 or suspends floor privileges of a clerical employee for not more than five days for violation of any of its regulations concerning personal decorum on a trading floor, the disposition shall not be considered ''final'' for purposes of this paragraph if the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the exchange with respect to the matter. *Provided further,* That this exemption from the notice requirement of this paragraph shall not be available where a decorum sanction is imposed at, or results from, a hearing on the matter.

(2) Any disciplinary action, other than a decorum sanction not deemed ''final'' under paragraph (c)(1) of this section, taken by a seld-regulatory organization for which the Commission is the appropriate regulatory agency against any person for violation of a rule of the self-regulatory organization which has been designated as a minor rule violation pursuant to a plan or any amendment thereto filed with and declared effective by the Commission under this paragraph, shall not be considered ''final'' for purposes of paragraph (c)(1) of this section if the sanction imposed consists of a fine not exceeding $2500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the self-regulatory organization with resepect to the matter. After appropriate notice of the terms of substance of the filing or a description of the subjects and issues involved and opportunity for interested persons to submit written comment, the Commission may, by order, declare such plan or amendment effective if it finds that such plan or amendment is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the plan (including abbreviated reporting of selected minor rule violations) and to the period of its effectiveness which it deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

(d) *Contents of notice required by paragraph (c)(1).* Any notice filed pursuant to paragraph (c)(1) of this section, shall consist of the following, as appropriate:

(1) The name of the respondent concerned together with his last known place of residence or business as reflected on the records of the self-regulatory organization and the name of the person, committee, or other organizational unit which brought the charges involved; except that, as to any respondent who has been found not to have violated a provision covered by a charge, identifying information with respect to such person may be deleted insofar as the notice reports the disposition of that charge, unless, prior to the filing of the notice, the respondent requests otherwise;

(2) A statement describing the investigative or other origin of the action;

(3) As charged in the proceeding, the specific provisions of the Act, the rules or regulations thereunder, the rules of the organization, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board, and, in the event a violation of other statutes or rules constitutes a violation of any rule of the organization, such other statutes or rules; and a statement describing the answer of the respondent to the charges;

(4) A statement setting forth findings of fact with respect to any act or practice which such respondent was charged with having engaged in or omitted; the conclusion of the organization as to whether such respondent is deemed to have violated any provision covered by the charges; and a statement of the organization in support of the resolution of the principal issues raised in the proceedings;

(5) A statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction has or will become effective, together with a finding if appropriate, as to whether such respondent was a cause of any sanction imposed upon any other person; and

(6) Such other matters as the organization may deem relevant.

(e) *Notice of final denial, bar, prohibition, termination or limitation based on qualification or administrative rules.* Any final action of a self-regulatory organization for which the Commission is the appropriate regulatory agency that is taken with respect to any person constituting a denial, bar, prohibition, or limitation of membership, participation or association with a member, or of access to services offered by a self-regulatory organization or a member thereof, and which is based on an alleged failure of any person to:

(1) Pass any test or examination required by the rules of the Commission or such organization;

(2) Comply with other qualification standards established by rules of the Commission or such organization; or

(3) Comply with any administrative requirements of such organization (including failure to pay entry or other dues or fees or to file prescribed forms or reports) not involving charges of violations which may lead to a disciplinary sanction

Shall not be considered a ''disciplinary action'' for purposes of paragraph (c) of this rule; but notice thereof shall be promptly filed with the Commission in accordance with paragraph (f) of this section, *Provided, however,* That no disposition of a matter shall be considered ''final'' pursuant to this paragraph which results merely from a notice of such failure to the person affected, if such person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter.

(f) *Contents of notice required by paragraph (e).* Any notice filed pursuant to paragraph (e) of this section shall consist of the following, as appropriate:

(1) The name of each person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The specific provisions of the Act, the rules or regulations thereunder, the rules of the organization, and, in the case of a registered securities association, the rules of the Municipal Securities Rulemaking Board, upon which the action of the organization was based, and a statement describing the answer of the person concerned;

(3) A statement setting forth findings of fact and conclusions as to each alleged failure of the person to pass any required examination, comply with other qualification standards, or comply with administrative obligations, and a statement of the organization in support of the resolution of the principal issues raised in the proceeding;

(4) The date upon which such action has or will become effective; and

(5) Such other matters as the organization may deem relevant.

(g) *Notice of final action based upon prior adjudicated statutory disqualifications.* Any self-regulatory organization for which the Commission is the appropriate regulatory agency that takes any final action with respect to any person which:

(1) Denies or conditions membership or participation in, or association with a member of, such organization or prohibits or limits access to services offered by such organization or a member thereof; and

(2) Is based upon a statutory disqualification of a type defined in subparagraph (A), (B), or (C) of section 3(a)(39) of the Act or consisting of a prior conviction, as described in subparagraph (E) of said section 3(a)(39), shall promptly file a notice of such action with the Commission in accordance with paragraph (h) of this section, *provided, however,* That no disposition of a

matter shall be considered ''final'' pursuant to this paragraph where such person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies within such organization with respect to such a matter.

(h) *Contents of notice required by paragraph (g).* Any notice filed pursuant to paragraph (g) of this section shall consist of the following, as appropriate:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the record of the organization;

(2) A statement setting forth the principal issues raised, the answer of any person concerned, and a statement of the organization in support of the resolution of the principal issues raised in the proceeding;

(3) Any description furnished by or on behalf of the person concerned of the activities engaged in by the person since the adjudication upon which the disqualification is based;

(4) Any description furnished by or on behalf of the person concerned of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person;

(5) A copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such statutory disqualification;

(6) The nature of the action taken and the date upon which such action is to be made effective; and

(7) Such other matters as the organization deems relevant.

(i) *Notice of summary suspension of membership, participation, or association, or summary limitation or prohibition of access to services.* If any self-regulatory organization for which the Commission is the appropriate regulatory agency summarily suspends a member, participant, or person associated with a member, or summarily limits or prohibits any person with respect to access to or services offered by the organization or (in the case of a national securities exchange or a registered securities association) a member thereof pursuant to the provisions of section 6(d)(3), 15A(h)(3) or 17A(b)(5) (C) of the Act, such organization shall, within 24 hours of the effectiveness of such summary suspension, limitation or prohibition notify the Commission of such action, which notice shall contain at least the following information:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the records of the organization;

(2) The date upon which such summary action has or will become effective;

(3) If such summary action is based upon the provisions of section 6(d)(3)(A), 15A(h)(3)(A), or 17A(b)(5)(C)(i) of the Act, a copy of the relevant order or decision of the self-regulatory organization;

(4) If such summary action is based upon the provisions of section 6(d)(3)(B) or (C), 15A(h)(3) (B) or (C), or 17A(b)(5)(C) (ii) or (iii) of the Act, a statement describing, as appropriate:

(i) The financial or operating difficulty of the member or participant upon which such organization determined the member or particpant could not be permitted to continue to do business with safety to investors, creditors, other members or participants, or the organization;

(ii) The pertinent failure to meet qualification requirements or other prerequisites for access and the basis upon which such organization determined that the person concerned could not be permitted to have access with safety to investors, creditors, other members, or the organization; or

(iii) The default of any delivery of funds or securities to a clearing agency by a participant.

(5) The nature and effective date of the suspension, limitation or prohibition; and

(6) Such other matters as the organization deems relevant.

(15 U.S.C. 78f, 78k–1, 78*o*, 78*o*–3, 78q, 78q–1, 78s and 78w)

[42 FR 36415, July 14, 1977, as amended at 49 FR 23831, June 8, 1984]

§ 240.19d–2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction

as to which a notice is required to be filed with the Commission pursuant to Section 19(d)(1) of the Exchange Act, 15 U.S.C. 78s(d)(1), pursuant to Section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act (15 U.S.C. 78f(b)(6), 78*o*–3(b)(7) or 78q–1(b)(3)(G)), or summarily suspends or limits or prohibits access pursuant to Section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act (15 U.S.C. 78f(d)(3), 78*o*–3(h)(3) or 78q–1(b)(5)(C)), any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Commission a written motion for a stay of imposition of such action pursuant to Rule 401 of the Commission's Rules of Practice, § 201.401 of this chapter.

[60 FR 32825, June 23, 1995]

§ 240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, participation, bar from association, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 420 of the Commission's Rules of Practice, § 201.420 of this chapter.

[60 FR 32825, June 23, 1995]

§ 240.19g2–1 Enforcement of compliance by national securities exchanges and registered securities associations with the Act and rules and regulations thereunder.

(a) In enforcing compliance, within the meaning of section 19(g) of the Act, with the Act and the rules and regulations thereunder by its members and persons associated with its members, a national securities exchange or registered securities association is not required:

(1) To enforce compliance with sections 12 (other than sections 12(j) and 12(k)), 13, 14 (other than section 14(b)), 15(d) and 16 and the rules thereunder except to the extent of any action normally taken with respect to any person which is not a member or a person associated with a member;

(2) To enforce compliance with respect to persons associated with a member, other than securities persons or persons who control a member; and

(3) To conduct examinations as to qualifications of, require filing of periodic reports by, or conduct regular inspections (including examinations of books and records) of, persons associated with a member, other than securities persons whose functions are not solely clerical or ministerial.

(b) For the purpose of this rule:

(1) A *securities person* is a person who is a general partner or officer (or person occupying a similar status or performing similar functions) or employee of a member; *Provided, however,* That a registered broker or dealer which controls, is controlled by, or is under common control with, the member and the general partners and officers (and persons occupying similar status or performing similar functions) and employees of such a registered broker or dealer shall be securities persons if they effect, directly or indirectly, transactions in securities through the member by use of facilities maintained or supervised by such exchange or association; and

(2) *Control* means the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract or otherwise; *Provided, however,* That:

(i) Any person who, directly or indirectly, (A) has the right to vote 25 percent or more of the voting securities, (B) is entitled to receive 25 percent or more of the net profits, or (C) is a director (or person occupying a similar status or performing similar functions) of a company shall be presumed to be a person who controls such company;

(ii) Any person not covered by paragraph (b)(2)(i) of this section shall be presumed not to be a person who controls such company; and

(iii) Any presumption may be rebutted on an appropriate showing.

(Secs. 3, 6, 19, 23, 48 Stat. 882, 885, 898, as amended (15 U.S.C. 78c, 78f, 78s, 78w); sec. 15A, 52 Stat. 1070, as amended (15 U.S.C. 78*o*–3))

[41 FR 51808, Nov. 24, 1976]

§ 240.19h–1 Notice by a self-regulatory organization of proposed admission to or continuance in membership or participation or association with a member of any person subject to a statutory disqualification, and applications to the Commission for relief therefrom.

(a) *Notice of admission or continuance notwithstanding a statutory disqualification.* (1) Any self-regulatory organization proposing, conditionally or unconditionally, to admit to, or continue any person in, membership or participation or (in the case of a national securities exchange or registered securities association) association with a member, notwithstanding a statutory disqualification, as defined in section 3(a)(39) of the Act, with respect to such person, shall file a notice with the Commission of such proposed admission or continuance. If such disqualified person has not consented to the terms of such proposal, notice of the organization's action shall be filed pursuant to rule 19d–1 under the Act and not this rule.

(2) With respect to a person associated with a member of a national securities exchange or registered securities association, notices need be filed with the Commission pursuant to this rule only if such person:

(i) Controls such member, is a general partner or officer (or person occupying a similar status or performing similar functions) of such member, is an employee who, on behalf of such member, is engaged in securities advertising, public relations, research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons engaged in such activities, or is an employee with access to funds, securities or books and records, or

(ii) Is a broker or dealer not registered with the Commission, or controls such (unregistered) broker or dealer or is a general partner or officer (or person occupying a similar status or performing similar functions) of such broker or dealer.

(3) A notice need not be filed with the Commission pursuant to this rule if:

(i) The person subject to the statutory disqualification is already a participant in, a member of, or a person associated with a member of, a self-regulatory organization, and the terms and conditions of the proposed admission by another self-regulatory organization are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under paragraph (d) of this section or other substantially equivalent written communication.

(ii) The self-regulatory organization finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the person subject to the statutory disqualification pursuant to an order of the Commission under paragraph (d) of this section or other substantially equivalent written communication and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(iii) The disqualification consists of (A) an injunction from engaging in any action, conduct, or practice specified in section 15(b)(4)(C) of the Act, which injunction was entered 10 or more years prior to the proposed admission or continuance—*Provided, however,* That in the case of a final or permanent injunction which was preceded by a preliminary injunction against the same person in the same court proceeding, such ten-year period shall begin to run from the date of such preliminary injunction—and/or (B) a finding by the Commission or a self-regulatory organization of a willful violation of the Act, the Securities Act of 1933, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or a rule or regulation under one or more of such Acts and the sanction for such violation is no longer in effect;

(iv) The disqualification previously (A) was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and (B) was considered by the Commission in determining a sanction against such person in the proceeding; and the Commission concluded in such

proceeding that it would not restrict or limit the future securities activities of such person in the capacity now proposed or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed;

(v) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment (A) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited or (B) includes such restrictions or limitations for a specified time period and such time period has elapsed; or

(vi) In the case of a person seeking to become associated with a broker or dealer or municipal securities dealer, the Commission has previously consented to such proposed association pursuant to section 15(b)(6) or 15B(c)(4) of the Act.

In the case of an admission to membership, participation, or association, if an exception provided for in this paragraph (a)(3) is applicable, the self-regulatory organization shall, pursuant to its rules, determine when the admission to membership, participation, or association shall become effective.

(4) If a self-regulatory organization determines to admit to, or continue any person in, membership, participation, or association with a member pursuant to an exception from the notice requirements provided in paragraph (a)(3)(ii), (iv) or (v) of this section, such organization shall, within 14 calendar days of its making of such determination, furnish to the Commission, by letter, a notification setting forth, as appropriate:

(i) The name of the person subject to the statutory disqualification;

(ii) The name of the person's prospective and immediately preceding employers who are (were) brokers or dealers or municipal securities dealers;

(iii) The name of the person's prospective supervisor(s);

(iv) The respective places of such employments as reflected on the records of the self-regulatory organization;

(v) If applicable, the findings of the self-regulatory organization referred to in paragraph (a)(3)(ii) of this section and the nature (including relevant dates) of the previous Commission or court determination referred to in paragraph (a)(3)(iv) or (v) of this section; and

(vi) An identification of any other self-regulatory organization which has indicated its agreement with the terms and conditions of the proposed admission or continuance;

(5) If a notice or notification has been previously filed or furnished pursuant to this rule by a self-regulatory organization, any other such organization need not file or furnish a separate notice or notification pursuant to this rule with respect to the same matter if such other organization agrees with the terms and conditions of the membership, participation or association reflected in the notice or notification so filed or furnished, and such agreement is set forth in the notice or notification.

(6) The notice requirements of sections 6(c)(2), 15A(g)(2), and 17A(b)(4)(A) of the Act concerning an action of a self-regulatory organization subject to one (or more) of such sections and this paragraph (a) shall be satisfied by a notice with respect to such action filed in accordance with paragraph (c) of this section.

(7) The Commission, by written notice to a self-regulatory organization on or before the thirtieth day after receipt of a notice under this Rule, may direct that such organization not admit to membership, participation, or association with a member any person who is subject to a statutory disqualification for a period not to exceed an additional 60 days beyond the initial 30 day notice period in order that the Commission may extend its consideration of the proposal; *Provided, however,* That during such extended period of consideration, the Commission will not direct the self-regulatory organization to bar the proposed admission to membership, participation or association with a member pursuant to section 6(c)(2), 15A(g)(2), or 17A(b)(4)(A) of the Act, and the Commission will not institute proceedings pursuant to section 15(b) or 15B of the Act on the basis

of such disqualification if the self-regulatory organization has permitted the admission to membership, participation or association with a member, on a temporary basis, pending a final Commission determination.

(b) *Preliminary notifications.* Promptly after receiving an application for admission to, or continuance in, participation or membership in, or association with a member of, a self-regulatory organization which would be required to file with the Commission a notice thereof pursuant to paragraph (a) of this section if such admission or continuance is ultimately proposed by such organization, the organization shall file with the Commission a notification of such receipt. Such notification shall include, as appropriate:

(1) The date of such receipt;

(2) The names of the person subject to the statutory disqualification and the prospective employer concerned together with their respective last known places of residence or business as reflected on the records of the organization;

(3) The basis for any such disqualification including (if based on a prior adjudication) a copy of the order or decision of the court, the Commission, or the self-regulatory organization which adjudicated the matter giving rise to the disqualification; and

(4) The capacity in which the person concerned is proposed to be employed.

(c) *Contents of notice of admission or continuance.* A notice filed with the Commission pursuant to paragraph (a) of this section shall contain the following, as appropriate:

(1) The name of the person concerned together with his last known place of residence or business as reflected on the records of the self-regulatory organization;

(2) The basis for any such disqualification from membership, participation or association including (if based on a prior adjudication) a copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such disqualification;

(3) In the case of an admission, the date upon which it is proposed by the organization that such membership, participation or association shall become effective, which shall be not less than 30 days from the date upon which the Commission receives the notice;

(4) A description by or on behalf of the person concerned of the activities engaged in by the person since the disqualification arose, the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person. This description shall be accompanied by a written statement submitted to the self-regulatory organization by the proposed employer setting forth the terms and conditions of such employment and supervision. The description also shall include (i) the qualifications, experience and disciplinary records of the proposed supervisors of the person and their family relationship (if any) to that person; (ii) the findings and results of all examinations conducted, during the two years preceding the filing of the notice, by self-regulatory organizations of the main office of the proposed employer and of the branch office(s) in which the employment will occur or be subject to supervisory controls; (iii) a copy of a completed Form U–4 with respect to the proposed association of such person and a certification by the self-regulatory organization that such person is fully qualified under all applicable requirements to engage in the proposed activities; and (iv) the name and place of employment of any other associated person of the proposed employer who is subject to a statutory disqualification (other than a disqualification specified in paragraph (a)(3)(iii) of this section);

(5) If a hearing on the matter has been held by the organization, a certified record of the hearing together with copies of any exhibits introduced therein;

(6) All written submissions not included in a certified oral hearing record which were considered by the organization in its disposition of the matter;

(7) An identification of any other self-regulatory organization which has indicated its agreement with the terms and conditions of the proposed admission or continuance;

(8) All information furnished in writing to the self-regulatory organization

by the staff of the Commission for consideration by the organization in its disposition of the matter or the incorporation by reference of such information, and a statement of the organization's views thereon; and

(9) Such other matters as the organization or person deems relevant.

If the notice contains assertions of material facts not a matter of record before the self-regulatory organization, such facts shall be sworn to by affidavit of the person or organization offering such facts for Commission consideration. The notice may be accompanied by a brief.

(d) *Application to the Commission for relief from certain statutory disqualifications*. The filing of a notice pursuant to paragraph (a) of this section shall neither affect nor foreclose any action which the Commission may take with respect to such person pursuant to the provisions of section 15(b), 15B or 19(h) of the Act or any rule thereunder. Accordingly, a notice filed pursuant to paragraph (a) of this section with respect to the membership, participation, or association of any person subject to an ''applicable disqualification,'' as defined in paragraph (f) of this section, may be accompanied by an application by or on behalf of the person concerned to the Commission for an order declaring, as applicable, that notwithstanding such disqualification, the Commission:

(1) Will not institute proceedings pursuant to section 15(b)(1)(B), 15(b)(4), 15(b)(6), 15B(a)(2), 15B(c)(2), 19(h)(2) or 19(h)(3) of the Act if such person seeks to obtain or continue registration as a broker or dealer or municipal securities dealer or association with a broker or dealer or municipal securities dealer so registered, or membership or participation in a self-regulatory organization;

(2) Will not direct otherwise, as provided in section 6(c)(2), 15A(g)(2) or 17A(b)(4)(A) of the Act; and

(3) Will deem such person qualified pursuant to Rule G–4 of the Municipal Securities Rulemaking Board under the Act.

If a Commission consent is required in order to render a proposed association lawful under section 15(b)(6) or 15B(c)(4) of the Act, an application by or on behalf of the person seeking such consent shall accompany the notice of the proposed association filed pursuant to paragraph (a) of this section. The Commission may, in its discretion and subject to such terms and conditions as it deems necessary, issue such an order and consent should the Commission determine not to object to the position of the self-regulatory organization set forth in the notice or application; *Provided*, *however*, That nothing herein shall foreclose the right of any person, at his election, to apply directly to the Commission for such consent, if he makes such application pursuant to the terms of an existing order of the Commission under section 15(b)(6) or 15B(c)(4) of the Act limiting his association with a broker or dealer or municipal securities dealer but explicitly granting him such a right to apply for entry or reentry at a later time.

(e) *Contents of application to the Commission*. An application to the Commission pursuant to paragraph (d) of this section shall consist of the following, as appropriate:

(1) The name of the person subject to the disqualification together with his last known place of residence or business as reflected on the records of the self-regulatory organization;

(2) A copy of the order or decision of the court, the Commission or the self-regulatory organization which adjudicated the matter giving rise to such ''applicable disqualification'';

(3) The nature of the relief sought and the reasons therefor;

(4) A description of the activities engaged in by the person since the disqualification arose;

(5) A description of the prospective business or employment in which the person plans to engage and the manner and extent of supervision to be exercised over and by such person. This description shall be accompanied by a written statement submitted to the self-regulatory organization by the proposed employer setting forth the terms and conditions of such employment and supervision. The description also shall include (i) the qualifications, experience, and disciplinary records of the proposed supervisors of the person and their family relationship (if any)

to that person; (ii) the findings and results of all examinations conducted, during the two years preceding the filing of the application, by self-regulatory organizations of the main office of the proposed employer and of the branch office(s) in which the employment will occur or be subject to supervisory controls; (iii) a copy of a completed Form U–4 with respect to the proposed association of such person and a certification by the self-regulatory organization that such person is fully qualified under all applicable requirements to engage in the proposed activities; and (iv) the name and place of employment of any other associated person of the proposed employer who is subject to a statutory disqualification (other than a disqualification specified in paragraph (a)(3)(iii) of this section);

(6) If a hearing on the matter has been held by the organization, a certified copy of the hearing record, together with copies of any exhibits introduced therein;

(7) All written submissions not included in a certified oral hearing record which were considered by the organization in its disposition of the matter;

(8) All information furnished in writing to the self-regulatory organization by the staff of the Commission for consideration by the organization in its disposition of the matter or the incorporation by reference of such information, and a statement of the organization's views thereon; and

(9) Such other matters as the organization or person deems relevant.

If the application contains assertions of material facts not a matter of record before the organization, such facts shall be sworn to by affidavit of the person or organization offering such facts for Commission consideration.

(f) *Definitions*. For purposes of this rule:

(1) The term *applicable disqualification* shall mean:

(i) Any effective order of the Commission pursuant to section 15(b) (4) or (6), 15B(c) (2) or (4) or 19(h) (2) or (3) of the Act—

(A) Revoking, suspending or placing limitations on the registration, activities, functions, or operations of a broker or dealer;

(B) Suspending, barring, or placing limitations on the association, activities, or functions of an associated person of a broker or dealer;

(C) Suspending or expelling any person from membership or participation in a self-regulatory organization; or

(D) Suspending or barring any person from being associated with a member of a national securities exchange or registered securities association;

(ii) Any conviction of injunction of a type described in section 15(b)(4) (B) or (C) of the Act; or

(iii) A failure under the provisions of Rule G–4 of the Municipal Securities Rulemaking Board under the Act, to meet qualifications standards, and such failure may be remedied by a finding or determination by the Commission pursuant to such rule(s) that the person affected nevertheless meets such standards.

(2) The term *control* shall mean the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract or otherwise; *Provided, however*, That

(i) Any person who, directly or indirectly, (A) has the right to vote 10 percent or more of the voting securities, (B) is entitled to receive 10 percent or more of the net profits, or (C) is a director (or person occupying a similar status or performing similar functions) of a company shall be presumed to be a person who controls such company;

(ii) Any person not covered by paragraph (i) shall be presumed not to be a person who controls such company; and

(iii) Any presumption may be rebutted on an appropriate showing.

(g) Where it deems appropriate to do so, the Commission may determine whether to (1) direct, pursuant to section 6(c)(2), 15A(g)(2) or 17A(b)(4)(A) of the Act, that a proposed admission covered by a notice filed pursuant to paragraph (a) of this section shall be denied or an order barring a proposed association issued or (2) grant or deny an application filed pursuant to paragraph (d) of this section on the basis of the notice or application filed by the self-regulatory organization, the person subject to the disqualification, or other

applicant (such as the proposed employer) on behalf of such person, without oral hearing. Any request for oral hearing or argument should be submitted with the notice or application.

(h) The Rules of Practice (17 CFR part 201) shall apply to proceedings under this rule to the extent that they are not inconsistent with this rule.

(15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))
[46 FR 58661, Dec. 3, 1981, as amended at 48 FR 53691, Nov. 29, 1983]

INSPECTION AND PUBLICATION OF INFORMATION FILED UNDER THE ACT

§ 240.24b–1 Documents to be kept public by exchanges.

Upon action of the Commission granting an exchange's application for registration or exemption, the exchange shall make available to public inspection at its offices during reasonable office hours a copy of the statement and exhibits filed with the Commission (including any amendments thereto) except those portions thereof to the disclosure of which the exchange shall have filed objection pursuant to § 240.24b–2 which objection shall not have been overruled by the Commission pursuant to section 24(b) of the Act.

(Sec. 24, 48 Stat. 901; 15 U.S.C. 78x)
[13 FR 8214, Dec. 22, 1948]

CROSS REFERENCE: For regulations relating to registration and exemption of exchanges, see §§ 240.6a–1 to 240.6a–3.

§ 240.24b–2 Nondisclosure of information filed with the Commission and with any exchange.

PRELIMINARY NOTE

Confidential treatment requests shall be submitted in paper format only, whether or not the filer is required to submit a filing in electronic format.

(a) Any person filing any registration statement, report, application, statement, correspondence, notice or other document (herein referred to as the material filed) pursuant to the Act may make written objection to the public disclosure of any information contained therein in accordance with the procedure set forth below. The procedure provided in this rule shall be the exclusive means of requesting confidential treatment of information required to be filed under the Act.

(b) The person shall omit from material filed the portion thereof which it desires to keep undisclosed (hereinafter called the confidential portion). In lieu thereof, it shall indicate at the appropriate place in the material filed that the confidential portion has been so omitted and filed separately with the Commission. The person shall file with the copies of the material filed with the Commission:

(1) One copy of the confidential portion, marked ''Confidential Treatment,'' of the material filed with the Commission. The copy shall contain an appropriate identification of the item or other requirement involved and, notwithstanding that the confidential portion does not constitute the whole of the answer, the entire answer thereto; except that in the case where the confidential portion is part of a financial statement or schedule, only the particular financial statement or schedule need be included. The copy of the confidential portion shall be in the same form as the remainder of the material filed;

(2) An application making objection to the disclosure of the confidential portion. Such application shall be on a sheet or sheets separate from the confidential portion, and shall contain (i) an identification of the portion; (ii) a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Commission's rules and regulations adopted under the Freedom of Information Act (17 CFR 200.80), and a justification of the period of time for which confidential treatment is sought; (iii) a written consent to the furnishing of the confidential portion to other government agencies, offices or bodies and to the Congress; and (iv) the name of each exchange, if any, with which the material is filed.

(3) The copy of the confidential portion and the application filed in accordance with this paragraph (b) shall be enclosed in a separate envelope marked ''Confidential Treatment'' and addressed to The Secretary, Securities

and Exchange Commission, Washington, DC 20549.

(c) Pending a determination as to the objection filed the material for which confidential treatment has been applied will not be made available to the public.

(d)(1) If it is determined that the objection should be sustained, a notation to that effect will be made at the appropriate place in the material filed. Such a determination will not preclude reconsideration whenever appropriate, such as upon receipt of any subsequent request under the Freedom of Information Act (5 U.S.C. 552) and, if appropriate, revocation of the confidential status of all or a portion of the information in question. Where an initial determination has been made under this rule to sustain objections to disclosure, the Commission will attempt to give the person requesting confidential treatment advance notice, wherever possible, if confidential treatment is revoked.

(2) In any case where an objection to disclosure has been disallowed or where a prior grant of confidential treatment has been revoked, the person who requested such treatment will be so informed by registered or certified mail to the person or his agent for service. Pursuant to § 201.431 of this chapter, persons making objections to disclosure may petition the Commission for review of a determination by the Division disallowing objections or revoking confidential treatment.

(e) The confidential portion shall be made available to the public at the time and according to the conditions specified in paragraphs (d) (1) and (2) of this section:

(1) Upon the lapse of five days after the dispatch of notice by registered or certified mail of a determination disallowing an objection, if prior to the lapse of such five days the person shall not have communicated to the Secretary of the Commission his intention to seek review by the Commission under § 201.431 of this chapter of the determination made by the Division; or

(2) If such a petition for review shall have been filed under § 201.431 of this chapter, upon final disposition thereof adverse to the petitioner.

(f) If the confidential portion is made available to the public, one copy thereof shall be attached to each copy of the material filed with the Commission and with each exchange.

[41 FR 20578, May 19, 1976, as amended at 58 FR 14685, Mar. 18, 1993; 60 FR 32825, June 23, 1995; 60 FR 47692, Sept. 14, 1995; 61 FR 30404, June 14, 1996]

§ 240.24b–3 Information filed by issuers and others under sections 12, 13, 14, and 16.

(a) Except as otherwise provided in this section and in § 240.17a–6, each exchange shall keep available to the public under reasonable regulations as to the manner of inspection, during reasonable office hours, all information regarding a security registered on such exchange which is filed with it pursuant to section 12, 13, 14, or 16, or any rules or regulations thereunder. This requirement shall not apply to any information to the disclosure of which objection has been filed pursuant to § 240.24b–2, which objection shall not have been overruled by the Commission pursuant to section 24(b). The making of such information available pursuant to this section shall not be deemed a representation by any exchange as to the accuracy, completeness, or genuineness thereof.

(b) In the case of an application for registration of a security pursuant to section 12 an exchange may delay making available the information contained therein until it has certified to the Commission its approval of such security for listing and registration.

(Sec. 24, 48 Stat. 901, as amended; 15 U.S.C. 78x)

[16 FR 3109, Apr. 10, 1951]

§ 240.24c-1 Access to nonpublic information.

(a) For purposes of this section, the term ''nonpublic information'' means records, as defined in Section 24(a) of the Act, and other information in the Commission's possession, which are not available for public inspection and copying.

(b) The Commission may, in its discretion and upon a showing that such information is needed, provide nonpublic information in its possession to any of the following persons if the person

receiving such nonpublic information provides such assurances of confidentiality as the Commission deems appropriate:

(1) A federal, state, local or foreign government or any political subdivision, authority, agency or instrumentality of such government;

(2) A self-regulatory organization as defined in Section 3(a)(26) of the Act, or any similar organization empowered with self-regulatory responsibilities under the federal securities laws (as defined in Section 3(a)(47) of the Act), the Commodity Exchange Act (7 U.S.C. 1, *et seq.*), or any substantially equivalent foreign statute or regulation;

(3) A foreign financial regulatory authority as defined in Section 3(a)(51) of the Act;

(4) The Securities Investor Protection Corporation or any trustee or counsel for a trustee appointed pursuant to Section 5(b) of the Securities Investor Protection Act of 1970;

(5) A trustee in bankruptcy;

(6) A trustee, receiver, master, special counsel or other person that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or an administrative proceeding involving allegations of violations of the securities laws (as defined in Section 3(a)(47) of the Act) or the Commission's Rules of Practice, 17 CFR Part 201, or otherwise, where such trustee, receiver, master, special counsel or other person is specifically designated to perform particular functions with respect to, or as a result of, the litigation or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice;

(7) A bar association, state accountancy board or other federal, state, local or foreign licensing or oversight authority, or a professional association or self-regulatory authority to the extent that it performs similar functions; or

(8) A duly authorized agent, employee or representative of any of the above persons.

(c) Nothing contained in this section shall affect:

(1) The Commission's authority or discretion to provide or refuse to provide access to, or copies of, nonpublic information in its possession in accordance with such other authority or discretion as the Commission possesses by statute, rule or regulation; or

(2) The Commission's responsibilities under the Privacy Act of 1974 (5 U.S.C. 552a), or the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401–22) as limited by section 21(h) of the Act.

[58 FR 52419, Oct. 8, 1993]

§ 240.31–1 Securities transactions exempt from transaction fees.

Preliminary Note

The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange, is to be paid by the exchange or the national securities association itself, respectively, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

(a) The following shall be exempt from section 31 of the Act:

(1) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(2) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(3) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(4) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(5) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in §240.11Aa3–1 (Rule 11Aa3–1 under the Act) and any approved plan filed thereunder;

(b) Over-the-counter (''OTC'') transactions in OTC securities which are subject to unlisted trading privileges on a national securities exchange shall be exempt only from section 31(c) of the Act. 7

[Revised and amended at 61 FR FR 68594, Dec. 30, 1996]

Subpart B—Rules and Regulations Under the Securities Investor Protection Act of 1970 [Reserved]

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Excerpt from letter relating to section 16(a)	21	Oct. 1, 1934	11 FR 10968.
Statement by Commission to correct the erroneous impression created by certain commercial institutions with respect to the necessity for filing reports with the Commission.	68	July 22, 1934	Do.
Letter of General Counsel relating to section 16(a)	116	Mar. 9, 1935	Do.
Opinion of General Counsel relating to section 16(a)	175	Apr. 16, 1935	Do.
Excerpt from a general letter relating to section 16(a)	227	May 14, 1935	Do.
Opinion of the Director of the Division of Forms and Regulations discussing the definition of ''parent'' as used in various forms under the Securities Act of 1933 and the Securities Exchange Act of 1934.	1131	Apr. 7, 1937	Do.
Statement by Commission with respect to the purpose of the disclosure requirements of section 14 and the rules adopted thereunder.	1350	Aug. 13, 1937	11 FR 10969.
Opinion of Director of the Trading and Exchange Division relating to Rules X–15C1–6 (17 CFR 240.15c1–6) and X–10B–2 (17 CFR 240.10b–2).	1411	Oct. 7, 1937	Do.
Opinion of Director of the Trading and Exchange Division relating to Rule X–15C1–1(a) (17 CFR, 240.15c1–1a).	1462	Nov. 15, 1937	Do.
Partial text of letter of February 2, 1938, from the Secretary of the New York Stock Exchange to its members, relating to Rules X–3B–3 (17 CFR 240.3b–3), X–10A–1 (17 CFR 240.10a–1), and X–10A–2 (17 CFR 240.10a–2), together with a letter from Director of Trading and Exchange Division, concurring in the opinions expressed by the Exchange.	1571	Feb. 5, 1938	Do.
Opinion of General Counsel relating to section 16(a)	1965	Dec. 21, 1938	11 FR 10970.
Letter of General Counsel concerning the services of former employees of the Commission in connection with matters with which such employees become familiar during their course of employment with the Commission.	2066	May 5, 1939	11 FR 10971.
Statement of Commission and separate statement by Commissioner Healy on the problem of regulating the ''pegging, fixing and stabilizing'' of security prices under sections 9(a)(2), 9(a)(6) and 15(c)(1) of the Securities Exchange Act.	2446	Mar. 18, 1940	Do.
Statement of Commission respecting distinctions between the reporting requirements of section 16(a) of the Securities Exchange Act of 1934 and section 30(f) of the Investment Company Act of 1940.	2687	Nov. 16, 1940	11 FR 10981.
Statement of Commission issued in connection with the adoption of Rules X–8C–1 (17 CFR, 240.8c–1) and X–15–C2–1 (17 CFR, 240.15c 2–1) under the Securities Exchange Act of 1934 relating to the hypothecation of customers' securities by members of national securities exchanges and other brokers and dealers.	2690	Nov. 15, 1940	11 FR 10982.
Opinion of General Counsel relating to paragraph (b)(2)(ii) of Rules X–8C–1 (17 CFR, 240.8c–1) and X–15C2–1 (17 CFR, 240.15C 2–1) under the Securities Exchange Act.	2822	Mar. 17, 1941	11 FR 10983.
Partial text of letter sent by Director of the Trading and Exchange Division to certain securities dealers who had failed to keep records of the times of their securities transactions, as required by Rules X–17A–3 (17 CFR, 240.17a–3) and X–17A–4 (17 CFR, 240.17a–4) under the Securities Exchange Act.	3040	Oct. 13, 1941	11 FR 10984.
Opinion of General Counsel relating to the anti-manipulation provisions of sections 9(a)(2), 10(b) and 15(c)(1) of the Securities Exchange Act of 1934, as well as section 17(a) of the Securities Act of 1933.	3056	Oct. 27, 1941	Do.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Opinion of Chief Counsel to the Corporation Finance Division relating to when-issued trading of securities the issuance of which has already been approved by a Federal district court under Chapter X of the Bankruptcy Act.	3069	Jan. 4, 1945	11 FR 10985.
Statement of Commission policy with respect to the acceleration of the effective date of a registration statement.	3085	Dec. 6, 1941	Do.
Letter of Director of the Corporation Finance Division relating to sections 14 and 18.	3380	Feb. 2, 1943	Do.
Excerpts from letters of Director of the Corporation Finance Division relating to section 14 and Schedule 14A under Regulation X–14 (17 CFR, 240.14a–9).	3385	Feb. 17, 1943	Do.
Opinion of Director of the Trading and Exchange Division relating to the anti-manipulation provisions of sections 9(a)(2), 10(b), and 15(c)(1) of the Securities Exchange Act of 1934, and 17(a) of the Securities Act of 1933.	3505	Nov. 16, 1943	11 FR 10986.
Opinion of Director of the Trading and Exchange Division relating to the anti-manipulation provisions of sections 9(a)(2), 10(b), and 15(c)(1) of the Securities Exchange Act of 1934, and 17(a) of the Securities Act of 1933.	3506	Nov. 16, 1943	11 FR 10987.
Statement of the Commission relating to the anti-fraud provisions of section 17(a) of the Securities Act of 1933, and sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934.	3572	June 1, 1944	Do.
Letter of Director of the Corporation Finance Division relating to section 20 and to Rule X–14A–7 (17 CFR, 240.14a–7) under the Securities Exchange Act of 1934.	3638	Jan. 3, 1945	11 FR 10988.
Statement by Commission relating to section 3(a)(1)	3639	Jan. 4, 1945	Do.
Statement of the Commission in connection with the adoption of certain amendments to Form 3–M, one of the forms for registration of over-the-counter brokers or dealers under section 15(b) of the Securities Exchange Act of 1934, and to Rule X–15B–2 (17 CFR, 240.15b–2), the rule governing the filing of supplemental statements to such applications.	3674	Apr. 9, 1945	Do.
Statement by Commission relating to the adoption of Rule X–13A–6B (17 CFR, 240.13a–6b).	3803	Mar. 28, 1946	Do.
Statement of the Commission in connection with notice of opportunity to submit proposals for regulations or legislation regarding the stabilization of market prices by persons offering securities to the public.	4163	Sept. 16, 1948	13 FR 4163.
Statement of the Commission accompanying November 5, 1948, revision of § 240.14 of this chapter (Regulation X–14).	4185	Nov. 5, 1948	13 FR 6680.
Opinion of the General Counsel, relating to the use of ''hedge clauses'' by brokers, dealers, investment advisers, and others.	4593	Apr. 18, 1951	16 FR 3387.
Statement of the Commission regarding public offerings of investment contracts providing for the acquisition, sale or servicing of mortgages or deeds of trust.	5633	Jan. 31, 1958	23 FR 841.
Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.	6419	Nov. 18, 1960	25 FR 12178.
Statement of the Commission concerning standards of conduct for registered broker-dealers in the distribution of unregistered securities.	6721	Feb. 2, 1962	27 FR 1251.
Opinion of Philip A. Loomis, Jr., Director of Division of Trading and Exchanges of the Commission, on the application of section 11(d)(1), Securities Exchange Act of 1934, to broker-dealers engaged in ''equity funding'', ''secured funding'', and ''life funding''.	6726	Feb. 8, 1962	27 FR 1415.
Statement of the Commission cautioning broker-dealers about violating the anti-fraud provisions of the Federal securities laws when making short sales in which they delay effecting the covering transaction to acquire the security.	6778	Apr. 16, 1962	27 FR 3991.
Statement of Commission showing circumstances in 7 cases where profits in real estate transactions were not earned at time transactions were recorded but that the sales were designed to create the illusion of profits or value as a basis for the sale of securities.	6982	Dec. 28, 1962	28 FR 276.
Answer of the Commission to four questions relating to the solicitation of proxies.	7078	May 15, 1963	28 FR 5133.
Statement by the Commission on the maintenance of rec-ords of transactions by brokers-dealers as underwriters of investment company shares according to Rule 17a–3 under section 17(a) of the Securities Exchange Act of 1934 (17 CFR 240.17a–3).	7169	Nov. 13, 1963	28 FR 12617.
Opinion of the General Counsel relating to participation by broker-dealer firms in proxy solicitations.	7208	Jan. 7, 1964	29 FR 341.

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Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission re applicability of Securities Act of 1933 to offerings of securities outside the U.S. and re applicability of section 15(a) of the Securities Exchange Act of 1934 to foreign underwriters as part of program of Presidential Task Force to reduce U.S. balance of payments deficit and protect U.S. gold reserves.	7366	July 9, 1964	29 FR 9828.
Summary and interpretation by the Commission of amendments to the Securities Act of 1933 and Securities Exchange Act of 1934 as contained in the Securities Acts Amendments of 1964.	7425	Sept. 14, 1964	29 FR 13455.
Opinion and statement of the Commission in regard to proper reporting of deferred income taxes arising from installment sales.	7763	Dec. 7, 1965	30 FR 15420.
Statement of the Commission to clarify the meaning of ''beneficial ownership of securities'' as relates to beneficial ownership of securities held by family members.	7793	Jan. 19, 1966	31 FR 1005.
Program by the Commission which it requests that issuing companies follow in order to expedite the processing of proxy material.	7805	Jan. 26, 1966	31 FR 2475.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	7824	Feb. 14, 1966	31 FR 3175.
Policy statement by the Director of the Division of Trading and Markets re consummation of securities transactions by brokers-dealers when trading is suspended.	7920	July 19, 1966	31 FR 10076.
Opinions of the Commission on the acceleration of the effective date of a registration statement under the Securities Act of 1933 and on the clearance of proxy material such as convertible preferred shares considered residual securities in determining earnings per share applicable to common stock.	8336	June 18, 1968	33 FR 10086.
Statement of the Commission to alert prospective borrowers obtaining loans for real estate development about recent fraudulent schemes.	8351	July 5, 1968	33 FR 10134.
Statement of the Commission warning broker-dealers to be prompt in the consummation of securities transactions and about the penalty for not so doing.	8363	July 29, 1968	33 FR 11150.
Statement of the Commission re broker-dealer registration of insurance companies acting as agents for distribution of ''variable annuities'' and application of regulations for such under the Securities Exchange Act of 1934.	8389	Aug. 29, 1968	33 FR 13005.
Statement of the Commission reminding broker-dealer managements to establish and maintain an effective supervisory system and failure to do so will result in disciplinary action against the firm and responsible individuals.	8404	Sept. 11, 1968	33 FR 14286.
Statement of the Commission clarifying that industrial revenue bonds sold according to Rule 131 (17 CFR 230.131) and Rule 3b–5 (17 CFR 240.3b–5) are not affected if acquired and paid for by the underwriters on or before December 31, 1968.	8409	Sept. 16, 1968	33 FR 14545.
Statement of the Commission cautioning brokers and dealers with respect to effecting transactions of ''spin offs'' and ''shell corporations''.	8638	July 2, 1969	34 FR 11581.
Commission's statement about publicity concerning the petroleum discoveries on the North Slope of Alaska.	8728	Oct. 20, 1969	34 FR 17433.
Commission's warning statement re sale and distribution of whisky warehouse receipts.	8733	Nov. 4, 1969	34 FR 18160.
Letter by Philip A. Loomis, Jr., General Counsel for the Commission, explaining obligations of mutual fund managements and brokers with respect to commissions on portfolio brokerage of mutual funds.	8746	Nov. 10, 1969	34 FR 18543.
Publication of the Commission's guidelines re applicability of Federal securities laws to offer and sale outside the U.S. of shares of registered open-end investment companies.	8907	June 23, 1970	35 FR 12103.
Statement of the Commission reminding reporting companies of obligation re Commission's rules to file reports on a timely basis.	8995	Oct. 15, 1970	35 FR 16733.
Commission's statement re exemption of certain industrial revenue bonds from registration, etc. requirements in view of amendment of Securities Act of 1933 and of Securities Exchange Act of 1934 by ''section 401'' (Pub. L. 91–1037).	9016	Nov. 6, 1970	35 FR 17990.
Commission's views relating to important questions re the accounting by registered investment companies for investment securities in their financial statements and in the periodic computations of net asset value for the purpose of pricing their shares.	9049	Dec. 23, 1970	35 FR 19986.
Publication of the Commission's procedure to be followed if requests are to be met for no action or interpretative letters and responses thereto to be made available for public use.	9065	Jan. 25, 1971	36 FR 2600.

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Interpretations of the Commission in regard to requirements for registration statements and reports concerning information requested re description of business, summary of operations, and financial statements.	9083	Feb. 18, 1971	36 FR 4483.
Statement of the Commission warning the public about novel unsecured debt securities which appear to invite unwarranted comparisons with bank savings accounts, savings and loan association accounts, and bank time deposit certificates.	9148	Apr. 12, 1971	36 FR 8239.
Statement of the Commission prohibiting the reduction of fixed charges by amounts representing interest or investment income or gains on retirement of debt in registration statements or reports filed with the Commission.	9210	June 16, 1971	36 FR 11918.
Statement of the Commission calling attention to requirements in its forms and rules under the Securities Act of 1933 and the Securities and Exchange Act of 1934 for disclosure of legal proceedings and descriptions of registrant's business as these requirements relate to material matters involving the environment and civil rights.	9252	July 19, 1971	36 FR 13988.
Commission's policy requiring the inclusion in financial statements of the ratio of earnings to fixed charges for the total enterprise in equivalent prominence with the ratio for the registrant or registrant and consolidated subsidiaries.	9279	Aug. 10, 1971	36 FR 15527.
Policy of Commission's Division of Corporation Finance to defer processing registration statements and amendments filed under the Securities Act of 1933 by issuers whose reports are delinquent until such reports are brought up to date.	9345	Sept. 27, 1971	36 FR 19362.
Commission's statement concerning applicability of securities laws to multilevel distributorships and other business opportunities offered through pyramid sales plans.	9387	Nov. 30, 1971	36 FR 23289.
Statement by the Commission regarding payment of solicitation fees in tender offers.	9395	Nov. 24, 1971	36 FR 23359.
Commission's statement concerning offering and sale of securities in nonpublic offerings and applicability of antifraud provisions of securities acts.	9444	Jan. 14, 1972	37 FR 600.
Statement of the Commission's views on the present status of the securities markets and the direction in which the public interest requires that they evolve in the future.	.....	Mar. 14, 1972	37 FR 5286
Commission endorses the establishment by all publicly held companies of audit committees composed of outside directors.	9548	Apr. 5, 1972	37 FR 6850.
Applicability of Commission's policy statement on the future structure of securities markets to selection of brokers and payment of commissions by institutional managers.	9598	May 18, 1972	37 FR 9988.
Commission's statement and policy on misleading pro rata stock distributions to shareholders.	9618	June 9, 1972	37 FR 11559.
Commission's guidelines on independence of certifying accountants; example cases and Commission's conclusions.	9662	June 19, 1972	37 FR 14294.
Commission's decisions on recommendations of advisory committee regarding commencement of enforcement proceedings and termination of staff investigations.	9796	Mar. 1, 1973	38 FR 5457.
Commission's interpretation of risk-sharing test in pooling-of-interest accounting.	9798	Oct. 5, 1972	37 FR 20937.
Commission's statement that short-selling securities prior to offering date is a possible violation of antifraud and antimanipulative laws.	9824	Oct. 25, 1972	37 FR 22796.
Commission reaffirms proper accounting treatment to be followed by a lessee when the lessor is created as a conduit for debt financing.	9867	Dec. 13, 1972	37 FR 26516.
Commission's interpretations of a rule (15c3–3) dealing with customer protection by securities brokers and dealers.	9922	Jan. 18, 1973	38 FR 1737.
Amendment of previous interpretation (AS–130) of risk-sharing test in pooling of interest accounting.	9927	Jan. 18, 1973	38 FR 1734.
Commission clarifies effective dates of Rule 15c3–3	9946	Feb. 5, 1973	38 FR 3313.
Commission's designation of control locations for foreign securities	9969	Feb. 5, 1973	Do.
Commission's findings on disclosure of projections of future economic performance by issuers of publicly traded securities.	9984	Mar. 19, 1973	38 FR 7220.
Commission's views on reporting cash flow and other related data	10041	Apr. 11, 1973	38 FR 9158.
Commission's statement on obligations of underwriters with respect to discretionary accounts.	10181	June 1, 1973	38 FR 17201.
Commission's opinion on net capital treatment of securities position, obligation and transactions in suspended securities.	10209	June 8, 1973	38 FR 16774.
Commission expresses concern with failure of issuers to timely and properly file periodic and current report.	10214	July 10, 1973	38 FR 18366.
Commission's statement and policy on application of minimum net capital requirement.	10304	Aug. 3, 1973	38 FR 20820.

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Commission's conclusions as to certain problem relating to the effect of treasury stock transactions on accounting for business combinations.	10363	Sept. 10, 1973	38 FR 24635.
Commission's interpretation of market identification requirement of rule for reporting of market information on transactions in listed securities.	10388	Sept. 20, 1973	38 FR 26358.
Commission's response to the New York Stock Exchange's proposed interpretation of "affiliated person".	10391	Sept. 25, 1973	38 FR 26716.
Commission request for comments on Accounting Series Release No. 46	10422	Oct. 17, 1973	38 FR 28819.
Commission's guidelines for control locations for foreign securities	10429	Oct. 23, 1973	38 FR 29217.
Commission's views and comments relating to quarterly reporting on Form 10–Q and Form 10–QSB.	10547	Jan. 7, 1974	39 FR 1261.
Statement by the Commission on disclosure of the impact of possible fuel shortages on the operations of issuers.	10569	Jan. 10, 1974	39 FR 1511.
Commission's statement on disclosure of inventory profits reflected in income in periods of rising prices.	10580	Jan. 17, 1974	39 FR 2085.
Commission decision on trading in securities issued or guaranteed by the governments of Bulgaria, Hungary, and Romania.	10610	Jan. 31, 1974	39 FR 3932.
Commission views on disclosure of illegal campaign contributions	10673	Mar. 11, 1974	39 FR 10237.
Commission's statement of policy and interpretations	10363A	Apr. 12, 1974	39 FR 14588.
Commission's statement regarding maintenance of current books and records by brokers and dealers.	10756	May 9, 1974	39 FR 16440.
Commission's practices on reporting of natural gas reserve estimates	10857	June 14, 1974	39 FR 27556.
Commission's views on business combinations involving open-end investment companies.	10898	July 3, 1974	39 FR 26719.
Commission's guidelines for filings related to extractive reserves and natural gas supplies.	10899	July 3, 1974	39 FR 26720.
Commission's guidelines for registration and reporting	10961	Aug. 14, 1974	39 FR 31894.
Commission's requirements for financial statements; limited partnerships in annual reports.	11029	Sept. 27, 1974	39 FR 36578.
Commission's examples of unusual risks and uncertainties	11150	Dec. 23, 1994	40 FR 2678.
Letters of the Division of Corporation Finance with respect to certain proposed arrangements for the sale of gold bullion.	11156	Dec. 26, 1994	40 FR 1695.
Commission's statement on disclosure problems relating to LIFO accounting	11198	Jan. 23, 1975	40 FR 6483.
Commission's guidelines on Accounting Series Release No. 148	11470	June 13, 1975	40 FR 27441.
Brokers and dealers effecting transactions in municipal securities	11854	Nov. 20, 1975	40 FR 57786.
Financial responsibility requirements of brokers and dealers	11969	Jan 2, 1976	41 FR 5277.
Brokers and dealers effecting transactions in municipal securities	12021	.....	41 FR 3469.
Interpretation of certain terms in item 10 of Form BD	12078	Feb. 17, 1976	41 FR 7089.
Brokers and dealers effecting transactions in municipal securities	12288	Apr. 15, 1976	41 FR 15842.
Standards for disclosure; oil and gas reserve	12435	May 12, 1976	41 FR 21764.
Brokers and dealers effecting transactions in municipal securities	12496	June 11, 1976	41 FR 23668.
Statement of informal proposals for the rendering of staff advice with respect to shareholder proposals.	12599	July 20, 1976	41 FR 29989.
Guides for statistical disclosure by bank holding companies	12748	Aug. 31, 1976	41 FR 39007.
Uniform net capital rule	12766	Sept. 14, 1976	41 FR 39014.
Uniform net capital rule	12927	Oct. 27, 1976	41 FR 48335.
Brokers and dealers effecting transactions in municipal securities	12932	Oct. 27, 1976	41 FR 48336.
Brokers and dealers effecting transactions in municipal securities	13108	Jan. 4, 1977	42 FR 759.
Brokers and dealers effecting transactions in municipal securities	13362	Mar. 21, 1977	42 FR 15310.
Rescission of certain accounting series releases	13630	June 15, 1977	42 FR 33282.
Guideline regarding the preparation of integrated reports to shareholders	13639	June 17, 1977	42 FR 31780.
Industry segment determination	14523	Mar. 3, 1978	43 FR 9599.
Securities transactions by members of national securities exchanges	14563	Mar. 14, 1978	43 FR 11542.
Application of registration requirements to certain tender offers and the application of tender offer provisions to certain cash–option mergers.	14699	Apr. 24, 1978	43 FR 18163.
Reporting by certain institutional investors of beneficial ownership of certain equity securities which as of the end of any month exceeds ten percent of the class.	14830	June 13, 1978	43 FR 25420.
Division of investment management's interpretative positions relating to Rule 13f–1 and related Form 13F.	15292	Nov. 2, 1978	43 FR 52697.
Guides for disclosure of projections of future economic performance	15305	Nov. 7, 1978	43 FR 53246.
Commission's statement regarding disclosure of impact of Wage and Price Standards for 1979 on the operations of issuers.	15371	Nov. 29, 1978	43 FR 57596.
Statement of the views of the Commission's Division of Corporation Finance with respect to disclosure in proxy statements containing certain sale of assets transactions.	15572	Feb. 15, 1979	44 FR 11541.
Short sales; interpretation of rule	16150	Aug. 30, 1979	44 FR 53159.
Shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.	16163	Sept. 6, 1979	44 FR 53426.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Environmental disclosure requirements	16224	Sept. 27, 1979	44 FR 56924.
Pooled income funds	16478	Jan. 10, 1980	45 FR 3258.
Tender offer rules	16623	Mar. 5, 1980	45 FR 15521.
Proxy rules	16833	May 23, 1980	45 FR 36374.
Clearing agencies	16900	June 17, 1980	45 FR 41920.
Guides for statistical disclosure by bank holding companies	16961	July 8, 1980	45 FR 47142.
Transfer agents	17111	Sept. 2, 1980	45 FR 59840.
Amendments to guides	17114	Sept. 2, 1980	45 FR 63647.
Extension date of clearing agencies for form filing	17231	Oct. 20, 1980	45 FR 70857.
Beneficial ownership rules	17354	Dec. 4, 1980	45 FR 81559.
Distribution of proxy materials to beneficial shareowners	17424	Jan. 7, 1981	46 FR 3204.
Foreign Corrupt Practices Act of 1977	17500	Jan. 29, 1981	46 FR 11544.
Analysis of results of 1980 proxy statement disclosure monitoring program	17518	Feb. 5, 1981	46 FR 11954.
Option and option-related transactions during underwritten offerings	17609	Mar. 6, 1981	46 FR 16670.
Going private transactions under rule 13e–3	17719	Apr. 13, 1981	46 FR 22571.
Insider reporting and trading	18114	Sept. 23, 1981	46 FR 48147.
Retail repurchase agreements by banks and savings and loan associations	18122	Sept. 25, 1981	46 FR 48637.
Analysis of results of 1981 proxy statement disclosure monitoring program	18532	Mar. 3, 1982	47 FR 10794.
Rescission of guides and redesignation of industry guides (effective May 24, 1982).	18525	Mar. 3, 1982	47 FR 11481.
Amendments to guides	19337	Dec. 15, 1982	47 FR 57911.
Revision of financial statement requirements and industry guide disclosure for bank holding companies..	19570	Mar. 7, 1983	48 FR 11104.
Commission's views on *Colema Realty Corp.* v. *R. D. Bibow, et al*	19756	May 11, 1983	48 FR 23173.
Revision of industry guide disclosures for bank holding companies	20068	Aug. 11, 1983	48 FR 37609.
Public statements by corporate representatives	20560	Jan. 13, 1984	49 FR 2468.
Research reports	21332	Sept. 19, 1984	49 FR 37574.
Commission views on computer brokerage systems	21383	Oct. 9, 1984	49 FR 40159.
Guide for disclosures concerning reserves for unpaid claims and claim adjustment expenses of property-casualty underwriters.	21521	Nov. 27, 1984	49 FR 47601.
Brokerage and research services concerning scope of section 28(e) of Securities Exchange Act of 1934.	23170	Apr. 23, 1986	51 FR 16012.
Application of Rule 10b—6 under the Securities Exchange Act of 1934 to persons participating in shelf distributions.	23611	Sept. 11, 1986	51 FR 33248.
Industry guides for statistical disclosure by bank holding companies	23846	Nov. 25, 1986	51 FR 43599.
Tender offers rules	24296	Apr. 3, 1987	52 FR 11458.
Statement of the Commission Regarding Disclosure Obligations of Companies Affected by the Government's Defense Contract Procurement Inquiry and Related Issues.	25951	Aug. 1, 1988	53 FR 29228.
Statement of the Commission Regarding Disclosure by Issuers of interests in Publicly Offered Commodity Pools.	26508	Feb. 1, 1989	54 FR 5603.
Management's discussion and analysis of financial condition and results of operations; certain investment company disclosures.	26831	May 18, 1989	54 FR 22427.
Modifying and confirming the interpretation of municipal underwriter securities responsibilities.	26985	June 28, 1989	54 FR 28814.
Liquidation of Index Arbitrage Positions	27938	Apr. 30, 1990	55 FR 17949.
Ownership reports on trading by officers, directors and principal security holders.	29131	Apr. 26, 1991	56 FR 19928.
Limited partnership reorganizations and public offerings of limited partnership interests.	29314	June 17, 1991	56 FR 28986.
Registration of Successors to Broker–Dealers and Investment Advisors	31661	Jan. 4, 1993	58 FR 11.
Statement of the Commission regarding disclosure obligations of municipal securities issuers and others.	33741	Mar. 9, 1994	59 FR 12758.
Amendment of interpretation regarding substantive repossession of collateral	34061	May 12, 1994	59 FR 26109.
Use of electronic media for delivery purposes	36345	Oct. 6, 1995	60 FR 53467.
Use of electronic media for delivery purposes	37182	May 9, 1996	61 FR 24651.
Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore.	39779	March 23, 1998	63 FR 14813

PART 242—REGULATION M

Sec.

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AUTHORITY: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(c), 78o(g), 78q(a), 78q(h), 78w(a), 78dd–1, 80a–23, 80a–29, and 80a–37.

SOURCE: 62 FR 544, Jan. 3, 1997, unless otherwise noted.

§ 242.100 Preliminary note; definitions.

(a) *Preliminary note:* Any transaction or series of transactions, whether or not effected pursuant to the provisions of Regulation M (§§ 242.100–242.105 of this chapter), remain subject to the antifraud and antimanipulation provisions of the securities laws, including, without limitation, Section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)] and Sections 9, 10(b), and 15(c) of the Securities Exchange Act of 1934 [15 U.S.C. 78i, 78j(b), and 78o(c)].

(b) For purposes of regulation M (§§ 242.100 through 242.105 of this chapter) the following definitions shall apply:

ADTV means the worldwide average daily trading volume during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

Affiliated purchaser means:

(1) A person acting, directly or indirectly, in concert with a distribution participant, issuer, or selling security holder in connection with the acquisition or distribution of any covered security; or

(2) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that, directly or indirectly, controls the purchases of any covered security by a distribution participant, issuer, or selling security holder, whose purchases are controlled by any such person, or whose purchases are under common control with any such person; or

(3) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that regularly purchases securities for its own account or for the account of others, or that recommends or exercises investment discretion with respect to the purchase or sale of securities; *Provided, however,* That this paragraph (3) shall not apply to such affiliate if the following conditions are satisfied:

(i) The distribution participant, issuer, or selling security holder:

(A) Maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of §§ 242.101, 242.102, and 242.104; and

(B) Obtains an annual, independent assessment of the operation of such policies and procedures; and

(ii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the distribution participant, issuer, or selling security holder that direct, effect, or recommend transactions in securities; and

(iii) The affiliate does not, during the applicable restricted period, act as a market maker (other than as a specialist in compliance with the rules of a national securities exchange), or engage, as a broker or a dealer, in solicited transactions or proprietary trading, in covered securities.

Agent independent of the issuer means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if:

(1) The agent is not an affiliate of the issuer; and

(2) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the prices or amounts of the securities to be purchased, the timing of, or the manner in which, the securities are to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or its affiliate

will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the source of the shares to fund the plan the basis for determining the amount of its contributions to a plan, or the basis for determining the frequency of its allocations to a plan, or any formula specified in a plan that determines the amount or timing of securities to be purchased by the agent.

Asset-backed security has the meaning contained in General Instruction I.B.5. to Form S–3 (§ 239.13 of this chapter).

At-the-market offering means an offering of securities at other than a fixed price.

Business day refers to a 24 hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market.

Completion of participation in a distribution. Securities acquired in the distribution for investment by any person participating in a distribution, or any affiliated purchaser of such person, shall be deemed to be distributed. A person shall be deemed to have completed its participation in a distribution as follows:

(1) An issuer or selling security holder, when the distribution is completed;

(2) An underwriter, when such person's participation has been distributed, including all other securities of the same class that are acquired in connection with the distribution, and any stabilization arrangements and trading restrictions in connection with the distribution have been terminated; *Provided, however*, That an underwriter's participation will not be deemed to have been completed if a syndicate overallotment option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise; and

(3) Any other person participating in the distribution, when such person's participation has been distributed.

Covered security means any security that is the subject of a distribution, or any reference security.

Current exchange rate means the current rate of exchange between two currencies, which is obtained from at least one independent entity that provides or disseminates foreign exchange quotations in the ordinary course of its business.

Distribution means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods.

Distribution participant means an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.

Electronic communications network has the meaning contained in § 240.11Ac1–1(a)(8) of this chapter.

Employee has the meaning contained in Form S–8 (§ 239.16b of this chapter) relating to employee benefit plans.

Exchange Act means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Independent bid means a bid by a person who is not a distribution participant, issuer, selling security holder, or affiliated purchaser.

NASD means the National Association of Securities Dealers, Inc. or any of its subsidiaries.

Nasdaq means the Nasdaq system as defined in § 240.11Ac1–2(a)(3) of this chapter.

Nasdaq security means a security that is authorized for quotation on Nasdaq, and such authorization is not suspended, terminated, or prohibited.

Net purchases means the amount by which a passive market maker's purchases exceed its sales.

Offering price means the price at which the security is to be or is being distributed.

Passive market maker means a market maker that effects bids or purchases in accordance with the provisions of § 242.103.

Penalty bid means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

Plan means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock

option, stock ownership, stock appreciation, dividend reinvestment, or similar plan; or any dividend or interest reinvestment plan or employee benefit plan as defined in § 230.405 of this chapter.

Principal market means the single securities market with the largest aggregate reported trading volume for the class of securities during the 12 full calendar months immediately preceding the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, during the 12 full calendar months immediately preceding the determination of the offering price. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share. For purposes of this paragraph, depositary share means a security, evidenced by a depositary receipt, that represents another security, or a multiple or fraction thereof, deposited with a depositary.

Prospective underwriter means a person:

(1) Who has submitted a bid to the issuer or selling security holder, and who knows or is reasonably certain that such bid will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or

(2) Who has reached, or is reasonably certain to reach, an understanding with the issuer or selling security holder, or managing underwriter that such person will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.

Public float value shall be determined in the manner set forth on the front page of Form 10–K (§ 249.310 of this chapter), even if the issuer of such securities is not required to file Form 10–K, relating to the aggregate market value of common equity securities held by non-affiliates of the issuer.

Reference period means the two full calendar months immediately preceding the filing of the registration statement or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, the two full calendar months immediately preceding the determination of the offering price.

Reference security means a security into which a security that is the subject of a distribution (''subject security'') may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security.

Restricted period means:

(1) For any security with an ADTV value of $100,000 or more of an issuer whose common equity securities have a public float value of $25 million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution; and

(2) For all other securities, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person's completion of participation in the distribution.

(3) In the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution.

Securities Act means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

Selling security holder means any person on whose behalf a distribution is made, other than an issuer.

Stabilize or stabilizing means the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security.

Syndicate covering transaction means the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a short position created in connection with the offering.

30% ADTV limitation means 30 percent of the market maker's ADTV in a covered security during the reference period, as obtained from the NASD.

Underwriter means a person who has agreed with an issuer or selling security holder:

(1) To purchase securities for distribution; or

(2) To distribute securities for or on behalf of such issuer or selling security holder; or

(3) To manage or supervise a distribution of securities for or on behalf of such issuer or selling security holder.

[62 FR 544, Jan. 3, 1997, as amended at 62 FR 11323, Mar. 12, 1997]

§ 242.101 Activities by distribution participants.

(a) *Unlawful Activity*. In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Provided, however*, That if a distribution participant or affiliated purchaser is the issuer or selling security holder of the securities subject to the distribution, such person shall be subject to the provisions of § 242.102, rather than this section.

(b) *Excepted Activity*. The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Research*. The publication or dissemination of any information, opinion, or recommendation, if the conditions of §§ 230.138 or 230.139 of this chapter are met; or

(2) *Transactions complying with certain other sections*. Transactions complying with §§ 242.103 or 242.104; or

(3) *Odd-lot transactions*. Transactions in odd-lots; or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e–4(h)(5) of this chapter; or

(4) *Exercises of securities*. The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Unsolicited transactions*. Unsolicited brokerage transactions; or unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(6) *Basket transactions*. (i) Bids or purchases, in the ordinary course of business, in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased; or

(ii) Adjustments to such a basket in the ordinary course of business as a result of a change in the composition of a standardized index; or

(7) *De minimis transactions*. Purchases during the restricted period, other than by a passive market maker, that total less than 2% of the ADTV of the security being purchased, or unaccepted bids; *Provided, however*, That the person making such bid or purchase has maintained and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section; or

(8) *Transactions in connection with a distribution*. Transactions among distribution participants in connection with a distribution, and purchases of securities from an issuer or selling security holder in connection with a distribution, that are not effected on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(9) *Offers to sell or the solicitation of offers to buy*. Offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer or solicitation; or

(10) *Transactions in Rule 144A securities*. Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be ''U.S. persons'' for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(10)(i) of this section.

(c) *Excepted Securities*. The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded securities*. Securities that have an ADTV value of at least $1 million and are issued by an issuer whose common equity securities have a public float value of at least $150 million; *Provided, however*, That such securities are not issued by the distribution participant or an affiliate of the distribution participant; or

(2) *Investment grade nonconvertible and asset-backed securities*. Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3–1 of this chapter, in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities*. ''Exempted securities'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust*. Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (c)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(d) *Exemptive Authority*. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.102 Activities by issuers and selling security holders during a distribution.

(a) *Unlawful Activity*. In connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Except That* if an affiliated purchaser is a distribution participant, such affiliated purchaser may comply with § 242.101, rather than this section.

(b) *Excepted Activity*. The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Odd-lot transactions*. Transactions in odd-lots, or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e–4(h)(5) of this chapter; or

(2) *Transactions by closed-end investment companies*. (i) Transactions complying with § 270.23c–3 of this chapter; or

(ii) Periodic tender offers of securities, at net asset value, conducted pursuant to § 240.13e–4 of this chapter by a closed-end investment company that engages in a continuous offering of its securities pursuant to § 230.415 of this chapter; *Provided, however*, That such securities are not traded on a securities exchange or through an inter-dealer quotation system or electronic communications network; or

(3) *Redemptions by commodity pools or limited partnerships*. Redemptions by commodity pools or limited partnerships, at a price based on net asset value, which are effected in accordance with the terms and conditions of the instruments governing the securities; *Provided, however*, That such securities are not traded on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(4) *Exercises of securities*. The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Offers to sell or the solicitation of offers to buy*. Offers to sell or the solicitation of offers to buy the securities being distributed; or

(6) *Unsolicited purchases*. Unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-

dealer quotation system or electronic communications network; or

(7) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be ''U.S. persons'' for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(7)(i) of this section.

(c) *Plans.* (1) Paragraph (a) of this section shall not apply to distributions of securities pursuant to a plan, which are made:

(i) Solely to employees or security holders of an issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons; or

(ii) To persons other than employees or security holders, if bids for or purchases of securities pursuant to the plan are effected solely by an agent independent of the issuer and the securities are from a source other than the issuer or an affiliated purchaser of the issuer.

(2) Bids for or purchases of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the purchase is effected, by an agent independent of the issuer.

(d) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded reference securities.* Reference securities with an ADTV value of at least $1 million that are issued by an issuer whose common equity securities have a public float value of at least $150 million; *Provided, however,* That such securities are not issued by the issuer, or any affiliate of the issuer, of the security in distribution.

(2) *Investment grade nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3–1 of this chapter, in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities.* ''Exempted securities'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (d)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) shall have the meanings specified in such Act.

(e) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[62 FR 544, Jan. 3, 1997, as amended at 62 FR 11323, Mar. 12, 1997]

§ 242.103 Nasdaq passive market making.

(a) *Scope of Section.* This section permits broker-dealers to engage in market making transactions in covered securities that are Nasdaq securities without violating the provisions of § 242.101; *Except That* this section shall not apply to any security for which a stabilizing bid subject to § 242.104 is in effect, or during any at-the-market offering or best efforts offering.

(b) *Conditions to be Met*—(1) *General limitations.* A passive market maker must effect all transactions in the capacity of a registered market maker on Nasdaq. A passive market maker shall not bid for or purchase a covered security at a price that exceeds the highest

independent bid for the covered security at the time of the transaction, except as permitted by paragraph (b)(3) of this section or required by a rule promulgated by the Commission or the NASD governing the handling of customer orders.

(2) *Purchase limitation*. On each day of the restricted period, a passive market maker's net purchases shall not exceed the greater of its 30% ADTV limitation or 200 shares (together, ''purchase limitation''); *Provided, however*, That a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in its purchase limitation being equalled or exceeded. If a passive market maker's net purchases equal or exceed its purchase limitation, it shall withdraw promptly its quotations from Nasdaq. If a passive market maker withdraws its quotations pursuant to this paragraph, it may not effect any bid or purchase in the covered security for the remainder of that day, irrespective of any later sales during that day, unless otherwise permitted by § 242.101.

(3) *Requirement to lower the bid*. If all independent bids for a covered security are reduced to a price below the passive market maker's bid, the passive market maker must lower its bid promptly to a level not higher than the then highest independent bid; *Provided, however*, That a passive market maker may continue to bid and effect purchases at its bid at a price exceeding the then highest independent bid until the passive market maker purchases an aggregate amount of the covered security that equals or, through the purchase of all securities that are part of a single order, exceeds the lesser of two times the minimum quotation size for the security, as determined by NASD rules, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section.

(4) *Limitation on displayed size*. At all times, the passive market maker's displayed bid size may not exceed the lesser of the minimum quotation size for the covered security, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section; *Provided, however*, That a passive market maker whose purchasing capacity at any time is between one and 99 shares may display a bid size of 100 shares.

(5) *Identification of a passive market making bid*. The bid displayed by a passive market maker shall be designated as such.

(6) *Notification and reporting to the NASD*. A passive market maker shall notify the NASD in advance of its intention to engage in passive market making, and shall submit to the NASD information regarding passive market making purchases, in such form as the NASD shall prescribe.

(7) *Prospectus disclosure*. The prospectus for any registered offering in which any passive market maker intends to effect transactions in any covered security shall contain the information required in §§ 228.502, 228.508, 229.502, and 229.508 of this chapter.

(c) *Transactions at Prices Resulting from Unlawful Activity*. No transaction shall be made at a price that the passive market maker knows or has reason to know is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

§ 242.104 Stabilizing and other activities in connection with an offering.

(a) *Unlawful Activity*. It shall be unlawful for any person, directly or indirectly, to stabilize, to effect any syndicate covering transaction, or to impose a penalty bid, in connection with an offering of any security, in contravention of the provisions of this section. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

(b) *Purpose*. Stabilizing is prohibited except for the purpose of preventing or retarding a decline in the market price of a security.

(c) *Priority*. To the extent permitted or required by the market where stabilizing occurs, any person stabilizing shall grant priority to any independent bid at the same price irrespective of the size of such independent bid at the time that it is entered.

(d) *Control of Stabilizing.* No sole distributor or syndicate or group stabilizing the price of a security or any member or members of such syndicate or group shall maintain more than one stabilizing bid in any one market at the same price at the same time.

(e) *At-the-Market Offerings.* Stabilizing is prohibited in an at-the-market offering.

(f) *Stabilizing Levels—(1) Maximum stabilizing bid.* Notwithstanding the other provisions of this paragraph (f), no stabilizing shall be made at a price higher than the lower of the offering price or the stabilizing bid for the security in the principal market (or, if the principal market is closed, the stabilizing bid in the principal market at its previous close).

(2) *Initiating stabilizing*—(i) *Initiating stabilizing when the principal market is open.* After the opening of quotations for the security in the principal market, stabilizing may be initiated in any market at a price no higher than the last independent transaction price for the security in the principal market if the security has traded in the principal market on the day stabilizing is initiated or on the most recent prior day of trading in the principal market and the current asked price in the principal market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, stabilizing may be initiated in any market after the opening of quotations in the principal market at a price no higher than the highest current independent bid for the security in the principal market.

(ii) *Initiating stabilizing when the principal market is closed.* (A) When the principal market for the security is closed, but immediately before the opening of quotations for the security in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(*1*) The price at which stabilizing could have been initiated in the principal market for the security at its previous close; or

(*2*) The most recent price at which an independent transaction in the security has been effected in any market since the close of the principal market, if the person stabilizing knows or has reason to know of such transaction.

(B) When the principal market for the security is closed, but after the opening of quotations in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(*1*) The price at which stabilization could have been initiated in the principal market for the security at its previous close; or

(*2*) The last independent transaction price for the security in that market if the security has traded in that market on the day stabilizing is initiated or on the last preceding business day and the current asked price in that market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, under this paragraph (f)(2)(ii)(B)(*2*), stabilizing may be initiated at a price no higher than the highest current independent bid for the security in that market.

(iii) *Initiating stabilizing when there is no market for the security or before the offering price is determined.* If no *bona fide* market for the security being distributed exists at the time stabilizing is initiated, no stabilizing shall be initiated at a price in excess of the offering price. If stabilizing is initiated before the offering price is determined, then stabilizing may be continued after determination of the offering price at the price at which stabilizing then could be initiated.

(3) *Maintaining or carrying over a stabilizing bid.* A stabilizing bid initiated pursuant to paragraph (f)(2) of this section, which has not been discontinued, may be maintained, or carried over into another market, irrespective of changes in the independent bids or transaction prices for the security.

(4) *Increasing or reducing a stabilizing bid.* A stabilizing bid may be increased to a price no higher than the highest current independent bid for the security in the principal market if the principal market is open, or, if the principal market is closed, to a price no higher than the highest independent bid in the principal market at the previous close thereof. A stabilizing bid may be reduced, or carried over into

another market at a reduced price, irrespective of changes in the independent bids or transaction prices for the security. If stabilizing is discontinued, it shall not be resumed at a price higher than the price at which stabilizing then could be initiated.

(5) *Initiating, maintaining, or adjusting a stabilizing bid to reflect the current exchange rate.* If a stabilizing bid is expressed in a currency other than the currency of the principal market for the security, such bid may be initiated, maintained, or adjusted to reflect the current exchange rate, consistent with the provisions of this section. If, in initiating, maintaining, or adjusting a stabilizing bid pursuant to this paragraph (f)(5), the bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(6) *Adjustments to stabilizing bid.* If a security goes ex-dividend, ex-rights, or ex-distribution, the stabilizing bid shall be reduced by an amount equal to the value of the dividend, right, or distribution. If, in reducing a stabilizing bid pursuant to this paragraph (f)(6), the bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(7) *Stabilizing of components.* When two or more securities are being offered as a unit, the component securities shall not be stabilized at prices the sum of which exceeds the then permissible stabilizing price for the unit.

(8) *Special prices.* Any stabilizing price that otherwise meets the requirements of this section need not be adjusted to reflect special prices available to any group or class of persons (including employees or holders of warrants or rights).

(g) *Offerings with no U.S. Stabilizing Activities.* (1) Stabilizing to facilitate an offering of a security in the United States shall not be deemed to be in violation of this section if all of the following conditions are satisfied:

(i) No stabilizing is made in the United States;

(ii) Stabilizing outside the United States is made in a jurisdiction with statutory or regulatory provisions governing stabilizing that are comparable to the provisions of this section; and

(iii) No stabilizing is made at a price above the offering price in the United States, except as permitted by paragraph (f)(5) of this section.

(2) For purposes of this paragraph (g), the Commission by rule, regulation, or order may determine whether a foreign statute or regulation is comparable to this section considering, among other things, whether such foreign statute or regulation: specifies appropriate purposes for which stabilizing is permitted; provides for disclosure and control of stabilizing activities; places limitations on stabilizing levels; requires appropriate recordkeeping; provides other protections comparable to the provisions of this section; and whether procedures exist to enable the Commission to obtain information concerning any foreign stabilizing transactions.

(h) *Disclosure and Notification.* (1) Any person displaying or transmitting a bid that such person knows is for the purpose of stabilizing shall provide prior notice to the market on which such stabilizing will be effected, and shall disclose its purpose to the person with whom the bid is entered.

(2) Any person effecting a syndicate covering transaction or imposing a penalty bid shall provide prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected or the penalty bid is imposed.

(3) Any person subject to this section who sells to, or purchases for the account of, any person any security where the price of such security may be or has been stabilized, shall send to the purchaser at or before the completion of the transaction, a prospectus, offering circular, confirmation, or other document containing a statement similar to that comprising the statement provided for in Item 502(d) of Regulation S–B (§ 228.502(d) of this chapter) or Item 502(d) of Regulation S–K (§ 229.502(d) of this chapter).

(i) *Recordkeeping Requirements.* A person subject to this section shall keep

the information and make the notification required by § 240.17a–2 of this chapter.

(j) *Excepted Securities.* The provisions of this section shall not apply to:

(1) *Exempted Securities.* ''Exempted securities,'' as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(2) *Transactions of Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in a transaction exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be ''U.S. persons'' for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (j)(2)(i) of this section.

(k) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[62 FR 544, Jan. 3, 1997, as amended at 62 FR 11323, Mar. 12, 1997; 62 FR 13213, Mar. 19, 1997]

§ 242.105 Short selling in connection with a public offering.

(a) *Unlawful Activity.* In connection with an offering of securities for cash pursuant to a registration statement or a notification on Form 1–A (§ 239.90 of this chapter) filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the shorter of:

(1) The period beginning five business days before the pricing of the offered securities and ending with such pricing; or

(2) The period beginning with the initial filing of such registration statement or notification on Form 1–A and ending with the pricing.

(b) *Excepted Offerings.* This section shall not apply to offerings filed under § 230.415 of this chapter or to offerings that are not conducted on a firm commitment basis.

(c) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

By the Commission.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

Sec.
249.0–1 Availability of forms.

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249.25 Form 25, for notification of removal from listing and registration of matured, redeemed or retired securities.
249.26 Form 26, for notification of the admission to trading of a substituted or additional class of security under Rule 12a–5 (§ 240.12a–5) of this chapter.

Subpart B—Forms for Reports To Be Filed by Officers, Directors, and Security Holders

249.103 Form 3, initial statement of beneficial ownership of securities.
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Subpart C—Forms for Applications for Registration of Securities on National Securities Exchanges and Similar Matters

249.208 [Reserved]
249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934.
249.208b [Reserved]
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form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

249.210b Form 10–SB, optional form for the registration of securities of a small business issuer.

249.218 Form 18, for foreign governments and political subdivisions thereof.

249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

249.250 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 249.37 of this chapter), F–8, F–9, F–10 or F–80.

Subpart D—Forms for Annual and Other Reports of Issuers Required Under Sections 13 and 15(d) of the Securities Exchange Act of 1934

249.306 Form 6–K report of foreign issuer pursuant to Rules 13a–16 (§ 240.13a–16 of this chapter) and 15d–16 (§ 240.15d–16 of this chapter) under the Securities Exchange Act of 1934.

249.308 Form 8–K, for current reports.

249.308a Form 10–Q and Form 10–QSB, for quarterly and transition reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

249.308b Form 10–QSB, Optional Form for Quarterly and Transition Reports of Small Business Issuers Under Section 13 or 15(d) of the Securities Exchange Act of 1934 (''Exchange Act'').

249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

249.310b Form 10–KSB, Optional Form for Annual and Transition Reports of Small Business Issuers Under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'').

249.310c [Reserved]

249.311 Form 11–K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

249.318 Form 18–K, annual report for foreign governments and political subdivisions thereof.

249.322 Form 12b–25—Notification of late filing.

249.323 Form 15, certification of termination of registration of a class of security under section 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Act.

249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934.

249.326 Form 13F–E, for filing of Form 13F reports on magnetic tape.

249.328T Form 17–H, Risk assessment report for brokers and dealers pursuant to section 17(h) of the Securities Exchange Act of 1934 and rules thereunder.

249.330 Form N–SAR, semi-annual report of registered investment companies.

249.444 Form SE, form for submission of paper format exhibits by electronic filers.

249.445 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filled on the EDGAR system.

249.446 Form ID, uniform application for access codes to file on EDGAR.

249.447 Form TH—Notification of reliance on temporary hardship exemption.

Subpart E [Reserved]

Subpart F—Forms for Registration of Brokers and Dealers Transacting Business on Over-the-Counter Markets

249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.

249.501a Form BDW, notice of withdrawal from registration as broker-dealer pursuant to § 240.15b6–1, § 240.15Bc3–1, or § 240.15Cc1–1 of this chapter.

249.507 Form 7–M, consent to service of process by an individual nonresident broker-dealer.

249.508 Form 8–M, consent to service of process by a corporation which is a nonresident broker-dealer.

249.509 Form 9–M, consent to service of process by a partnership nonresident broker-dealer.

249.510 Form 10–M, consent to service of process by a nonresident general partner of a broker-dealer firm.

Subpart G—Forms for Reports To Be Made by Certain Exchange Members, Brokers, and Dealers

249.617 Form X–17A–5, information required of certain brokers and dealers pursuant

to section 17 of the Securities Exchange Act of 1934 and §§ 240.17a–5, 240.17a–10 and 240.17a–11 of this chapter.
249.619—249.634 [Reserved]
249.635 Form X–17A–19, report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.
249.636 Form 17A–23, information required of certain broker and dealer sponsors of broker-dealer trading systems pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17a–23 of this chapter.

Subpart H—Forms for Reports as to Stabilization

249.709 [Reserved]

Subpart I—Forms for Self-Regulatory Organization Rule Changes and Forms for Registration of and Reporting by National Securities Associations and Affiliated Securities Associations

249.801 Form X–15AA–1, for application for registration as a national securities association or affiliated securities association.
249.802 Form X–15AJ–1, for amendatory and/or supplementary statements to registration statement of a national securities association or an affiliated securities association.
249.803 Form X–15AJ–2, for annual consolidated supplement of a national securities association or an affiliated securities association.
249.819 Form 19b–4, for filings with respect to proposed rule changes by all self-regulatory organizations.

Subpart J [Reserved]

Subpart K—Forms for Registration of, and Reporting by Securities Information Processors

249.1001 Form SIP, for application for registration as a securities information processor or to amend such an application or registration.

Subpart L—Forms for Registration of Municipal Securities Dealers

249.1100 Form MSD, application for registration as a municipal securities dealer pursuant to rule 15Ba–2–1 under the Securities Exchange Act of 1934 or amendment to such application.
249.1110 Form MSDW, notice of withdrawal from registration as a municipal securities dealer pursuant to Rule 15Bc3–1 (17 CFR 240.15Bc3–1).

Subpart M—Forms for Reporting and Inquiry With Respect to Missing, Lost, Stolen, or Counterfeit Securities

249.1200 Form X–17F–1A—Report for missing, lost, stolen or counterfeit securities.

AUTHORITY: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

Section 249.310 is also issued under 15 U.S.C. 78m, 78*o*(d), and 78w(a).

Section 249.326(T) also issued under section 13(f)(1) (15 U.S.C. 78m(f)(1)).

SOURCE: 33 FR 18995, Dec. 20, 1968; 34 FR 554, Jan. 15, 1969, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

§ 249.0–1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Securities Exchange Act of 1934.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of SEC regional or district offices)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5946, Feb. 9, 1994]

Subpart A—Forms for Registration or Exemption of, and Notification of Action Taken by, National Securities Exchanges

§ 249.1 Form 1, for application for, or exemption from, registration as a national securities exchange.

This form shall be used for applications for registration or for exemption from registration as a national securities exchange.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.1a Form 1–A, for amendments to Form 1.

This form shall be used for amendatory and/or supplementary statements to registration statements of a national securities exchange.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 1–A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.25 Form 25, for notification of removal from listing and registration of matured, redeemed or retired securities.

This form shall be used by a registered national securities exchange for notification of the removal from listing and registration of matured, redeemed, or retired securities.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 25, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.26 Form 26, for notification of the admission to trading of a substituted or additional class of security under Rule 12a–5 (§ 240.12a–5 of this chapter).

This form shall be used by a registered national securities exchange for notification of the admission to trading of a substituted or additional class of security under Rule 12a–5.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 26, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart B—Forms for Reports To Be Filed by Officers, Directors, and Security Holders

§ 249.103 Form 3, initial statement of beneficial ownership of securities.

This Form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for initial statements of beneficial ownership of securities. The Commission is authorized to solicit the information required by this Form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (17 CFR part 240); sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (17 CFR part 250); and sections 30(f) and 38 of the Investment Company Act of 1940 (17 CFR part 270), and the rules and regulations thereunder. Disclosure of information specified on this Form is mandatory, except for disclosure of the I.R.S. identification number by entities, which is voluntary. If such numbers are furnished, they will assist the Commission in distinguishing reporting persons with similar names and will facilitate the prompt processing of the Form. The information will be used for the primary purpose of disclosing the holdings of directors, officers and beneficial owners of registered companies. Information disclosed will be a matter of public record and available for inspection by members of the public. The Commission can use the information in investigations or litigation involving the federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the federal securities laws and rules.

[56 FR 7274, Feb. 21, 1991, as amended at 62 FR 35341, July 1, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.104 Form 4, statement of changes in beneficial ownership of securities.

This Form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for statements of changes in beneficial ownership of securities. The Commission is authorized to solicit the information required by this form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (17 CFR part 240); sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (17 CFR part 250); and sections 30(f) and 38 of the Investment Company Act of 1940 (17 CFR part 270), and the rules and regulations thereunder. Disclosure of information specified on this Form is mandatory, except for disclosure of the I.R.S. identification number by entities, which is voluntary. If such numbers are furnished, they will assist the Commission in distinguishing reporting persons with similar names and will facilitate the prompt processing of the Form. The information will be used for the primary purpose of disclosing the transactions and holdings of directors, officers and beneficial owners of registered companies. Information disclosed will be a matter of public record

and available for inspection by members of the public. The Commission can use the information in investigations or litigation involving the federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the federal securities laws and rules.

[56 FR 7274, Feb. 21, 1991, as amended at 62 FR 35341, July 1, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.105 Form 5, annual statement of beneficial ownership of securities.

This Form shall be filed pursuant to Rule 16a–3 (§ 240.16a–3 of this chapter) for annual statements of beneficial ownership of securities. The Commission is authorized to solicit the information required by this Form pursuant to sections 16(a) and 23(a) of the Securities Exchange Act of 1934 (17 CFR part 240); sections 17(a) and 20(a) of the Public Utility Holding Company Act of 1935 (17 CFR part 250); and sections 30(f) and 38 of the Investment Company Act of 1940 (17 CFR part 270), and the rules and regulations thereunder. Disclosure of information specified on this Form is mandatory, except for disclosure of the I.R.S. identification number by entities, which is voluntary. If such numbers are furnished, they will assist the Commission in distinguishing reporting persons with similar names and will facilitate the prompt processing of the Form. The information will be used for the primary purpose of disclosing the transactions and holdings of officers, directors and beneficial owners of registered companies. Information disclosed will be a matter of public record and available for inspection by members of the public. The Commission can use the information in investigations or litigation involving the federal securities laws or other civil, criminal, or regulatory statutes or provisions, as well as for referral to other governmental authorities and self-regulatory organizations. Failure to disclose required information may result in civil or criminal action against persons involved for violations of the federal securities laws and rules.

[56 FR 7274, Feb. 21, 1991, as amended at 62 FR 35341, July 1, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 5, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C—Forms for Applications for Registration of Securities on National Securities Exchanges and Similar Matters

§ 249.208 [Reserved]

§ 249.208a Form 8–A, for registration of certain classes of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

(a) Subject to paragraph (b) of this section, this form may be used for registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 of any class of securities of any issuer which is required to file reports pursuant to sections 13 and 15(d) of that Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange.

(b) If the registrant would be required to file an annual report pursuant to section 15(d) of the Act for its last fiscal year, except for the fact that the registration statement on this form will become effective before such report is required to be filed, an annual report for such fiscal year shall nevertheless be filed within the period specified in the appropriate annual report form.

(c) If this form is used for the registration of a class of securities under Section 12(b) of the Act (15 U.S.C. 78*l*(b)), it shall become effective;

(1) If a class of securities is not concurrently being registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*)(''Securities Act''), upon the later of receipt by the Commission of certification from the national securities exchange listed on the form or the filing of the Form 8–A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the Filing of the Form 8–A with the Commission, receipt by the Commission of certification from the national securities exchange listed on the form, or the effectiveness of the Securities Act registration statement relating to the class of securities.

(d) If this form is used for the registration of a class of securities under Section 12(g) of the Act (15 U.S.C. 78*l*(g)), it shall become effective:

(1) If a class of securities is not concurrently being registered under the Securities Act, upon the filing of the Form 8–A with the Commission; or

(2) If a class of securities is concurrently being registered under the Securities Act, upon the later of the filing of the Form 8–A with the Commission or the effectiveness of the Securities registration statement relating to the class of securities.

[43 FR 21663, May 19, 1978, as amended at 59 FR 55347, Nov. 7, 1994; 62 FR 39768, July 24, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 8–A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.208b [Reserved]

§ 249.208c [Reserved]

EDITORIAL NOTE: Amended Form 8–A replaces former Form 8–C; see § 249.208a of this chapter.

§ 249.210 Form 10 and Form 10–SB, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

This form shall be used for registration pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934 of classes of securities of issuers for which no other form is prescribed.

(Secs. 7, 10, 19(a), 48 Stat. 78, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 8, 68 Stat. 685; 15 U.S.C. 77g, 77j, 77s(a); secs. 12, 13, 14, 15(d), 23, 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 3, 4, 5, 6, 10, 78 Stat. 565–568, 569, 570–574, 88a; secs. 1, 2, 3, 82 Stat. 454, 455; secs.1, 2, 3–5, 28(c), 84 Stat. 1435, 1479; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155 (15 U.S.C. 78*l*, 78m, 78n, 78o(d), 78w))

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10 and Form 10–SB, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.210b Form 10–SB, optional form for the registration of securities of a small business issuer.

A ''small business issuer,'' defined in Rule 12b–2 (§ 240.12b–2 of this chapter) may use Form 10–SB to register a class of its securities under Section 12 (b) or (g) of the Exchange Act. For further information concerning eligibility to use this form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.).

[57 FR 36495, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–SB, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.218 Form 18, for foreign governments and political subdivisions thereof.

This form shall be used for the registration of securities of any foreign government or political subdivision thereof.

[47 FR 54781, Dec. 6, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 18, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.220f Form 20–F, registration of securities of foreign private issuers pursuant to section 12(b) or (g) and annual and transition reports pursuant to sections 13 and 15(d).

(a) Any foreign private issuer may use this form as a registration statement under section 12 of the Securities Exchange Act of 1934 (the ''Exchange Act'') or as an annual or transition report filed under section 13(a) or 15(d) of the Exchange Act.

(b) An annual report on this form shall be filed within six months after the end of the fiscal year covered by such report.

(c) A transition report on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or

§ 240.15d–10 applicable when the issuer changes its fiscal year end.

[47 FR 54781, Dec. 6, 1982, as amended at 54 FR 10319, Mar. 13, 1989; 56 FR 30075, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 20–F, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

(a) Form 40–F may be used to file reports with the Commission pursuant to section 15(d) of the Securities Exchange Act of 1934 (the ''Exchange Act'') and Rule 15d–4 (17 CFR 240.15d–4) thereunder by registrants that are subject to the reporting requirements of that section solely by reason of their having filed a registration statement on Form F–7, F–8, F–9, F–10 or F–80 under the Securities Act of 1933 (the ''Securities Act'').

NOTE: No reporting obligation arises under section 15(d) of the Securities Act from the registration of securities on Form F–7, F–8 or F–80 if the issuer, at the time of filing such Form, is exempt from the requirements of section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b). See Rule 12h–4 under the Exchange Act.

(b) Form 40–F may be used to register securities with the Commission pursuant to section 12(b) or 12(g) of the Exchange Act, to file reports with the Commission pursuant to section 13(a) of the Exchange Act and Rule 13a–3 (17 CFR 240.13a–3) thereunder, and to file reports with the Commission pursuant to section 15(d) of the Exchange Act if:

(1) The registrant is incorporated or organized under the laws of Canada or any Canadian province or territory;

(2) The registrant is a foreign private issuer or a crown corporation;

(3) The registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form and is currently in compliance with such obligations; and

(4) The aggregate market value of the public float of the registrant's outstanding equity shares is $75 million or more; *provided*, *however*, no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9 (§ 239.39 of this chapter).

Instructions

1. For purposes of this Form, ''foreign private issuer'' shall be construed in accordance with Rule 405 under the Securities Act.

2. For purposes of this Form, the term ''crown corporation'' shall mean a corporation all of whose common shares or comparable equity is owned directly or indirectly by the Government of Canada or a Province or Territory of Canada.

3. For purposes of this Form, the ''public float'' of specified securities shall mean only such securities held by persons other than affiliates of the issuer.

4. For the purposes of this Form, an ''affiliate'' of a person is anyone who beneficially owns directly or indirectly, or exercises control or direction over, more than 10 percent of the outstanding equity shares of such person. The determination of a person's affiliates shall be made as of the end of such person's most recently completed fiscal year.

5. For purposes of this Form, ''equity shares'' shall mean common shares, non-voting equity shares and subordinate or restricted voting equity shares, but shall not include preferred shares.

6. For purposes of this Form, the market value of outstanding equity shares (whether or not held by affiliates) shall be computed by use of the price at which the shares were last sold, or the average of the bid and asked prices of such shares, in the principal market for such shares as of a date within 60 days prior to the date of filing. If there is no market for any of such securities, the book value of such securities computed as of the latest practicable date prior to the filing of this Form shall be used for purposes of calculating the market value, unless the issuer of such securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of such securities shall be used.

(c) If the registrant is a successor registrant subsisting after a business combination, it shall be deemed to meet the 12-month reporting requirement of paragraph (b)(3) of this section if:

(1) The time the successor registrant has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory

authority in Canada, when added separately to the time each predecessor had been subject to such requirements at the time of the business combination, in each case equals at least 12 calendar months, *provided, however,* that any predecessor need not be considered for purposes of the reporting history calculation if the reporting histories of predecessors whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of such participating companies' most recently completed fiscal years immediately prior to the business combination, when combined with the reporting history of the successor registrant in each case satisfy such 12-month reporting requirement; and

(2) The successor registrant has been subject to such continuous disclosure requirements since the business combination, and is currently in compliance with its obligations thereunder.

(d) This Form shall not be used if the registrant is an investment company registered or required to be registered under the Investment Company Act of 1940.

(e) Registrants registering securities on this Form, and registrants filing annual reports on this Form who have not previously filed a Form F–X (§ 249.250 of this chapter) in connection with the class of securities in relation to which the obligation to file this report arises, shall file a Form F–X with the Commission together with this Form.

[56 FR 30075, July 1, 1991, as amended at 58 FR 62031, Nov. 23, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 40–F, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.250 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249.240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 249.37 of this chapter), F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By any non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

[56 FR 30076, July 1, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form F–X, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart D—Forms for Annual and Other Reports of Issuers Required Under Sections 13 and 15(d) of the Securities Exchange Act of 1934

§ 249.306 Form 6–K, report of foreign issuer pursuant to Rules 13a–16 (§ 240.13a–16 of this chapter) and 15d–16 (§ 240.15d–16 of this chapter) under the Securities Exchange Act of 1934.

This form shall be used by foreign issuers which are required to furnish reports pursuant to Rule 13a–16 (§ 240.13a–16 of this chapter) or 15d–16 (§ 240.15d–16 of this chapter) under the Securities Exchange Act of 1934.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 6–K, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.308 Form 8–K, for current reports.

This form shall be used for the current reports required by Rule 13a–11 or Rule 15d–11 (§ 240.13a–11 or § 240.15d–11 of this chapter).

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 8–K, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.308a Form 10–Q and Form 10–QSB, for quarterly and transition reports under section 13 or 15(d) of the Securities Exchange Act of 1934.

Form 10–Q and Form 10–QSB shall be used for quarterly reports under section 13 of 15(d) of the Securities Exchange Act of 1934, required to be filed pursuant to § 240.13a–13 or § 240.15d–13 of this chapter. A quarterly report on this form pursuant to § 240.13a–13 or § 240.15d–13 of this chapter shall be filed within 45 days after the end of the first three fiscal quarters of each fiscal year, but no quarterly report need be filed for the fourth quarter of any fiscal year. Form 10–Q and Form 10–QSB also shall be used for transition and quarterly reports filed pursuant to § 240.13a–10 or § 240.15d–10 of this chapter. Such transition or quarterly reports shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end.

[35 FR 18512, Dec. 5, 1970, as amended at 41 FR 24702, June 18, 1976; 53 FR 12931, Apr. 20, 1988; 53 FR 9774, May 8, 1988; 54 FR 10320, Mar. 13, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–Q and Form 10–QSB, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.308b Form 10–QSB, Optional Form for Quarterly and Transition Reports of Small Business Issuers Under Section 13 or 15(d) of the Securities Exchange Act of 1934 ("Exchange Act").

A *small business issuer*, defined in Rule 12b–2, may use this Form for its transition and quarterly reports under section 13 or 15(d) of the Exchange Act and Rules 13a–13 and 15d–13 (§§ 240.13a–13 or 240.15d–13 of this chapter). For further information as to eligibility to use this Form see Item 10(a) of Regulation S–B (17 CFR 228.10 et seq.). A small business issuer shall file a quarterly report on this form within 45 days after the end of the first three fiscal quarters of each fiscal year. No report need be filed for the fourth quarter of any fiscal year. Transition reports shall be filed in accordance with the requirements set forth in Rule 13a–10 or Rule 15d–10.

[57 FR 36498, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–QSB, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.310 Form 10–K, for annual and transition reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

This form shall be used for annual reports pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 for which no other form is prescribed. This form also shall be used for transition reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report. Transition reports on this form shall be filed in accordance with the requirements set forth in § 240.13a–10 or § 240.15d–10 applicable when the registrant changes its fiscal year end.

However, all schedules required by Article 12 of Regulation S–X may, at the option of the registrant, be filed as an amendment to the annual report not later than 120 days after the end of the fiscal year covered by the report or, in the case of a transition report, not later than 30 days after the due date of the report.

[45 FR 63638, Sept. 25, 1980, as amended at 54 FR 10321, Mar. 13, 1989; 59 FR 67765, Dec. 30, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–K, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.310b Form 10–KSB, Optional Form for Annual and Transition Reports of Small Business Issuers Under Sections 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

A *small business issuer* defined in Rule 12b–2 of the Exchange Act (§ 240.12b–2 of this chapter), may use this form for its annual and transitional reports under section 13 or 15(d) of the Exchange Act. Annual reports on this form shall be filed within 90 days after the end of the fiscal year covered by the report and transition reports shall be filed after an issuer changes its fiscal year end in accordance with Rule 13a–10 or Rule 15d–10 (§ 240.13a–10 or 240.15d–10 of this chapter).

[57 FR 36496, Aug. 13, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–KSB, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.310c [Reserved]

§ 249.311 Form 11–K, for annual reports of employee stock purchase, savings and similar plans pursuant to section 15(d) of the Securities Exchange Act of 1934.

This form shall be used for annual reports pursuant to section 15(d) of the Securities Exchange Act of 1934 with respect to employee stock purchase, savings and similar plans, interests in which constitute securities which have been registered under the Securities Act of 1933. Such a report is required to be filed even though the issuer of the securities offered to employees pursuant to the plan also files annual reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934. However, attention is directed to Rule 15d–21 (§ 240.15d–21 of this chapter) which provides that in certain cases the information required by this form may be furnished with respect to the plan as a part of the annual report of such issuer. Reports on this form shall be filed within 90 days after the end of the fiscal year of the plan, or, in the case of a plan subject to the Employee Retirement Income Security Act of 1974, within 180 days after the plan's fiscal year end.

[43 FR 21663, May 19, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 11–K, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.318 Form 18–K, annual report for foreign governments and political subdivisions thereof.

This form shall be used for the annual reports of foreign governments or political subdivisions thereof.

[47 FR 54790, Dec. 6, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 18–K, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.322 Form 12b–25—Notification of late filing.

(a) This form shall be filed pursuant to § 240.12b–25 of this chapter by issuers who are unable to file timely all or any required portion of an annual or transition report on Form 10–K and Form 10–KSB, 20–F, or 11–K or a quarterly or transition report on Form 10–Q and Form 10–QSB pursuant to section 13 or 15(d) of the Act or a semi-annual, annual or transition report on Form N–SAR pursuant to section 30 of the Investment Company Act of 1940. The filing shall consist of a signed original and three conformed copies, and shall be filed with the Commission at Washington, DC 20549, no later than one business day after the due date for the periodic report in question. Copies of this form may be obtained from ''Publications'', Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

(b) This form shall not be used by electronic filers unable to timely file a report solely due to electronic difficulties. Filers unable to submit a report within the time period prescribed due to electronic difficulties should comply with either Rule 201 or Rule 202 of Regulation S–T (§ 232.201 or § 232.202 of this chapter), or apply for an adjustment in filing date pursuant to Rule 13(b) of Regulation S–T (§ 232.13(b) of this chapter).

[50 FR 1449, Jan. 11, 1985, as amended at 54 FR 10321, Mar. 13, 1989; 58 FR 14686, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 12b–25, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.323 Form 15, certification of termination of registration of a class of security under section 12(g) or notice of suspension of duty to file reports pursuant to sections 13 and 15(d) of the Act.

(a) This form shall be filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 300 persons, or that the number of holders of record of a class of security registered under section 12(g) of the Act is reduced to less than 500 persons and the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. Registration terminates 90 days after the filing of the certificate or within such shorter time as the Commission may direct.

(b) This form shall also be filed by each issuer required to file reports pursuant to section 15(d) of the Act, as a notification that the duty to file such reports is suspended pursuant to section 15(d) of the Act because all securities of each class of such issuer registered under the Securities Act of 1933 are held of record by less than 300 persons at the beginning of its fiscal year, or otherwise pursuant to the provisions of Rule 12h–3 (17 CFR 240.12h–3).

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565–568, 569, 570–574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78*l*(g)(4), 78*l*(h), 78m(a), 78o(d), 78w(a))

[49 FR 12690, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

§ 249.325 Form 13F, report of institutional investment manager pursuant to section 13(f) of the Securities Exchange Act of 1934.

This form shall be used by institutional investment managers which are required to furnish reports pursuant to section 13(f) of the Securities Exchange Act of 1934. (15 U.S.C. 78m(f)) and Rule 13f–1 thereunder (§ 240.13f–1 of this chapter).

[43 FR 26705, June 22, 1978]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 13F, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.326 Form 13F–E, for filing of Form 13F reports on magnetic tape.

This form shall be used by institutional investment managers electing to file their Form 13F reports on magnetic tape.

[52 FR 9155, Mar. 23, 1987. Redesignated at 58 FR 14859, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 13F–E, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.328T Form 17–H, Risk assessment report for brokers and dealers pursuant to section 17(h) of the Securities Exchange Act of 1934 and rules thereunder.

This form shall be used by brokers and dealers in reporting information to the Commission concerning certain of their associated persons pursuant to section 17(h) of the Securities Exchange Act of 1934 [15 U.S.C. 78q(h)] and Rules 17h–1T and 17h–2T thereunder [§§ 240.17h–1T and 240.17h–2T of this chapter].

[57 FR 32171, July 21, 1992]

§ 249.330 Form N–SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a–1 (17 CFR 270.30a–1) or 30b1–

3 (17 CFR 270.30b.1–3) in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 274.101 of this chapter).

[50 FR 1449, Jan. 11, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–SAR, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.444 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in Rule 311 of Regulation S–T (§ 232.311 of this chapter).

[58 FR 14686, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.445 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.

This form shall accompany electronic filings submitted on magnetic tape or diskette under the EDGAR system.

[57 FR 18219, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ET, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.446 Form ID, uniform application for access codes to file on EDGAR.

(a) Form ID is to be used by registrants, third party filers, or their agents for the purpose of requesting assignment of access codes to permit filing on EDGAR, as follows:

(1) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(2) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(3) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(4) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

(b) Form ID also may be used for the purpose of requesting a reassignment of their CCC, PW and PMAC.

[57 FR 18219, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ID, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.447 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by Rule 201(a) of Regulation S–T (§ 232.201(a) of this chapter).

[58 FR 14686, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TH, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart E [Reserved]

Subpart F—Forms for Registration of Brokers and Dealers Transacting Business on Over-the-Counter Markets

§ 249.501 Form BD, for application for registration as a broker and dealer or to amend or supplement such an application.

This form shall be used for application for registration as a broker-dealer under the Securities Exchange Act of 1934, or to amend such application.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form BD, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.501a Form BDW, notice of withdrawal from registration as broker-dealer pursuant to § 240.15b6–1, § 240.15Bc3–1, or § 240.15Cc1–1 of this chapter.

This form shall be used for filing a notice of withdrawal as broker-dealer pursuant to Rule 15b6–1 (§ 240.15b6–1 of this chapter), Rule 15Bc3–1 § 240.15B3–1 of this chapter), or Rule 15Cc1–1 (§ 240.15Cc1–1 of this chapter). Under sections 15(b), 15B, 15C, 17(a), and 23(a) of the Securities Exchange Act of 1934 (17 CFR part 240), and the rules and regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form from registrants desiring to withdraw their registration as a broker-dealer. Disclosure of the information specified in this form is mandatory prior to processing of applications for withdrawal, except for social security account numbers, disclosure of which is voluntary. The information will be used for the primary purpose of determining whether it is in the public interest to permit a broker-dealer to withdraw his registration. This notice will be made a matter of public record. Therefore, any information, given will be available for inspection by any member of the public. Because of the public nature of the information the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws and other civil, criminal or regulatory statutes or provisions. Social security account numbers, if furnished, will assist the Commission in identifying registrants and, therefore, in promptly processing applications for withdrawal. Failure to disclose the information requested by Form BDW, except for social security account numbers, may result in the registrant not being permitted to withdraw his registration.

[52 FR 16844, May 6, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form BDW, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.507 Form 7–M, consent to service of process by an individual nonresident broker-dealer.

This form shall be filed pursuant to Rule 15b1–5 (§ 240.15b1–5 of this chapter) by each individual nonresident broker-dealer registered or applying for registration pursuant to section 15 of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 7–M, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.508 Form 8–M, consent to service of process by a corporation which is a nonresident broker-dealer.

This form shall be filed pursuant to Rule 15b1–5 (§ 240.15b1–5 of this chapter) by each corporate nonresident broker-dealer registered or applying for registration pursuant to section 15 of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 8–M, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.509 Form 9–M, consent to service of process by a partnership nonresident broker-dealer.

This form shall be filed pursuant to Rule 15b1–5 (§ 240.15b1–5 of this chapter) by each partnership nonresident broker-dealer registered or applying for registration pursuant to section 15 of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 9–M, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.510 Form 10–M, consent to service of process by a nonresident general partner of a broker-dealer firm.

This form shall be filed pursuant to Rule 15b1–5 (§ 240.15b1–5 of this chapter) by each nonresident general partner of a broker-dealer firm registered or applying for registration pursuant to section 15 of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 10–M, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart G—Forms for Reports To Be Made by Certain Exchange Members, Brokers, and Dealers

§ 249.617 Form X–17A–5, information required of certain brokers and dealers pursuant to section 17 of the Secruities Exchange Act of 1934 and § 240.17a–5, § 240.17a–10 and § 240.17a–11 of this chapter.

Appropriate parts of this form shall be used by every broker or dealer required to file reports under § 240.17a–5(a), (b), and (d), § 240.17a–10(a), and § 240.17a–11 of this chapter.

(Secs. 15, 17 and 23, of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*, 78q, and 78w))

[49 FR 43455, Oct. 29, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form X–17A–5, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§§ 249.619—249.634 [Reserved]

§ 249.635 Form X–17A–19, report by national securities exchanges and registered national securities associations of changes in the membership status of any of their members.

This form shall be completed and filed by each national securities exchange or registered national securities association as required by § 240.17a–19 of this chapter within 5 business days of the occurrence of the initiation of the membership of any person or the suspension or termination of the membership of any of its members.

[45 FR 39840, June 12, 1980]

§ 249.636 Form 17A–23, information required of certain broker and dealer sponsors of broker-dealer trading systems pursuant to section 17 of the Securities Exchange Act of 1934 and § 240.17a–23 of this chapter.

This form shall be used by every registered broker and dealer that is required to file reports under § 240.17a–23 of this chapter.

[59 FR 66710, Dec. 28, 1994]

Subpart H—Forms For Reports as to Stabilization

§ 249.709 [Reserved]

Subpart I—Forms for Self-Regulatory Organization Rule Changes and Forms for Registration of and Reporting by National Securities Associations and Affiliated Securities Associations

§ 249.801 Form X–15AA–1, for application for registration as a national securities association or affiliated securities association.

This form shall be filed as an application for registration as a national securities association or as an affiliated securites association pursuant to Rule 15Aa–1 (§ 240.15Aa–1 of this chapter).

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form X–15AA–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.802 Form X–15AJ–1, for amendatory and/or supplementary statements to registration statement of a national securities association or an affiliated securities association.

This form shall be filed pursuant to Rule 15Aj–1 (§ 240.15Aj–1 of this chapter) as amendatory and/or supplementary statements to registration statement of a national securities association or an affiliated securities association.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form X–15AJ–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.803 Form X–15AJ–2, for annual consolidated supplement of national securities association or an affiliated securities association.

This form shall be filed pursuant to Rule 15Aj–1 (§ 240.15Aj–1 of this chapter) for the annual consolidated supplement to registration statement of a national securities association or an affiliated securities association.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form X–15AJ–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.819 Form 19b–4, for filings with respect to proposed rule changes by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934, to file proposed rule changes with the Commission pursuant to section 19(b) of that Act and Rule 19b–4 thereunder.

[40 FR 40512, Sept. 3, 1975. Redesignated at 45 FR 73915, Nov. 7, 1980]

EDITORIAL NOTES: 1. Copies of the form have been filed with the Office of the Federal Register and will be forwarded to the self–regulatory organizations. Copies may be requested from the Commission.

2. For FEDERAL REGISTER citations affecting Form 19b–4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart J [Reserved]

Subpart K—Form for Registration of, and Reporting by Securities Information Processors

§ 249.1001 Form SIP, for application for registration as a securities information processor or to amend such an application or registration.

This form shall be used for application for registration as a securities information processor, pursuant to section 11A(b) of the Securities Exchange Act of 1934 and Rule 11Ab2–1 (§ 240.11Ab2–1 of this chapter) thereunder, or to amend such an application or registration.

[40 FR 45424, Oct. 2, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SIP, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart L—Forms for Registration of Municipal Securities Dealers

§ 249.1100 Form MSD, application for registration as a municipal securities dealer pursuant to rule 15Ba2–1 under the Securities Exchange Act of 1934 or amendment to such application.

This Form is to be used by a bank or a separately identifiable department or division of a bank (as defined by the Municipal Securities Rulemaking Board) to apply for registration as a municipal securities dealer with the Securities and Exchange Commission pursuant to section 15B(a) of the Securities Exchange Act of 1934 (the ''Act''), or to amend such application.

NOTE: Copies of Form MSD have been filed with the Office of the Federal Register as part of this document. Copies of Forms BD and MSD may be obtained from the Office of Reports and Information Services; Securities and Exchange Commission, 500 North Capitol Street, Washington, DC, 20549. Only printed copies of Form MSD should be used to apply for registration with the Commission.

[40 FR 49777, Oct. 24, 1975; 40 FR 54425, Nov. 24, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form MSD, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249.1110 Form MSDW, notice of withdrawal from registration as a municipal securities dealer pursuant to Rule 15Bc3–1 (17 CFR 240.15Bc3–1).

This form is to be used by a bank or a separately identifiable department or division of a bank (as defined by the Municipal Securities Rulemaking Board) to withdraw from registration with the Securities and Exchange Commission as a municipal securities dealer pursuant to section 15B(c) of the Securities Exchange Act of 1934.

NOTE: Copies of Form MSDW have been filed with the Office of the Federal Register as part of this document. Copies of Form MSDW may be obtained from the Publications Section, Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549.

[41 FR 28949, July 14, 1976]

Subpart M—Forms for Reporting and Inquiry With Respect to Missing, Lost, Stolen, or Counterfeit Securities

§ 249.1200 Form X–17F–1A—Report for missing, lost, stolen or counterfeit securities.

This form is to be filed with the Commission or its designee pursuant to paragraph (c) of § 240.17f–1 of this chapter by all reporting institutions subject

to section 17(f)(1) of the Securities Exchange Act of 1934.

[44 FR 31504, May 31, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form X–17F–1A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 249a—FORMS, SECURITIES INVESTOR PROTECTION ACT OF 1970 [RESERVED]

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

Sec.

249b.1 —249b.99 [Reserved]
249b.100 Form TA–1, uniform form for registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.
249b.101 Form TA–W, notice of withdrawal from registration as transfer agent.
249b.102 Form TA–2, form to be used by transfer agents registered pursuant to section 17A of the Securities Exchange Act of 1934 for the annual report of transfer agent activities.
249b.200 Form CA–1, form for registration or for exemption from registration as a clearing agency and for amendment to registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934.

AUTHORITY: 15 U.S.C. 78a *et seq.*, unless otherwise noted;

Sections 249b.100 and 249b.102 also issued under secs. 17, 17A and 23(a); 48 Stat. 897, as amended, 89 Stat. 137, 141 and 48 Stat. 901 (15 U.S.C. 78q, 78q–1, 78w(a)).

§§ 249b.1—249b.99 [Reserved]

§ 249b.100 Form TA–1,[1] uniform form for registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.

This form shall be used for application for registration as a transfer agent and for amendment to registration as a transfer agent pursuant to section 17A of the Securities Exchange Act of 1934.

[40 FR 51184, Nov. 4, 1975, as amended at 51 FR 12127, Apr. 9, 1986]

[1] Copies of the form may be obtained from the Publications Section, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 and from each of the Commission's regional and district offices.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TA–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249b.101 Form TA–W, notice of withdrawal from registration as transfer agent.

This form shall be used for withdrawing, pursuant to section 17A of the Securities Exchange Act of 1934, the registration of transfer agents registered with the Commission.

(Secs. 2, 17, 17A and 23(a); (15 U.S.C. 78b, 78a, 78a–1 and 78w(a)))

[42 FR 44984, Sept. 8, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TA–W, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249b.102 Form TA–2,[1] form to be used by transfer agents registered pursuant to section 17A of the Securities Exchange Act of 1934 for the annual report of transfer agent activities.

This form shall be used on an annual basis for registered transfer agents for reporting their business activities.

[51 FR 12134, Apr. 9, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TA–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 249b.200 Form CA–1, [1] form for registration or for exemption from registration as a clearing agency and for amendment to registration as a clearing agency pursuant to section 17A of the Securities Exchange Act of 1934.

This form shall be used for application for registration or for exemption from registration as a clearing agency and for amendment to registration as a clearing agency pursuant to section

[1] Copies of the form may be obtained from the Publication Section, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 and from each of the Commission's regional and district offices.

[1] Copies of the form may be obtained from the Publication Section, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549 and from each of the Commission's regional and district offices.

17A of the Securities Exchange Act of 1934.

[40 FR 52359, Nov. 10, 1975, as amended at 51 FR 12134, Apr. 9, 1986]

PART 250—GENERAL RULES AND REGULATIONS, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

REGISTRATION AND GENERAL EXEMPTIONS

Sec.
250.1 Registration.
250.2 Exemption of holding companies which are intrastate or predominantly operating companies.
250.3 Exemption of certain banks.
250.4 Exemption of certain brokers, dealers and underwriters.
250.5 Exemption of certain foreign holding companies.
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250.7 Companies deemed not to be electric or gas utility companies.
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250.10 Effect of certain exemptions.
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FORMS, PROCEDURE AND ACCOUNTS

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250.23 Procedure applicable to certain applications and declarations.
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250.61 Solicitations other than in connection with a reorganization or transaction which is the subject of an application or declaration.
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OFFICERS, DIRECTORS AND REPRESENTATIVES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES

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250.83 Exemption in the case of transactions with foreign associates.
250.84 Prohibition of unauthorized transactions by registered holding companies.
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250.100 Orders granting or withdrawing exemptions.
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250.103A Liability for certain statements by issuers.
250.104 Public disclosure of information and objections thereto.
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250.110 Small entities for purposes of the Regulatory Flexibility Act.

AUTHORITY: 15 U.S.C. 79c, 79f(b), 79i(c)(3), 79t, unless otherwise noted.

SOURCE: Rule U, 6 FR 2015, Apr. 19, 1941, unless otherwise noted.

NOTE: In §§ 250.1 to 250.105 the numbers to the right of the decimal point correspond with the respective rule numbers of Regulation U.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

REGISTRATION AND GENERAL EXEMPTIONS

§ 250.1 Registration.

(a) *Notification of registration.* Notifications of registration pursuant to section 5(a) of the act (49 Stat. 812; 15 U.S.C. 79(e) shall be filed on Form U–5A.

(b) *Registration statement.* Every registered holding company and person registering as a company proposing to become a holding company, shall file with the Commission a registration statement on Form U–5B within 90 days after becoming a registered holding company.

(c) *Annual report.* Every registered holding company shall file, on or before the first of May in the year following that in which it filed its registration statement, and in every succeeding year, an annual report on Form U5S (§ 259.5s of this chapter): *Provided, however,* That where any holding company system includes more than one registered holding company, the annual report shall be filed by the top registered holding company in such system and shall be signed on behalf of each registered holding company in such system by the authorized officer of each such registered holding company.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 16 FR 2576, Mar. 21, 1951; 37 FR 1472, Jan. 29, 1972; 61 FR 49961, Sept. 24, 1996]

§ 250.2 Exemption of holding companies which are intrastate or predominantly operating companies.

(a) *General provisions.* Any holding company, and every subsidiary company thereof as such, shall, upon the filing of an exemption statement on Form U–3A–2 and subject to the filing of such exemption statement on or before March 1 of each year thereafter, and subject to the provisions of Rule U–6, be exempt from all the provisions of the act and rules thereunder, except section 9(a)(2) of the act, if:

(1) Such holding company, and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized; or

(2) Such holding company is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto.

(b) *Exception.* Unless otherwise required by the Commission, a holding company which is a subsidiary of a registered holding company need file only the initial statement on Form U–3A–2.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15412, Dec. 29, 1945]

§ 250.3 Exemption of certain banks.

(a) *General exemption.* Subject to the provisions of § 250.6 and to the requirements contained in paragraph (c) of this section, any bank shall be exempt from any obligation, duty, or liability imposed by the act upon such bank as a holding company solely by reason of such bank owning, controlling, or holding with power to vote any securities of any public-utility or holding company which the bank:

(1) Holds as collateral for a bona fide debt; or

(2) Holds in the ordinary course of its business as a fiduciary; or

(3) Has acquired solely for purposes of liquidation in connection with a bona fide debt previously contracted and has owned beneficially for a period of not more than two years.

(b) *Exemptions from section 9(a)(2).* Subject to the requirements contained in paragraph (c) of this section, any bank shall be exempt from section 9(a)(2) of the act with respect to the acquisition of any securities by such bank:

(1) As collateral for a bona fide debt; or

(2) Solely for purposes of liquidation in connection with a bona fide debt previously contracted; or

(3) In the ordinary course of its business as fiduciary; or

(4) Which is not a voting security or convertible into a voting security.

(c) *Statements.* Any bank claiming exemptions pursuant to the provisions of this section shall file a statement on Form U–3A3–1 (§ 259.403 of this chapter) within 30 days after the last day of February of each year. No such statement is required, however, with respect to any security holdings as to which such form is inapplicable by its provisions.

(d) *Definition of bank.* The term ''bank'', as used in this section, means any company primarily engaged in business as a commercial bank or trust company, or both, and subject to regulation or examination under the laws of the United States or of any State, or any receiver, conservator, or liquidating agent thereof in his capacity as such.

[16 FR 253, Jan. 10, 1951]

§ 250.4 Exemption of certain brokers, dealers and underwriters.

(a) *General exemption.* Subject to the provision of § 250.6, any broker, dealer or underwriter, as defined in paragraph (c) of this section, shall be exempt from any obligation, duty, or liability imposed by the act upon such person as a holding company, solely by reason of such person owning, controlling, or holding with power to vote any securities of any public utility or holding company which are:

(1) Not beneficially owned by such persons and are subject to any voting instructions which may be given by customers or their assigns; or

(2) Acquired within 12 months in the ordinary course of business as a broker, dealer or underwriter with the bona fide intention of effecting distribution of the specific securities so acquired.

(b) *Exemption from section 9(a)(2).* Any broker, dealer or underwriter, as defined in paragraph (c) of this section shall be exempt from section 9(a)(2) of the act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any securities for the account of customers, or in connection with any underwriting entered into with the intention of effecting immediate distribution of such securities.

(c) *Definition of broker, dealer or underwriter.* As used in this section, the

terms ''broker'' or ''dealer'' have the meaning set forth in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (48 Stat. 882; 15 U.S.C. 78c), and the term ''underwriter'' means any underwriter as defined in section 2(11) of the Securities Act of 1933 (48 Stat. 74, 905; 15 U.S.C. 77b) who is regularly engaged in business as such and is not a registered holding company.

§ 250.5 Exemption of certain foreign holding companies.

Any holding company not organized under the laws of any State of the United States or the District of Columbia, and owning no utility assets located within any State of the United States or the District of Columbia and having no subsidiaries or affiliates owning any assets so located, shall, subject to the provisions of § 250.6, be exempt from all the provisions of the act and rules thereunder: *Provided,* That such exemption shall not be applicable to any acquisition of utility assets located within any State of the United States or the District of Columbia or of any security of any company owning such assets or having any subsidiary owning such assets, if, as a result of such acquisition of securities, the acquiring company will become an affiliate of the issuer, except an issuer within any class specified in § 250.10(a).

§ 250.6 Termination of exemptions.

If it appears to the Commission (on the basis of statements claiming exemption or otherwise) that a substantial question of law or fact exists as to whether any holding company claiming exemption under § 250.2, § 250.3, § 250.4, § 250.5, or § 250.10 or any other section now or hereafter in force pursuant to section 3(a) of the Act exempting any class of holding companies from the registration requirements of the act, is within the exemption afforded by any such section, or if it appears that any question exists as to whether the exemption of any such company may be detrimental to the public interest or the interest of investors or consumers, the Commission may notify such holding company to that effect by registered mail. Thirty days after such notification, such exemption shall terminate, without prejudice to the right of such holding company to file an application for an order granting such an exemption pursuant to any applicable section of the act, and without prejudice to any temporary exemption provided for by the act if such application is filed in good faith.

[6 FR 5950, Nov. 25, 1941]

§ 250.7 Companies deemed not to be electric or gas utility companies.

(a) Any company which is primarily engaged in one or more businesses other than the business of an electric or gas utility company, shall not be deemed an electric or gas utility company within the meaning of section 2(a)(3) or section 2(a)(4) of the Act if the gross sales of electric energy, or of natural or manufactured gas distributed at retail by means of the facilities owned or operated by such company, did not exceed an average annual amount of $5,000,000 over the preceding three calendar years. There may be excluded from the gross sales specified:

(1) Sales of electric energy or natural or manufactured gas to tenants or employees of the operating company for their own use and not for resale; and

(2) Sales of gas to industrial consumers or in enclosed portable containers.

(b)(1) Any company whose only connection with the generation, transmission, or distribution of electric energy is the ownership or operation of facilities used for the production of heat or steam from special nuclear material which heat or steam is used in the generation of electric energy shall not be deemed an electric utility company within the meaning of section 2(a)(3) of the Act, if such company is organized not for profit and is engaged primarily in research and development activities.

(2) As a prerequisite to being entitled to the status afforded by paragraph (b)(1) of this section, any such company shall file with this Commission a statement that such company falls within the provisions of that subparagraph, including as exhibits (i) copies of its charter, by-laws and any licenses issued by the Nuclear Regulatory Commission to such company; (ii) a list of its members or stockholders indicating their respective percentages of voting power; and (iii) if such company was in

existence at the end of the preceding calendar year, a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(3) As a prerequisite to retaining the status afforded by paragraph (b)(1) of this section, any such company shall annually on or before May file a statement with this Commission that such company continues to fall within the provisions of that subparagraph, including as exhibits (i) any changes or additions to its charter or by-laws or list of members or stockholders or any licenses issued by the Nuclear Regulatory Commission to such company since the time of the last filing hereunder, and (ii) a balance sheet as at the end of the preceding calendar year and an income and surplus statement for such year or a statement of receipts and expenditures for such year and of financial status at its end.

(4) If it appears to the Commission (on the basis of the aforesaid statements or otherwise) that a substantial question of law or fact exists as to whether any company is entitled to the status afforded by paragraph (b)(1) of this section, the Commission may notify such company to that effect by registered mail. Thirty days after such notification the status afforded by paragraph (b)(1) of this section shall no longer be available to such company, without prejudice to the right of such company to file an application for an order granting an exemption from the application of section 2(a)(3) of the Act, and without prejudice to any temporary exemption provided by that section if such an application is filed in good faith. The Commission will grant such an application if it finds that the standards set forth in paragraph (b)(1) of this section are satisfied.

(c) Any company, which (1) owns no utility assets located within any State of the United States, (2) has no subsidiary company owning any such assets so located, and (3) is engaged solely in business outside the United States, shall not be deemed to be an electric or gas utility company within the meaning of section 2(a)(3) or (a)(4) of the Act, if its gross sales of electric energy or of natural or manufactured gas distributed at retail, by means of facilities owned or operated by such company, did not exceed 1 percent of its gross revenues during the previous calendar year.

(d) A company shall not be deemed to be an electric utility company or a gas utility company which owns any of the facilities specified in sections 2(a)(3) and (4) [of the Act] *Provided*, That:

(1) Such company owns the facility as a company, as a trustee, or as holder of a beneficial interest under a trust, or as a purchaser or assignee of any of the foregoing; and

(i) Such facility is leased under a net lease directly to a public utility company either as a sole lessee or joint lessee with one or more other public utility companies, and such facility is or is to be employed by the lessee in its operations as a public utility company; and

(ii) Such company is otherwise primarily engaged in one or more businesses other than the business of a public utility company, or is a company all of whose equity interest is owned by one or more companies so engaged, either directly or through subsidiary companies; and

(iii) The terms of the lease have been expressly authorized or approved by a regulatory authority having jurisdiction over the rates and service of the public utility company which leases such facility; and

(iv) The lease of the facility extends for an initial term of not less than 15 years, except for termination of the lease upon events therein set forth, unless the owner shall state in the initial certificate filed pursuant to paragraph (d)(5) of this section that a shorter term specified in the lease is not less than two-thirds of the expected useful life of the facility; and

(v) The rent reserved under the lease shall not include any amount based, directly or indirectly, on revenues or income of the public utility company, or any part thereof.

Paragraphs (d)(1)(iii) and (iv) of this section shall not apply to a lease executed before, or within 30 days after, the effective date of this section, if the certificate required by paragraph (d)(5)

of this section is filed within 60 days after such effective date.

(2) Paragraph (d)(1) of this section shall cease to be applicable in the event of termination of the lessee's right to possession or use of the facility during its term, unless within 90 days of the date of termination, and subject to such prior or subsequent regulatory and other approvals as by law may be required, such company, as defined in this section, negotiates a new lease or an operating agreement at a fixed rental.

(3) A public utility company shall not cease to be such by reason of a lease, directly or indirectly, of part or all of its facilities to any associate company or to any entity, whether or not a company, as defined in section 2(a)(2) of the Act.

(4) Except to the extent provided in paragraphs (d)(1) and (6) of this section, this section shall not relieve any company from such other provisions of the Act, and rules and regulations promulgated thereunder, as may be applicable.

(5) Any company specified in paragraph (d)(1) of this section shall file, or join in the filing of, a certificate on a form prescribed by the Commission, as to each lease within 30 days of its execution. Upon any transfer of legal or beneficial ownership, such new owner shall file an appropriate amendment within 30 days of such transfer. If the lease is amended in a manner which would alter any item of the certificate, or if the facility ceases, for any reasons, to be subject to the lease, the holder of legal title to the facility shall file an appropriate amendment within 30 days of the event.

(6) A company shall not be deemed to be an electric utility company by reason of ownership of any interest in nuclear fuel and facilities incident to its use, if the operation and use thereof is vested by lease or contract in one or more public utility companies, unless the consideration paid by a public utility company for the use of such fuel and facilities, or of the heat or energy produced thereby, includes an amount based, directly or indirectly, on the revenue or income of the public utility company or any part thereof. Any such company shall file, or join in the filing of, the certificates specified in paragraph (d)(5) of this section. A certificate with respect to a lease or contract executed prior to, or within 30 days after, the effective date of this section shall be filed within 60 days after such effective date.

(7) The provisions of paragraphs (d)(1) and (5) of this section, and the filing requirements of paragraph (d)(6) of this section shall not apply if the facilities therein specified are in possession of and operated by one or more governmental bodies or instrumentalities thereof specified in section 2(c) of the Act.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 7 FR 3423, May 8, 1942; 21 FR 5438, July 20, 1956; 32 FR 13487, Sept. 27, 1967; 38 FR 16998, June 28, 1973; 59 FR 21927, Apr. 28, 1994]

§ 250.8 Exemption of subsidiaries subject to jurisdiction of Interstate Commerce Commission.

Any subsidiary company of a registered holding company, which subsidiary is subject to the jurisdiction of the Interstate Commerce Commission but is not an electric or gas utility company or a holding company, shall be exempt from all the provisions of the act and rules thereunder, with respect to any transaction which is approved by the Interstate Commerce Commission, except that the exemption from section 9(a) (49 Stat. 817; 15 U.S.C. 79i) provided by this rule shall not be applicable to any acquisition of securities of any electric or gas utility company or holding company or to any acquisition by which such subsidiary will become a public utility or holding company.

§ 250.10 Effect of certain exemptions.

(a) *Parent holding companies exempt where subsidiaries have obtained, or applied for, certain exemptions.* Subject to the provisions of § 250.6, any holding company shall be exempt from any obligation, duty, or liability imposed on it as a holding company solely by reason of such company having as a subsidiary any company which, insofar as it is either a public utility or a holding company, is:

(1) A company declared not to be a public utility or holding company by rule or order under section 2(a)(3), 2(a)(4), or 2(a)(7) of the Act (49 Stat.

804; 15 U.S.C. 79b), or is exempted without qualification by order pursuant to section 3(b) from all obligations, duties, or liabilities imposed on it as a subsidiary company; or

(2) A company exempted as a holding company from sections 4 and 5(a) of the Act (49 Stat. 812; 15 U.S.C. 79d, 79e) by order under subparagraph (3), (4), or (5) of section 3(a) (49 Stat. 810; 15 U.S.C. 79c), or by § 250.3, § 250.4, or § 250.5; or

(3) A company which is only indirectly a subsidiary of such holding company through the interest of such holding company in a subsidiary holding company of the class specified in paragraph (a)(2) of this section; or

(4) A company as to which there is pending an application for an order specified in paragraph (a)(1), (2), or (3) of this section. *Provided*, That such holding company does not have cause to believe that such application was not filed in good faith.

(b) *Subsidiary companies deemed to be included in applications by parent companies under section 2(a)(8)*. Every application for exemption filed under section 2(a)(8) (49 Stat. 804; 15 U.S.C. 79b), whether filed before or after the adoption of this section, shall, unless otherwise expressly stated therein, be deemed to be filed on behalf of such applicant and of all subsidiary companies of such applicant, and shall be deemed to include as applicants all such subsidiary companies of such subsidiary company filing such application: *Provided, however*, That the Commission may in any case direct the filing of separate applications by any such companies or may order separate hearings or enter separate or different orders with respect to any such companies so deemed to be included pursuant to this section.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941]

§ 250.11 Certain acquisitions by affiliates exempted from section 9(a)(2).

(a) *Acquisitions by certain exempt holding companies*. Any holding company which is exempt from sections 4 and 5(a) of the Act (49 Stat. 812; 15 U.S.C. 79d, 79e) and which is not a subsidiary of any registered holding company, shall be exempt from section 9(a)(2) (49 Stat. 817; 15 U.S.C. 79i) of the Act with respect to the acquisition of any securities issued by any subsidiary of such exempt holding company.

(b) *Acquisitions by certain exempt holding companies and persons not in registered holding company systems*. Any holding company specified in paragraph (a) of this section and any person which is not a holding company or a subsidiary of any registered holding company, shall be exempt from section 9(a)(2) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any of the following securities:

(1) *Securities issued by certain exempt public utility or holding companies*. Securities issued by any public utility or holding company, which is within the classes specified in § 250.10(a) (1) and (2); or

(2) *Securities of foreign companies*. Securities issued by any company which does not own or operate, or have a subsidiary which owns or operates, any utility assets located in the United States: *Provided*, That the acquiring company is not an affiliate under section 2(a)(11)(A) of the Act (49 Stat. 804; 15 U.S.C. 77b) of any company which owns or operates, and has no subsidiary which owns or operates, any utility assets located in the United States.

(c) *Acquisitions by certain registered holding companies*. The exemptions provided by paragraph (b)(2) of this section shall also apply to any registered holding company which has been exempted from section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) as to the acquisition of the securities therein specified.

(d) *Acquisitions by certain persons of securities issued by affiliates*. Any person which is not a holding company or a subsidiary of a registered holding company shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of any securities issued by a public utility or holding company of which such person is, prior to such acquisition, an affiliate under section 2(a)(11)(A) of the Act.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 18 FR 6589, Oct. 16, 1953]

§ 250.12 Exemption of certain public utility companies from the definition of subsidiary companies of holding companies.

(a) *Exemption*. If voting securities of a public utility company are owned, controlled or held with power to vote by the trustee or trustees of an inter-vivos or testamentary trust created by an instrument executed prior to January 1, 1935, and if such trust was established for charitable, religious, educational or other nonbusiness purposes, or for the benefit of an individual or individuals, or for more than one of such purposes, and if the beneficial interest or interests in such trust are not represented by transferable certificates, and if such public utility company is not itself a holding company, then such public utility company and any subsidiary companies thereof shall not be deemed to be subsidiary companies of such trustees or trust within the meaning of the act or any rule or regulation thereunder, and such public utility company and any subsidiary companies thereof and such trustees and trust shall be exempt from any provisions of the act other than section 9(a)(2) thereof, from any rules and regulations thereunder and from any obligations, duties and liabilities thereunder to which they might otherwise be subject by reason of the ownership, control or holding with power to vote of such securities by such trustees.

[12 FR 5868, Sept. 8, 1947]

§ 250.14 Exemption of acquisitions of securities of power supply companies from section 9(a)(2) of the act.

(a) An electric utility company which is not an ''affiliate'' of any other company under clause (B) of section 2(a)(11) shall be exempt from section 9(a)(2) of the Act with respect to the acquisition of any security of a power supply company, either directly or through a wholly-owned company organized solely for that purpose, provided that:

(1) The acquisition of any securities of the power supply company, including its voting securities, and any obligation by such electric utility company to provide funds to the power supply company pursuant to a capital funds agreement or guarantee of its debts, is authorized by a regulatory authority having jurisdiction over the rates and services of such electric utility company;

(2) All of the voting securities of the power supply company are owned by one or more electric utility companies to which the power supply company sells all of its electric energy, or as a transmission company provides all its transmission services to them or their customers (exclusive of any electric energy or transmission services which it sells to or provides to any person described in section 2(c) of the Act or to any rural electric cooperative association); and

(3) The issue of securities by the power supply company (other than any security maturing not more than one year after the date of issue) is subject to express authorization by a regulatory authority having jurisdiction over their issuance.

(b) If the voting securities of the power supply company are acquired by more than one electric utility company, the requirements of this rule shall apply independently to each (except that paragraph (a)(1) shall not apply to any person referred to in section 2(c) of the Act or to any rural electric cooperative association).

(c) *Definitions*. (1) The term *electric utility company*, as used in this rule, includes any person referred to in section 2(c) of the Act.

(2) The term *power supply company* means any company which owns and/or operates facilities for the generation or transmission of electric energy for sale to one or more electric utility companies, together with such other facilities as are incidental and functionally related thereto.

(3) The term *voting security* shall have the same meaning as in section 2(a)(17) of the Act, including any voting interest that serves the same defined purpose.

[46 FR 5869, Jan. 21, 1981]

§ 250.15 Exemption of holding company and subsidiary companies under section 3(a)(2) of the act.

(a) When an electric utility company becomes a holding company with respect to one or more power supply companies in a transaction or tranactions exempted under § 250.14, the electric

utility company, as such holding company, shall be exempt pursuant to section 3(a)(2) of the Act. If an electric utility company otherwise qualifies for an exemption pursuant to section 3(a)(2) of the Act, either by order or pursuant to § 250.2(a)(2) of these rules, that exemption shall not be affected by an acquisition exempt under § 250.14.

(b) The exemption under paragraph (a) of this section shall apply to an electric utility company whose acquisition, though not subject to section 9(a)(2) of the Act, satisfies all the requirements provided by § 250.14 for an exempt acquisition.

[46 FR 5870, Jan. 21, 1981]

§ 250.16 Exemption of non-utility subsidiaries and affiliates.

(a) Any company, and each affiliate thereof, shall be exempt from all obligations, duties or liabilities imposed upon it by the Act, as a subsidiary company or as an affiliate of a registered holding company or of a subsidiary company thereof, as such terms are respectively defined in sections 2(a)(8)(A) and 2(a)(11) of the Act, if—

(1) Such company is not a public utility company as defined in section 2(a)(5) of the Act;

(2) Such company is or has been organized to engage primarily in the exploration, development, production, manufacture, storage, transportation or supply of natural or synthetic gas;

(3) No more than 50% of its voting securities or other voting interests are owned, directly or indirectly, by one or more registered holding companies; and

(4) The acquisition by the registered holding company or subsidiary thereof of its interest in such company has been approved by the Commission pursuant to sections 9(a)(1) and 10 of the Act and applicable rules thereunder upon a timely application to the Commission.

(b) The exemption provided by this rule shall continue in effect during the pendency of such application. If an acquisition is made subject to Commission approval, the exemption provided by this rule is not terminated if the Commission does not grant its approval. In that event any such acquisition shall be disposed of in accordance with the order of the Commission.

(c) If a registered holding company directly or indirectly acquires any voting securities of such company, or any other voting interest, pursuant to this rule, the holding company shall include as an exhibit to its annual report on Form U5S a copy of the annual report of such company. It may incorporate by reference the annual report such company is required to file pursuant to other statutes administered by the Commission.

NOTE: Exhibits filed under paragraph (c) shall be submitted to the Commission in paper only, whether or not the registrant is otherwise required to file in electronic format. An electronic filer must submit paper exhibits under cover of Form SE (§ 259.603).

(d) This rule does not affect the authority of any agency having jurisdiction over rates with respect to a company exempt under this rule, including authority over affiliate transactions by or with such company pursuant to the laws administered by that agency.

[45 FR 79024, Nov. 28, 1980, as amended at 58 FR 15005, Mar. 18, 1993]

FORMS, PROCEDURE AND ACCOUNTS

§ 250.20 Prescribed forms and amendments.

(a) *General provisions.* (1) Any provision in the rules in this part requiring the filing of any application, declaration, report or other document on a specified form or upon the proper or appropriate form, means that such document shall comply with the requirements of such form and the instructions thereto, as most recently amended by the Commission.

(2) Any application or declaration unless otherwise stated therein shall be deemed to constitute a request for appropriate Commission authorizations (or exemption) of the proposed transaction or any part thereof, and the Commission may consider the transaction or any part thereof under the appropriate provisions of the act or rules, whether or not such provisions of the act or rules are specifically designated in the application or declaration.

(3) The Commission may for cause shown, authorize a modification of particular requirements with respect to the filing of information or regarding reports or accounts, or the filing of information after the date otherwise required by these rules or by the appropriate form, or may require filing of additional information; such authorization or requirement may be evidenced in any appropriate manner.

(b) *Amendments.* Amendments to any such document, other than amendments to applications or declarations filed on Form U–1, shall comply with the requirements of the original document and shall state the complete text of each item amended. Amendments shall be filed under cover of the form amended, and shall be marked with the suffix ''/A'' to designate the document as an amendment, e.g., ''U–7D/A.''

(c) *Form U–1* (*§ 259.101 of this chapter*). Applications and amendments thereto under section 6(b), 9(c)(3) and 10 of the Act and declarations and amendments thereto pursuant to sections 7, 12(b), 12(c), 12(d) or 12(f) of the Act or any rule of the Commission thereunder, shall be filed on Form U–1. Amendments shall be marked either ''U–1/A'' to designate the document as a pre-effective amendment or ''POS AMC'' to designate the document as a post-effective amendment.

(d) *Certificates of notification.* Form U–6B–2 is prescribed for any certificate of notification pursuant to the last sentence of section 6(b) of the Act. Such certificate shall be filed within 10 days after the issuance or sale of any securities exempted from the provisions of section 6(a) by or under the authority of section 6(b) (49 Stat. 814; 15 U.S.C. 79f), which is neither the subject of a declaration or application on Form U–1 nor included within the exemption provided by § 250.48.

(e) *Matters as to which no form is prescribed.* As to any proposed transactions, and any request for an order, for which no form of application is prescribed, applicant shall state the facts relied upon as the basis for any action which the Commission is asked to take, and shall furnish by amendment such other information as the Commission may require.

(f) *Electronic filings.* (1) Electronic filers are subject to Regulation S–T (Part 232 of this chapter) and the EDGAR Filer Manual. Any rule or instruction therein shall be controlling unless otherwise specifically provided in rules or instructions pertaining to the submission of a specific form.

(2) The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (§§ 232.10 and 237.302 of this chapter).

[6 FR 2015, Apr. 19, 1941, as amended at 19 FR 5211, Aug. 18, 1954; 58 FR 15005, Mar. 18, 1993]

§ 250.21 Filing of documents.

(a) *General provision.* All documents required to be filed with the Commission shall be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules, such documents shall be deemed to have been filed with the Commission on the date when they are actually received by it.

(b) *Electronic filings.* (1) All documents required to be filed with the Commission under the Act or the rules and regulations thereunder shall be filed at the principal office in Washington, D.C. via EDGAR by delivery to the Commission of a magnetic tape or diskette, or by direct transmission.

(2) The date of filing of documents shall be determined in the manner set forth in rule 13 of Regulation S–T (§ 232.13 of this chapter).

[6 FR 2015, Apr. 19, 1941, as amended at 58 FR 15005, Mar. 18, 1993]

§ 250.22 Applications and declarations.

(a) *Joinder.* As far as practicable combined or joint applications or declarations shall be filed with respect to the same or related transactions or where related questions of law or fact are involved, and the Commission will dispose of the matter simultaneously or otherwise as may be appropriate.

(b) *Incorporation by reference.* (1) If any information required to be filed in

any application or declaration is contained in any document previously or concurrently filed with the Commission pursuant to any Act administered by it, the application or declaration may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, incorporate such information by exact and specific reference to the filing in which it was physically filed. The Commission may refuse to permit incorporation by reference in any instance where, in its opinion, such incorporation is confusing, misleading or inadequate.

(2) *Electronic filings*. Any application or declaration filed in electronic format may incorporate by reference any information contained in any document previously or concurrently filed with the Commission under any Act administered by it, provided that, if amended, the document or amendment has been filed in accordance with the requirements of rule 102 of Regulation S–T (§ 232.102 of this chapter). Such information shall be incorporated by specific reference to the electronic filing in which it was filed, including the filer's name, the file number, the form type and the date filed.

(c) *Verification*. All applications and declarations shall be appropriately verified by an authorized officer of the applicant of declarant having knowledge of the facts, except as otherwise specifically provided in the applicable form.

(d) *Formal specifications*. All applications, declarations, certificates and statements, and any amendments thereto, shall be filed in triplicate. One copy shall be signed but the other two copies may have facsimile or typed signatures. Applications and declarations, amendments thereto, and where practicable, all papers filed as a part thereof shall be on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size. All documents filed shall be bound on the left side in such manner as to leave the reading matter legible, and shall be printed, lithographed, mimeographed, typewritten, or prepared by any process which, in the opinion of the Commission, produces copies suitable for permanent records and microfilming. Irrespective of the process used, all copies of such material shall be clear, easily readable and suitable for repeated photocopying. Debits and credits in financial statements shall be clearly distinguishable as such on photocopies.

(e) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Public Utility Holding Company Act of 1935, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further the total number of pages contained in a numbered original shall be set forth on the first page of the document.

(f) *Proposed notice*. A proposed notice of the proceeding initiated by the filing of an application or a declaration shall accompany each application or declaration as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application or declaration.

(Sec. 19, 48 Stat. 85, as amended, secs. 13, 15, 23, 48 Stat. 894, 895, 901, as amended, sec. 15, 49 Stat. 828, secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173, as amended, secs. 38, 39, 54 Stat. 841; 15 U.S.C. 77s, 78m, 78*o*, 78w, 79*o*, 77eee, 77ggg, 77nnn, 77sss, 80a–37, 80a–38; 15 U.S.C. 79c and 79t (49 Stat. 810, 833); 15 U.S.C. 80w–37, 30c–39 (54 Stat. 841, 342); 15 U.S.C. 80b–3, 80b–4, 80b–11 (54 Stat. 850, 852, 855))

[19 FR 5211, Aug. 18, 1954, as amended at 29 FR 2421, Feb. 13, 1964; 44 FR 4666, Jan. 23, 1979; 47 FR 58238, Dec. 30, 1982; 50 FR 50611, Dec. 11, 1985; 58 FR 15005, Mar. 18, 1993; 60 FR 32825, June 23, 1995]

§ 250.23 Procedure applicable to certain applications and declarations.

(a) *Scope of rule*. The provisions of this section apply to applications under sections 6(b), 9(c)(3) and 10 of the Act (49 Stat. 814, 49 Stat. 817, 49 Stat. 818; 15 U.S.C. 79f, 79i, 79j) or § 250.50 and declarations pursuant to sections 7, 12(b), 12(c), 12(d), and 12(f) of the Act (49 Stat. 815, 49 Stat. 823; 15 U.S.C. 79g, 79*l*)

and any rule of the Commission thereunder, to declarations under § 250.65, and to declarations regarding proposed accounting entries subject to instruction 8C of the Uniform System of Accounts for Public Utility Holding Companies.

(b) *Designation of filings as applications or declarations.* Any filing as to any matter specified in paragraph (a) of this section shall be designated an application, if filed pursuant to section 6(b), 9(c)(3) or 10 of the Act (49 Stat. 814, 817, 818; 15 U.S.C. 79f, 79i, 79j) or § 250.50, and shall be designated a declaration with respect to any other matter specified in paragraph (a) of this section.

(c) *Effective date.* A declaration or application, which complies with the applicable requirements of the Act and the rules and regulations thereunder, will become effective or be granted respectively by an order to issue upon the expiration of the period prescribed in the notice of filing.

(d) *Effect of order for hearing.* If the Commission deems that a hearing is appropriate in the public interest or the interest of investors or consumers, it will issue an order for hearing thereon, and in that event a declaration or application shall not become effective or be granted except pursuant to further order of the Commission.

(e) *Notice of filing.* The Commission will publish in the FEDERAL REGISTER notice of the filing of a declaration or application, stating the earliest date upon which such declaration or application, as filed or as amended, may be permitted to become effective or be granted. Any interested person may, not later than fifteen days after the publication of such notice or such other date as may be fixed therein, request the Commission in writing that a hearing be held, stating his reasons therefor and the nature of his interest.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941; 28 FR 5664, June 11, 1963; 41 FR 26854, June 30, 1976]

§ 250.24 Terms and conditions applicable to declarations and orders granting applications.

(a) *Certificate required from declarant or applicant.* Within 10 days after the consummation of any transaction regarding which a declaration has become effective or an application has been granted, the declarant or applicant shall certify to the Commission that such transaction has been carried out in accordance with the terms and conditions of and for the purposes represented by the declaration or application, and of any order of the Commission with respect thereto, and except to the extent that the declaration or application specifies that certain steps or transactions therein proposed may be carried out at a later time than the others, the applicant or declarant shall be required to carry out as a single transaction all the steps therein proposed. The foregoing requirement is imposed on each applicant and declarant unless otherwise expressly ordered by the Commission.

(b) *Conditions and restrictions proposed in an application or declaration.* Every order granting an application or making effective a declaration shall, unless otherwise therein expressly stated, impose upon the applicant or declarant the obligation to comply with any restriction or condition which the application or declaration proposes shall be imposed by the Commission in connection therewith.

(c) *Conditions to effectiveness.* Every order granting an application or making effective a declaration shall, unless otherwise expressly ordered, be subject to the following conditions:

(1) *Compliance with declaration or application.* That the transaction proposed shall be carried out in accordance with the terms and conditions of, and for the purposes stated in the declaration or application, and within 60 days after such declaration is effective or application granted, or such earlier or later date as may be designed in such declaration or application.

(2) *State commission action.* That if the transaction is proposed to be carried out in whole or in part pursuant to the express authorization of any State commission, such transaction shall be carried out in accordance with such authorization, and if the same be modified, revoked or otherwise terminated, the effectiveness of the declaration or order granting the application shall be, without further order or the taking of

any action by the Commission, revoked and terminated.

(3) *Reservation of jurisdiction*. That the Commission reserves jurisdiction:

(i) To pass upon the terms and conditions of any document which the declaration or application states is to be submitted to the Commission after the effective date of such declaration or application, and to pass upon any modification of the terms and conditions of any document previously submitted to the Commission. Any such document or modification shall, unless otherwise directed by the Commission, be submitted to the Commission, by amendment to the declaration or application, prior to the execution or use thereof.

(ii) To pass upon any matter which the declaration of application proposes shall be subject to future consideration by the Commission. No action shall be taken with respect to any such matter except upon order of the Commission.

(iii) To entertain, at the request of declarant or applicant, such further proceedings and take such further action as may be appropriate regarding any step which may be taken to consummate the proposed transaction.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941]

§ 250.25 Answers.

In any proceeding instituted by the Commission, the Commission may direct that any party respondent shall file an answer to the allegations contained in the order of the Commission initiating such proceeding, or in any statement of facts filed in such proceeding. Unless otherwise directed by the Commission, such answer shall conform to the requirements for answers to pleadings specified in the Federal Rules of Civil Procedure. The Commission recognizes the right of any person directed to file any such answer to set forth therein appropriate reservations of constitutional or other legal rights.

§ 250.26 Financial statement and recordkeeping requirements for registered holding companies and subsidiaries.

(a) Every registered holding company and every subsidiary company thereof:

(1) Shall conform to the requirements of Regulation S–X as to form and content of financial statements; and

(2) Shall make and keep current accounts, books and other records of all of its transactions in sufficient detail to permit examination, audit and verification of the financial statements, schedules and reports it is required to file with the Commission or which it issues to stockholders. Such accounts, books and other records shall be maintained in appropriate form and in sufficient detail to provide all of the information with respect to the business of the company specified by such Commission filing requirements as are in effect when the transactions recorded occur.

(b) Every registered holding company shall identify in its Form U5S the chart of accounts used by it and by each subsidiary company.

(1) The initial identification shall be made in the Form U5S, or a supplement thereto, filed in the year in which the use of such accounts is to begin, or in the year 1975 for charts of accounts already in use or proposed to be used in that year. Subsequent Forms U5S need merely state that no change in the accounts used has occurred, if that is the fact.

(2) A copy of each chart of accounts shall be annexed as an exhibit to the filing in which it is identified, except that it is unnecessary to file a copy of an official chart of accounts which any company subject to this rule is required to use by the Federal Energy Regulatory Commission, a state commission or by § 250.27 or § 250.93 under the Act. A company electing to use a chart of accounts promulgated by the Federal Energy Regulatory Commission also need not file a copy thereof.

(3) An amendment to Form U5S shall be filed as to any modification of such chart of accounts, except a modification made to an official chart of accounts by the commission which promulgated it. The amendment shall describe the nature, purpose and effect of the proposed modification and the date it is to be placed in effect. It shall be filed at least 30 days prior to its effective date. Unless the Commission directs otherwise, the chart of accounts, as so modified, shall be used thereafter.

(c) Every registered holding company and every subsidiary company thereof shall hereafter follow the equity method of accounting for investments in any subsidiary company.

(1) Each investment shall be recorded at its carrying value heretofore established and the actual cost of investments hereafter made. Each investment shall be periodically adjusted for the proportionate share of earnings or losses or capital changes of the subsidiary company since its acquisition, crediting any dividends received from such subsidiary company.

(2) Every company subject to this rule shall maintain a subaccount to its retained earnings account which shall be periodically debited or credited with its proportionate share of undistributed retained earnings of subsidiary companies.

(3) No company subject to this rule shall declare or pay any dividends or reacquire any of its own securities from or on the basis of any balances recorded in the subaccount referred to in paragraph (c)(2) of this section, except pursuant to a declaration under section 12(c) of the Act.

(d) No registered holding company which is not a public utility company shall dispose, without authorization from the Commission, of any accounts, books, or other records, except pursuant to 17 CFR part 257.

(e) This rule shall not modify or revoke any order of the Commission heretofore entered as to the accounting by any company subject to this rule including any continuing provision as to amortization or other disposition of any item governed thereby.

(f) Nothing in this rule shall relieve any company subject thereto from compliance with the requirements as to recordkeeping and retention that may be prescribed by any other regulatory agency.

(g) Any references in other rules, forms or releases under the Act to the uniform system of accounts shall be hereafter deemed to refer to this rule.

[40 FR 22129, May 21, 1975, as amended at 49 FR 27309, July 3, 1984; 59 FR 21927, Apr. 28, 1994]

§ 250.27 Classification of accounts prescribed for utility companies not already subject thereto.

(a) Every registered holding company and subsidiary thereof, which is a public utility company and which is not required by either the Federal Energy Regulatory Commission or a State commission to conform to a classification of accounts, shall keep its accounts, insofar as it is an electric utility company, in the manner currently prescribed for similar companies by the Federal Energy Regulatory Commission or, and insofar as it is a gas utility company, in the manner currently recommended by the National Association of Railroad and Utilities Commissioners, except any company whose public utility activities are so limited that the application to it of such system of accounts is clearly inappropriate. A company claiming that its activities are thus limited, shall apply to the Commission for written instructions to that effect.

(b) All references, in the systems of accounts made applicable by paragraph (a) of this section, to the authority prescribing the same and to orders and instructions by, and reports to, said authority, shall be deemed to refer to the Securities and Exchange Commission as the ''Commission'' thereby designated.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 8 FR 15814, Nov. 23, 1943; 59 FR 21927, Apr. 28, 1994]

§ 250.28 Inconsistent financial statements.

Except as otherwise authorized or required by the Commission by rule, regulation, order, statement of administrative policy, or otherwise, no registered holding company or subsidiary company thereof shall distribute to its security holders, or publish, financial statements which are inconsistent with the book accounts of such company or financial statements filed with this Commission by, or on behalf of, such company. This section shall not be deemed to prevent the distribution or publication of reasonable condensations or of unaudited financial statements or of financial statements (on a

cash or other basis) pursuant to the requirements of an indenture or mortgage given to secure bonds or similar instruments, or of appropriate financial statements of a receiver or trustee appointed by a court of the United States.

[25 FR 1942, Mar. 5, 1960]

§ 250.29 Filing of reports to State Commissions.

PRELIMINARY NOTE: Reports to State Commissions shall be submitted to the Commission in paper only, whether or not the filer is otherwise required to file in electronic format.

A copy of each annual report submitted by any registered holding company or any subsidiary thereof to a State Commission covering operations not reported to the Federal Energy Regulatory Commission shall be filed with the Securities and Exchange Commission no later than ten days after such submission.

[59 FR 21927, Apr. 28, 1994]

REGULATION AND EXEMPTION OF VARIOUS FINANCIAL TRANSACTIONS [2]

§ 250.40 Exemption of certain acquisitions from nonaffiliates.

(a) Section 9(a) (49 Stat. 817; 15 U.S.C. 79i), shall not apply to the acquisition, from a person other than an associate or affiliate of the acquiring company or an affiliate of an associate company, of any of the securities (excluding securities issued by the acquiring company) as specified below:

(1) *Readily marketable securities*. Any bond or other evidence of indebtedness issued by any nonassociate company which qualifies as a legal investment for trust funds or for saving banks under the laws of New York, Pennsylvania or Massachusetts, if after giving effect to such acquisition the acquiring company, together with its associate companies, will not own more than 5 percent of the particular class of such securities.

(2) *Commercial paper and similar securities*. Any prime commercial paper, trade acceptance or bank certificate of deposit maturing within 12 months from the date of issuance or payable in not more than 60 days after demand.

(3) *Acquisitions resulting from previous ownership of securities*. Securities received as a dividend, or in renewal of an evidence of indebtedness, or pursuant to the exercise of preemptive right or conversion privilege, or as a result of any reclassification, general exchange offer or reorganization: *Provided*, That no exemption shall be available under this paragraph as to the acquisition of any voting securities or securities convertible into voting securities if after giving effect to such acquisition the acquiring company will, directly or indirectly, own, control, or hold 5 percent or more of the particular class of such securities.

(4) *Securities acquired in connection with routine business transactions*. In the ordinary course of the acquiring company's business (other than the business of a holding company or investment company as such), any evidence of indebtedness executed by its customers in consideration of utility or other services by such company or executed in connection with the sale of goods or of real property other than utility assets.[3]

(5) *Securities of local enterprises*. Any security issued by an industrial or other nonutility enterprise located in the service territory of the acquiring public-utility company or, if the acquiring company is not a public-utility company, in the service territory of the registered holding-company system: *Provided*,

(i) The total cost of acquisitions by the acquiring company of securities of industrial development companies organized for the purpose of, and in accordance with a State law that specifically relates to, promoting the development of business and industry in such state does not exceed an annual aggregate amount of $5 million, and

(ii) The total cost of acquisitions of securities of other local industrial or nonutility enterprises does not exceed

[2] See, also, § 250.70(b)(2) as to dealings with financial institutions where there are or have been, certain interlocking relationships.

[3] See, also, § 250.48 for exemption concerning the acquisition of appliance paper in connection with the sale of electric or gas appliances.

an annual aggregate amount of $1 million. In no event, however, will the above exemption apply where, by reason of such acquisition, the acquiring company would become an affiliate of the issuer.

(6) *Small minority interests.* Any security of any subsidiary company, if prior to such acquisition the acquiring company owns 95 percent or more of the outstanding securities of the class acquired.

(b) Section 9(a) (49 Stat. 817; 15 U.S.C. 79i) shall not apply to the acquisition of any securities of a mutual or subsidiary service company: *Provided,* That such acquisition is in accordance with a program as to ownership of securities of such service company which the Commission has found to meet the requirements of section 13 (49 Stat. 825; 15 U.S.C. 79m) of the Act.

(c) Section 9(a)(1) shall not apply to the acquisition of securities of a company whose principal business is the ownership and/or licensing of trade names, trade-marks and service marks used by public-utility companies in the ordinary course of their business and the preparation, distribution and/or sale of material and services related wholly to such names and marks.

(d) Section 9(a)(2) shall not apply to the acquisition by a person who is neither a registered holding company, nor a subsidiary company thereof, of securities owned by a registered holding company, or subsidiary thereof, which are the subject of a divestment order under section 11(b), where such securities constitute all the vendor's interest in a company which does not operate any utility assets and which is a public-utility company only by reason of the ownership of a reversionary interest in utility assets: *Provided,* That such utility assets are operated under lease by a company which is not an affiliate of either the vendor or of the vendee, and the Commission finds that by reason of the duration of the lease, the ownership by the lessee of securities of the lessor and similar matters, there is no substantial probability of the lessor resuming operation of said utility assets. Such finding of the Commission may be made in connection with an application by the vendor company with respect to such sale.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 8 FR 5831, May 6, 1943; 18 FR 8890, Dec. 31, 1953; 28 FR 5664, June 11, 1963; 59 FR 21927, Apr. 28, 1994]

§ 250.41 Exemption of public utility subsidiaries with respect to limited acquisition of utility assets.

Any public utility company which is a subsidiary of a registered holding company shall be exempt from every obligation, duty, and liability imposed upon such company as a subsidiary company by the provisions of section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to an acquisition of utility assets provided that the following conditions are met:

(a) *Electric utility assets.* Any electric utility assets to be acquired are, prior to the acquisition, or will be immediately thereafter, connected with electric utility assets already owned and operated by the acquiring company, excluding connections over lines not operated by the acquiring company.

(b) *Gas utility assets.* Any gas utility assets to be acquired are located in or adjacent to the same service area as that in which gas utility assets already owned and operated by the acquiring company are located.

(c) *Limit in amount.* The total consideration paid for utility assets acquired pursuant to the exemption granted by this section does not exceed in any calendar year the lesser of $5 million or five percent of the gross annual revenues of the acquiring company derived from its operations as a public-utility company during the preceding calendar year.

(d) *Prohibition of fees.* No fees or commissions are to be paid by any person or company in connection with the acquisition of such utility assets except to a person or company subject to the rules of the Commission adopted under section 13 of the Act (49 Stat. 825; 15 U.S.C. 78m) or to a person or company not affiliated with the acquiring company.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

§ 250.42 Acquisition, retirement and redemption of securities by the issuer thereof.

A registered holding company or its subsidiary company may acquire, retire or redeem any security of which it is the issuer (or which it has assumed or guaranteed) without the need for prior Commission approval under sections 9(a), 10 and 12(c) of the Act: *Provided*, This section shall not apply to a transaction by a registered holding company or its subsidiary company with an associate company, an affiliate, or an affiliate of an associate company, or to a transaction by a registered holding company, as defined in § 240.13e-3(a)(3) of this chapter.

[59 FR 21928, Apr. 28, 1994]

§ 250.43 Sales to affiliates.

(a) *General provisions*. No registered holding company or subsidiary thereof shall, directly or indirectly, sell to any company in the same holding company system or to any affiliate of a company in such holding company system any securities or utility assets or any other interest in any business, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exception*. The foregoing requirement in paragraph (a) shall not apply to any sale of securities or utility assets or any other interest in any business in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities, assets or other interest does not require prior Commission approval.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15413, Dec. 29, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.44 Sales of securities and assets.

(a) *Sales of utility securities or assets*. No registered holding company shall, directly or indirectly, sell to any person any security which it owns of any public utility company, or any utility assets, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exception*. The foregoing requirement in paragraph (a) shall not apply to any sale of securities or of utility assets in an aggregate amount of up to $5,000,000 during any calendar year if the acquisition of such securities or assets does not require prior Commission approval.

(c) *Sales pursuant to order or plan under section 11*. No registered holding company or subsidiary thereof shall, directly or indirectly, sell or otherwise dispose of any security, asset or other interest in any business which it is required to dispose of by reason of any order of this Commission under section 11(b) of the Act, or pursuant to the provisions of any plan pending or approved under section 11(e) of the Act, unless it shall have given at least 10 days' notice to the Commission of its intention to make such sale or other disposition and;

(1) No notice shall have been given to said company by the Commission within said 10 day period that a declaration should be filed with respect to the proposed transaction, or notice shall have been given by the Commission within said 10 day period that no declaration is required; or

(2) A declaration filed by the company with respect to such transaction shall have been permitted to become effective by order of the Commission: *Provided*, That the provisions of this paragraph shall not apply to any transaction as to which a declaration is required under § 250.43(a) (Rule U–43(a)) or paragraph (a) of this section.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 10 FR 15413, Dec. 29, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.45 Loans, extensions of credit, donations and capital contributions to associate companies.

(a) *General provision*. No registered holding company or subsidiary company shall, directly or indirectly, lend or in any manner extend its credit to nor indemnify, nor make any donation

or capital contribution to, any company in the same holding company system, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act.

(b) *Exceptions*. The following transactions shall be exempt from the declaration requirements of this section:

(1) A loan or extension of credit involving an acquisition of securities approved by the Commission under section 10 (49 Stat. 818; 15 U.S.C. 79j) or exempt from section 9(a) of the Act by section 9(b)(2) (49 Stat. 817; 15 U.S.C. 79i) thereof or by any rule in this part.

(2) Extensions of credit without interest in connection with service, construction or sales contracts (including sales of materials and supplies) or from sales of electric energy or natural or manufactured gas, or other obligations accruing in the ordinary course of business: *Provided*, That payment is made as soon as reasonably practicable.

(3) Extensions of credit to a subsidiary without interest to meet emergency requirements: *Provided,* That both the borrowing and lending company forthwith join in a statement notifying the Commission of the transaction and agreeing to take such action with respect thereto as the Commission may require.

(4) Capital contributions or open account advances, without interest, by a company to its subsidiary company; *Provided*, That capital contributions or open account advances to any energy-related company subsidiary, as defined in § 250.58, shall not be exempt hereunder unless, after giving effect thereto, the aggregate investment by a registered holding company or any subsidiary thereof in such company and all other such energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

(5) Failure to demand or enforce payment with respect to all or part of any obligation which is by its terms payable on demand, or of any security which has matured, if no new agreement is entered into with respect to the terms or conditions of the unpaid balance thereof.

(6) An agreement by a registered holding company or subsidiary company of a registered holding company to guarantee, to assume joint liability, or to act as a surety or as an indemnitor with respect to contingent liabilities or other obligations of a subsidiary of such company, incurred in the ordinary course of such subsidiary's business, if said agreement is in the form of:

(i) A direct guarantee, assumption of liability, surety or indemnification of the subsidiary company's obligations which is required to meet the requirements of federal, state or local law; or

(ii) An indirect guarantee of a subsidiary through a surety or indemnification of one or more surety companies or agencies, which have agreed to provide bonds of the following kinds required by subsidiary companies in the holding-company system:

(A) Court and fiduciary bonds such as appeal bonds, supersedeas bonds, condemnation bonds, or bonds required to free property from attachment or to lift an injuction;

(B) License and permit bonds such as blasting and oversize load permit bonds;

(C) United States, state and local government bonds such as customs bonds, workers' compensation self-insurance bonds, bonds required by the Internal Revenue Services, mineral right-of-way or drilling lease bonds and notary public bonds;

(D) Lost instrument bonds or other bonds which may be necessary or desirable in connection with the processing of securities or any bonds which may be required by a stock exchange on which any security is listed;

(E) Admiralty bonds;

(F) Bonds required for engineering or construction purposes such as bid, performance or payment bonds;

(G) Any other bonds of a similar nature required for routine operational purposes;

Provided, however, That: (*1*) No payment, compensation or other consideration shall be paid or accrue to the parent company in consideration for such guarantee, assumption of liability, surety or indemnification; (*2*) this rule

shall not be construed to apply to a direct or indirect guarantee, assumption of liability, surety or indemnification of a subsidiary company's indebtedness for borrowed money; and (*3*) the aggregate of all such direct and indirect guarantees, assumptions of liability, sureties or indemnifications by the parent company, shall not exceed the greater of $50,000,000, or 5 percent of the aggregate amount of the other securities of the company then outstanding, such securities to be valued at (*i*) original principal amount, if there is such a principal amount, and (*ii*) fair market value as of the date of issuance, if there is no such principal amount. Par value stock shall be treated in the same manner as no par value stock, *i.e.*, as stock issued without any principal amount.

(7) An agreement by any subsidiary company of a registered holding company to assume liability (as guarantor, co-maker, indemnitor, or otherwise) with respect to any security issued by any other subsidiary company in the same holding company system, provided that the issuance and sale of such security is exempt, and such assumption of liability constitutes the issuance of a security that is exempt, from the declaration requirements of section 6(a) of the Act (15 U.S.C. 79f(a)) under § 250.52.

(c) A declaration under paragraph (a) of this section shall not be required for the filing of a consolidated tax return by the eligible associate companies in a registered holding company system, or the execution or performance of the agreement referred to herein, if such consolidated tax return is filed pursuant to a tax agreement, in writing, relating to either federal or state taxes, for a term of one or more tax years among the associate companies included in the consolidated return, and the agreement provides for allocation among such associate companies of the liabilities and benefits arising from such consolidated tax return for each tax year in a manner not inconsistent with the following conditions:

(1) Definitions:

Consolidated tax is the aggregate tax liability for a tax year, being the tax shown on the consolidated return and any adjustments thereto thereafter determined. The consolidated tax will be the refund if the consolidated return shows a negative tax.

Corporate tax credit is a negative separate return tax of an associate company for a tax year, equal to the amount by which the consolidated tax is reduced by including a net corporate taxable loss or other net tax benefit of such associate company in the consolidated tax return.

Corporate taxable income is the income or loss of an associate company for a tax year, computed as though such company had filed a separate return on the same basis as used in the consolidated return, except that dividend income from associate companies shall be disregarded, and other intercompany transactions eliminated in the consolidated return shall be given appropriate effect. It shall be further adjusted to allow for applicable rights accrued to the associate company under paragraphs (c) (4) and (5) of this section or under prior rules or orders, on the basis of other tax years, but carryovers or carrybacks shall not be taken into account if the associate company has been paid a corporate tax credit therefor. If an associate company is a member of the registered system's consolidated tax group for only part of a tax year, that period will be deemed to be its tax year for all purposes under paragraph (c) of this section.

Separate return tax is the tax on the corporate taxable income of an associate company computed as though such company were not a member of a consolidated group.

(2) The consolidated tax shall be apportioned among the several members of the group in proportion to (i) the corporate taxable income of each such member, or (ii) the separate return tax of each such member, but the tax apportioned to any subsidiary shall not exceed the separate return tax of such subsidiary.

(3) The tax agreement shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c) (2)(i) or (2)(ii) of this section if the sum of the corporate taxable incomes or separate return taxes of all members of the group in any taxable

year differs from the consolidated taxable income or tax because of intercompany transactions excluded from the consolidated return. It shall provide for appropriate and equitable adjustment of the allocation specified under paragraph (c)(2)(ii) to the extent that the consolidated tax and separate return tax for any year include material items taxed at different rates or involving other special benefits or limitations. Such adjustments will be directed to allocating to the individual members of the group the material effects of any particular features of the tax law applicable to them.

(4) The tax agreement may exclude from the allocation under paragraph (c)(2)(i) of this section associate companies not having a positive corporate taxable income for the year being allocated, or under paragraph (c)(2)(ii) of this section associate companies not having a positive separate return tax for the year being allocated. An agreement under this paragraph shall make appropriate and equitable provision for preserving to each subsidiary company so excluded the equivalent of any rights which such company would have had, under the applicable tax law, had it filed a separate return, to use in other years any loss or credit availed of by the group through the consolidated return. With respect to carryover rights, such provisions will normally consist of recognition of the carryover in future allocations by reducing the consolidated tax allocation in the subsequent year of the subsidiary company entitled to the benefit, and by charging the excess to the companies which had benefited by the prior deduction or credit. In the case of a carryback, the excluded subsidiary company should normally be paid the amount of refund to which it would have been entitled had it filed a separate return.

(5) The agreement may, instead of excluding members as provided in paragraph (c)(4), include all members of the group in the tax allocation, recognizing negative corporate taxable income or a negative corporate tax, according to the allocation method chosen. An agreement under this paragraph shall provide that those associate companies with a positive allocation will pay the amount allocated and those subsidiary companies with a negative allocation will receive current payment of their corporate tax credits. The agreement shall provide a method for apportioning such payments, and for carrying over uncompensated benefits, if the consolidated loss is too large to be used in full. Such method may assign priorities to specified kinds of benefits.

(6) The tax agreement for each taxable year shall be filed as an exhibit to the system's annual report on Form U5S (§ 259.5s of this chapter) for the previous taxable year. The initial filing after the effective date of this amendment shall be made as an amendment to the last Form U5S filed. If an existing tax agreement is merely renewed or amended, prior filings may be incorporated by reference. Amendments to a tax agreement shall be filed as an amendment to the Form U5S. Any amendment which would alter the allocation to any associate company for any period preceding its adoption shall be conditioned on approval by the Commission if the Commission directs, within 60 days after its filing, that it be deemed to be a declaration under Rule 45(a).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 488, Jan. 21, 1955; 46 FR 18534, Mar. 25, 1981; 52 FR 48986, Dec. 29, 1987; 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

§ 250.46 Dividend declarations and payments on certain indebtedness.

(a) *Dividends*. No registered holding company or subsidiary thereof shall declare or pay any dividend on any security of such company out of capital or unearned surplus, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act.

(b) *Payments on certain indebtedness*. No registered holding company or subsidiary company thereof shall, directly or indirectly, make any payment of principal or interest on any note, bond, book account or any indebtedness however evidenced which is or was issued

as, or based upon a dividend or dividends created or issued or declared from, or charged against, capital or unearned surplus, or in renewal of, or in exchange for any such obligation, whether such dividend was declared before or after the act took effect, except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23, and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the Act. In determining whether proposed payments on any such indebtedness issued or declared as a dividend in part out of earned surplus and in part out of capital or unearned surplus, or issued in renewal of, or in exchange for, such indebtedness, fall within this paragraph, past payments on account of such indebtedness or any predecessor indebtedness shall be deemed to have been first applied in reduction of the portion of such indebtedness issued or declared as a dividend out of earned surplus.

§ 250.47 Exemption of public utility subsidiaries as to certain securities issued to the Rural Electrification Administration.

(a) *Exemption.* Any public utility company which is a subsidiary company of a registered holding company shall be exempt from the obligations, duties, or liabilities imposed by the act or any rule thereunder, on such company as a subsidiary company, with respect to the issue and sale to the Rural Electrification Administration, of any security of which it is the issuer in an amount not exceeding in any one calendar year 2 percent of the aggregate of the outstanding funded indebtedness plus the capital and surplus accounts of the issuer as of the end of the prior calendar year. Such company shall also be exempt with respect to the pledge of any security or other property as collateral for any security so issued or sold, and with respect to the redemption or retirement, in whole or in part, of any such security.

(b) *Certificate of notification.* Within 10 days after the issue or sale of any security exempt under this section, the issuer shall file with the Commission a certificate of notification on Form U–6B–2 containing the information prescribed by that form.

§ 250.48 Certain exemptions in connection with appliance sales and loans to officers or employees.

(a)(1) *Exemptions in connection with appliance sales.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, in the ordinary course of business, of any evidence of indebtedness executed by customers of such public utility company as consideration for the purchase (whether from such public utility company, from an associate company thereof, or from dealers) of standard electric or gas appliances, or reacquisition of any such security guaranteed by such company.

(2) *Guarantee.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from the provisions of section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) and of § 250.44 with respect to the guarantee, by endorsement or otherwise, and sale of any such customers' evidence of indebtedness. This paragraph shall be inapplicable to any company which is a registered holding company.[4]

(3) *Issuance of note.* Any public utility company, or subsidiary thereof, or associated service company thereof, shall be exempt from the provisions of section 6(a) of the Act with respect to the issue or sale of any note or draft which is, and at all times will be, secured by a pledge of such customers' evidence of indebtedness having a principal amount still unpaid at least equal to the unpaid principal amount of such note or draft. This paragraph shall be inapplicable to any company which is a registered holding company.[4]

(4) *Acquisition of guaranteed paper or retirement of notes.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall

[4] Any registered holding company which is also a public utility company and whose regular course of business involves activities within the scope of this section may file a declaration, regarding such activities. See § 250.22(a).

be exempt from section 9(a) of the Act and § 250.42 with respect to the acquisition, retirement or redemption of any note or draft or customers' evidence of indebtedness issued or guaranteed by such company under the circumstances described in paragraph (b) or (c) of this section.

(b) *Exemption in connection with loans to employees.* Each registered holding company and any subsidiary company thereof is exempted from section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any evidence of indebtedness from its employee in consideration of a loan made to such employee and each subsidiary of a registered holding company is exempted from section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) with respect to the guarantee of indebtedness of it employee:

(1) If such transaction is made pursuant to a personnel policy of general application adopted in writing by the board of directors of such company, or by a committee or executive officer authorized by the board of directors so to act and communicated to the class of employees to which it applies; and does not cause the total amount of guarantees and loans of all companies in the holding-company system to or for the account of such employee, outstanding at the time of the transaction, to exceed the limits specified in the applicable personnel policy.

(2) The exemption also extends to securities or guarantees incident to bona fide advances to the employee for travel or other reimbursable expenses and current indebtedness of the employee for goods or services sold by the system companies in the ordinary course of business.

(3) Each company intending to avail itself of this exemption subsequent to the effective date of this rule shall file, as an exhibit or as an amendment to the system's annual report on Form U5S, a copy of such personnel policy.

As used in this rule, the term ''employee'' includes an officer and does not include a director who is not an officer or employee; and the term ''guarantee'' includes the assumption of an indebtedness or of an obligation to purchase such indebtedness or otherwise to provide a means of payment if the primary obligor fails to pay.

(Secs. 5(b), 9(c) and 14 of the Act, 15 U.S.C. 79e(b), 79i(c) and 79m)

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 49 FR 4717, Feb. 8, 1984]

§ 250.49 Certain exemptions granted to non-utility subsidiaries.

(a) *Companies exempted.* The exemptions provided by this section shall apply to any subsidiary of a registered holding company which subsidiary is not:

(1) A holding company,

(2) A public utility company,

(3) A company engaged in the business of performing services or construction for or selling goods to associate holding or public utility companies, or

(4) A company controlling, directly or indirectly, any company specified in paragraphs (a) (1) to (3) of this section.

(b) *Exemptions from sections 6(a) and 12(c).* Any such subsidiary company shall be exempt from the provisions of section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) with respect to the issuance or sale of any securities to the vendor of supplies or equipment for use in the business of such subsidiary company, and from the provisions of any rule under section 12(c) of the Act with respect to the acquisition, redemption or retirement of any such securities.

(c) *Transactions approved by a reorganization court.* Any such subsidiary company which is the subject of a proceeding for reorganization in any court of the United States in which proceeding the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)) or which is a subsidiary within the meaning of section 2(a)(8) of the Public Utility Holding Company Act (49 Stat. 804; 15 U.S.C. 79b), of any such subsidiary company which is the subject of such a proceeding, shall be exempt from any provision of the act applicable to the appointment of any trustee for such company or to any transaction entered into with the approval (direct or indirect) of such court: *Provided,* That such transaction does not involve the acquisition of any

utility assets or securities of any public utility or holding company; *Provided further*, That this paragraph shall be inapplicable to any subsidiary company which is the subject of reorganization proceedings (or any subsidiary of such subsidiary company within the meaning of section 2(a)(8) of the Public Utility Holding Company Act), where such subsidiary company, or any subsidiary thereof, is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company.

(d) *Exemption from section 9(a)*. (1) Any such subsidiary company primarily engaged in the production of natural gas or crude oil or sulphur, or in two or more of such businesses, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, from a person other than an associate or an affiliate of the acquiring company or an affiliate of an associate company, of gas leases, oil leases, or other production leases, in connection with the business in which such subsidiary is so engaged: *Provided, however*, That the exemption provided by this paragraph shall not be applicable if such acquisition is part of a transaction which involves the filing of an application or declaration with the Commission by such subsidiary company.

(2) Any such subsidiary company which is subject to regulation as a water, telephone, common carrier or other public service company, under the laws of the State in which it operates, shall be exempt from section 9(a) of the Act with respect to any acquisition expressly authorized by the State commission of such State provided that such acquisition does not include utility assets, securities of a public utility or holding company, or any other interest in any class of business other than that in which such public service company is engaged.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 12 FR 1649, Mar. 11, 1947; 59 FR 21928, Apr. 28, 1994]

§ 250.50 [Reserved]

§ 250.51 Acquisitions pursuant to preliminary agreements and invitation for tenders.

For the purpose of section 9(a) of the Act, the term ''acquire'' is defined to include the making of a contract or agreement (herein called Preliminary Agreement) pursuant to which a person subject to section 9(a) (of the Act) (herein called the Proposed Acquirer) contingently or otherwise acquires any right or becomes subject to any obligation to acquire directly or indirectly any securities or utility assets or any other interest in any business, or to direct any other person to make any sale or acquisition of any securities or utility assets or any other interest in any business. Except where an exemption from section 9(a) (of the Act) may be applicable, the making of such Preliminary Agreement or the taking of any action in connection therewith, without prior approval of the Commission, by any person so subject to section 9(a) (of the Act) shall be deemed unlawful, unless all of the following conditions are satisfied:

(a) The transaction contemplated by the Preliminary Agreement is expressly conditioned on Commission approval and the application for such approval is filed with the Commission as soon as practicable.

(b) No standby, option, or similar fee is paid or payable by or on behalf of the Proposed Acquirer as consideration for the Preliminary Agreement.

(c) The Proposed Acquirer does not indemnify or agree to indemnify any person against any market or investment risk in connection with such person's acquisition, retention or disposition of the subject matter of the proposed acquisition.

(d) The Proposed Acquirer does not transfer to any person (other than a subsidiary or successor in interest by merger or consolidation), by way of assignment or otherwise, any of its rights or interests in respect of the subject matter of the proposed acquisition unless such transfer is conditioned upon consummation of the Preliminary

Agreement following its approval by the Commission.

(e) In case a proposed transaction includes an acquisition of securities pursuant to an invitation for tenders to be made prior to the approval of such acquisition, provision shall be made that any person tendering such securities (the Tenderer) may demand in writing the return of any deposited securities at any time after 60 days from the initial mailing or publication of the invitation for tenders unless prior to the receipt of such demand either (1) the proposed acquisition has been approved by the Commission and the Proposed Acquirer is obligated to consummate the transaction or (2) the Tenderer has been issued a transferable certificate of deposit which meets the conditions specified in paragraph (f) of this section.

(f) A transferable certificate of deposit for purposes of paragraph (e) of this section may be issued in exchange for tendered securities subject to the following conditions:

(1) The terms of the certificate of deposit as proposed to be issued are specified in the invitations for tenders, including equitable provisions for return of the tendered securities in the event the proposed transaction is not approved by the Commission or otherwise fails of consummation, for exercise of voting rights and for receipt of dividends or interest by the Tenderer during the deposit period.

(2) The Proposed Acquirer files with the Commission an application-declaration proposing the issuance of such certificates of deposit in exchange for tendered securities.

(3) Upon notice and after a hearing which shall be limited to the fairness of the terms and conditions of such issuance and exchange and to compliance with the conditions of this Rule, the Commission in its descretion may by order permit such issuance and exchange on such terms and conditions as it shall approve. Any person to whom it is proposed to issue a certificate of deposit shall be entitled to appear at such hearing.

(4) If the terms and conditions specified in the certificates of deposit to be issued pursuant to order of the Commission differ from those specified in the invitation for tenders previously published by the Proposed Acquirer, the Commission may in such order require the Proposed Acquirer to give notice thereof by mail (and publication if deemed appropriate) to all persons who have tendered their securities and to provide up to 20 days after mailing of such notice for any such person to elect, in a manner prescribed by the Commission, either to continue to or revoke his tender. The terms and conditions specified in the certificates of deposit may be modified only pursuant to order of the Commission.

[33 FR 9287, June 25, 1968]

§ 250.52 Exemption of issue and sale of certain securities.

(a) Any registered holding-company subsidiary which is itself a public-utility company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and rules thereunder with respect to the issue and sale of any security, of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the business of the public-utility subsidiary company;

(2) The issue and sale of the security have been expressly authorized by the state commission of the state in which the subsidiary company is organized and doing business; and

(3) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of that associate company.

(b) Any subsidiary of a registered holding company which is not a holding company, a public-utility company, an investment company, or a fiscal or financing agency of a holding company, a public-utility company or an investment company shall be exempt from section 6(a) of the Act (15 U.S.C. 79f(a)) and related rules with respect to the issue and sale of any security of which it is the issuer if:

(1) The issue and sale of the security are solely for the purpose of financing the existing business of the subsidiary company; and

(2) The interest rates and maturity dates of any debt security issued to an associate company are designed to parallel the effective cost of capital of

that associate company; *Provided,* That any security issued to an associate company by any energy-related company subsidiary, as defined in § 250.58, shall not be exempt under these provisions unless, after giving effect to the issue of the security, the aggregate investment by a registered holding company or its subsidiary in the energy-related company subsidiary and all other energy-related company subsidiaries does not exceed the limitation in § 250.58(a)(1).

(c) Within ten days after the issue or sale of any security exempt under this section, the issuer or seller shall file with the Commission a Certificate of Notification on Form U–6B–2 (17 CFR 259.206) containing the information prescribed by that form. However, with respect to exempt financing transactions between associate companies which involve the repetitive issue or sale of securities or are part of an intrasystem financing program involving the issuance and sale of securities not exempted by this section, the filing of information on Form U–6B–2 may be done on a calendar quarterly basis.

(d) The acquisition by a company in a registered holding company system of any security issued and sold by any associate company, pursuant to this section, is exempt from the requirements of section 9(a) of the Act (15 U.S.C. 79i(a)); provided that the exemption granted by this paragraph (d) shall not apply to any transaction involving the issue and sale of securities to form a new subsidiary company of a registered holding company.

(e) A copy of any Certificate of Notification on Form U–6B–2 (§ 259.206) that is filed with this Commission under this section with respect to any security issued by a subsidiary of a registered holding company under paragraph (b) of this section and acquired by a public-utility company that is an associate company of the issuer, shall be submitted concurrently to each state commission having jurisdiction over the retail rates of the public-utility company.

[60 FR 33639, June 28, 1995, as amended at 62 FR 7915, Feb. 20, 1997; 63 FR 9741, Feb. 26, 1998]

§ 250.53 Certain registered holding company financings in connection with the acquisition of one or more exempt wholesale generators.

(a) In determining whether to approve the issue or sale of a security by a registered holding company for purposes of financing the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator by a registered holding company, the Commission shall not make a finding that such security is not reasonably adapted to the earning power of such company or to the security structure of such company or companies in the same holding company system, or that the circumstances are such as to constitute the making of such guarantee an improper risk for such company, if the following conditions are met:

(1) Aggregate investment does not exceed 50% of the system's consolidated retained earnings.

(i) *Aggregate investment* means all amounts invested, or committed to be invested, in exempt wholesale generators and foreign utility companies, for which there is recourse, directly or indirectly, to the registered holding company. Among other things, the term includes, but is not limited to, preliminary development expenses that culminate in the acquisition of an exempt wholesale generator or a foreign utility company; and the fair market value of assets acquired by an exempt wholesale generator or a foreign utility company from a system company (other than an exempt wholesale generator or a foreign utility company).

(ii) *Consolidated retained earnings* means the average of the consolidated retained earnings of the registered holding company system as reported for the four most recent quarterly periods on the holding company's Form 10–K or 10–Q (§ 249.308a or § 249.310 of this chapter, respectively) filed under the Securities Exchange Act of 1934, as amended.

(2) The registered holding company maintains books and records to identify investments in and earnings from any exempt wholesale generator or foreign utility company in which it directly or indirectly holds an interest. In addition:

(i) For each United States exempt wholesale generator in which the registered holding company directly or indirectly holds an interest:

(A) The books and records of such entity shall be kept in conformity with United States generally accepted accounting principles (''GAAP'').

(B) The financial statements shall be prepared according to GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements as the Commission may request.

(ii) For each foreign exempt wholesale generator or foreign utility company which is a majority-owned subsidiary company of the registered holding company:

(A) The books and records of such entity shall be kept in conformity with GAAP.

(B) The financial statements for such entity shall be prepared in conformity with GAAP.

(C) The registered holding company undertakes to provide the Commission access to such books and records and financial statements, or copies thereof, in English, as the Commission may request.

(D) For purposes of this section, a ''majority-owned subsidiary company'' is one in which the registered holding company directly or indirectly owns more than 50% of the voting securities.

(iii) For each foreign exempt wholesale generator or foreign utility company in which the registered holding company directly or indirectly owns 50% or less of the voting securities, the registered holding company shall proceed in good faith, to the extent reasonable under the circumstances, to cause:

(A) The books and records of such entity to be kept in conformity with GAAP; provided, that if the books and records are maintained according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the accounting principles, practices and methods used to maintain the books and records.

(B) The financial statements for such entity to be prepared according to GAAP; provided, that if the financial statements are prepared according to a comprehensive body of accounting principles other than GAAP, the registered holding company shall, upon request, describe and quantify each material variation from GAAP in the balance sheet line items and net income reported in the financial statements.

(C) Access by the Commission to such books and records and financial statements, or copies thereof, in English, as the Commission may request; provided, that in any event, the registered holding company shall make available to the Commission any books and records of the foreign exempt wholesale generator or foreign utility company that are available to the registered holding company.

(3) No more than two percent of the employees of the system's domestic public-utility companies render services, at any one time, directly or indirectly, to exempt wholesale generators or foreign utility companies in which the registered holding company, directly or indirectly, holds an interest; provided, that the Commission has previously approved the rendering of such services.

(4) The registered holding company simultaneously submits a copy of any Form U–1 (17 CFR 259.101) and certificate under section 250.24 filed with the Commission under this section, as well as a copy of Item 9 of Form U5S (17 CFR 259.5s) and Exhibits G and H thereof with every federal, state or local regulator having jurisdiction over the retail rates of any affected public-utility company.

(b) Notwithstanding the foregoing provisions, the section shall not be available if:

(1) The registered holding company, or any subsidiary company having assets with book value exceeding an amount equal to 10% or more of consolidated retained earnings, has been the subject of a bankruptcy or similar proceeding, unless a plan of reorganization has been confirmed in such proceeding; or

(2) The average consolidated retained earnings for the four most recent quarterly periods have decreased by 10%

from the average for the previous four quarterly periods and the aggregate investment in exempt wholesale generators and foreign utility companies exceeds two percent of total capital invested in utility operations; provided, this restriction will cease to apply once consolidated retained earnings have returned to their pre-loss level; or

(3) In the previous fiscal year, the registered holding company reported operating losses attributable to its direct or indirect investments in exempt wholesale generators and foreign utility companies, and such losses exceed an amount equal to 5% of consolidated retained earnings.

(c) An applicant that is unable to satisfy the requirements of paragraphs (a) and (b) of this section must affirmatively demonstrate that the proposed issue and sale of a security to finance the acquisition of an exempt wholesale generator, or the guarantee of a security of an exempt wholesale generator:

(1) Will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(2) Will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers.

(d) The Commission shall issue an order with respect to a proposed transaction under section 32(h)(3) of the Act within 120 days of completion of the record concerning such issue, sale or guarantee.

[58 FR 51504, Oct. 1, 1993]

§ 250.54 Effect of exempt wholesale generators on other transactions.

In determining whether to approve the issue or sale of a security by a registered holding company for purposes other than the acquisition of an exempt wholesale generator or a foreign utility company, or other transactions by such registered holding company or its subsidiaries other than with respect to exempt wholesale generators or foreign utility companies, the Commission shall not consider the effect of the capitalization or earnings of any subsidiary which is an exempt wholesale generator or a foreign utility company upon the registered holding company system if § 250.53 (a), (b) and (c) are satisfied.

[58 FR 51505, Oct. 1, 1993]

§ 250.57 Notices and reports to be filed under section 33.

(a) *Notification of Status as Foreign Utility Company*. Form U–57 (§ 259.207 of this chapter), notification of status as a foreign utility company, may be filed by, or on behalf of, an entity that seeks to become a foreign utility company. If the criteria of section 33 of the Act are otherwise met, the entity shall be deemed to be a foreign utility company upon the filing of such form.

(b) *Reporting Requirement for Associate Public-Utility Companies*. A United States public-utility company that is an associate company of a foreign utility company shall file with the Commission a report on Form U–33–S (§ 259.405 of this chapter) on or before May 1 of each year. This requirement shall not apply to public-utility companies that are subsidiaries of a registered holding company or of a holding company that is exempt from registration under section 3(a) (1) or (2) of the Act, pursuant to section 250.2. In addition, a holding company that is exempt from registration by Commission order may file a single Form U–33–S on behalf of all of its public-utility subsidiaries.

[58 FR 51505, Oct. 1, 1993]

§ 250.58 Exemption of investments in certain nonutility companies.

(a) *Exemption from Section 9(a)*. Section 9(a) of the Act (15 U.S.C. 79i(a)) shall not apply to:

(1) The acquisition by a registered holding company, or a subsidiary company thereof, of the securities of an energy-related company; *Provided*, That, after giving effect to any such acquisition, the aggregate investment by such registered holding company and subsidiaries in all such companies does not exceed the greater of:

(i) $50 million; or

(ii) 15% of the consolidated capitalization of such registered holding company, as reported in the registered holding company's most recent Annual

Report on Form 10–K or Quarterly Report on Form 10–Q (§ 249.308a or § 249.310 of this chapter) filed under the Securities Exchange Act of 1934, as amended (15 U.S.C. 78 *et seq.*); or

(2) The acquisition by a holding company that is registered solely by reason of ownership of voting securities of gas utility companies, or a subsidiary company thereof, of the securities of a gas-related company.

(b) *Definitions.* For purpose of this section:

(1) The term *energy-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues from temporary investments) from one or more of the following activities within the United States:

(i) The rendering of energy management services and demand-side management services;

(ii) The development and commercialization of electrotechnologies related to energy conservation, storage and conversion, energy efficiency, waste treatment, greenhouse gas reduction, and similar innovations;

(iii) The ownership, operation, sale, installation and servicing of refueling, recharging and conversion equipment and facilities relating to electric and compressed natural gas powered vehicles;

(iv) The sale of electric and gas appliances; equipment to promote new technologies, or new applications for existing technologies, that use gas or electricity; and equipment that enables the use of gas or electricity as an alternate fuel; and the installation and servicing thereof;

(v) The brokering and marketing of energy commodities, including but not limited to electricity, natural or manufactured gas and other combustible fuels;

(vi) The production, conversion, sale and distribution of thermal energy products, such as process steam, heat, hot water, chilled water, air conditioning, compressed air and similar products; alternative fuels; and renewable energy resources; and the servicing of thermal energy facilities;

(vii) The sale of technical, operational, management, and other similar kinds of services and expertise, developed in the course of utility operations in such areas as power plant and transmission system engineering, development, design and rehabilitation; construction; maintenance and operation; fuel procurement, delivery and management; and environmental licensing, testing and remediation;

(viii) The development, ownership or operation of ''qualifying facilities,'' as defined under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), and any integrated thermal, steam host, or other necessary facility constructed, developed or acquired primarily to enable the qualifying facility to satisfy the useful thermal output requirements under PURPA;

(ix) The ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities, scrubbers, and resource recovery and waste water treatment facilities; and

(x) The development and commercialization of technologies or processes that utilize coal waste by-products as an integral component of such technology or process; *Provided*, That any company engaged in the activities specified in paragraphs (b)(1)(ii), (b)(1)(iii) with respect to electric powered vehicles, (b)(1)(vi), (b)(1)(ix) or (b)(1)(x) of this section, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily electric utility companies; and *Provided further*, That any company engaged in the activities specified in paragraph (b)(1)(iii) of this section with respect to compressed natural gas powered vehicles, shall be an ''energy-related company'' for purposes of this section only if the securities of such company are acquired, directly or indirectly, by a registered holding company whose public-utility company subsidiaries are primarily gas utility companies.

(2) The term *gas-related company* shall mean any company that, directly or indirectly through one or more affiliates, derives or will derive substantially all of its revenues (exclusive of revenues

from temporary investments) from one or more of the following activities within the United States:

(i) Activities permitted under section 2(a) of the Gas-Related Activities Act of 1990, 104 Stat. 2810; and

(ii) Activities specified in section 2(b) of the Gas-Related Activities Act and approved by order of the Commission under sections 9 and 10 of the Act (15 U.S.C. 79i–j).

(3) The term *aggregate investment* shall mean all amounts invested or committed to be invested in energy-related companies, for which there is recourse, directly or indirectly, to the registered holding company or any subsidiary company thereof.

(c) *Report on related business activities.* For each quarter of the fiscal year of the registered holding company in which any acquisition that is exempt under this section is made, and for each such quarter thereafter in which the acquired interest is held, the registered holding company shall file with this Commission and with each state commission having jurisdiction over the retail rates of the public-utility subsidiary companies of such registered holding company a Quarterly Report on Form U–9C–3 (§ 259.208 of this chapter). Such filing shall be made within 60 days following the end of the first three quarters of the fiscal year, and within 90 days after the end of the fourth quarter.

[62 FR 7916, Feb. 20, 1997]

SOLICITATIONS AND REORGANIZATIONS

§ 250.60 Meaning of word "authorization".

The word ''authorization'', as used in §§ 250.60 to 250.64 includes ''any proxy, consent, authorization, power of attorney, deposit, or dissent'', as those words are used in section 11(g) of the Act (49 Stat. 820; 15 U.S.C. 79k) and ''any proxy, power of attorney, consent, or authorization'', as those words are used in section 12(e) (49 Stat. 823; 15 U.S.C. 79*l*) of the Act.

§ 250.61 Solicitations other than in connection with a reorganization or transaction which is the subject of an application or declaration.

The solicitation of any authorization regarding any security of a registered holding company or subsidiary company thereof, except solicitations in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of any application or declaration filed with the Commission, shall be subject to all rules and regulations now or hereafter adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 (48 Stat. 895; 15 U.S.C. 78n) that would be applicable to such solicitation if such security were registered on a national securities exchange: *Provided,* That unless such security is actually registered on a national securities exchange, no documents need be filed with any such exchange in connection with such solicitation.

[6 FR 5485, Oct. 28, 1941]

§ 250.62 Solicitations in connection with a reorganization or transaction which is the subject of an application or declaration.

(a) *General provisions.* No solicitation of any authorization, regarding any security of a registered holding company or a subsidiary company thereof, in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of an application or declaration filed with the Commission, shall be made except pursuant to a declaration with respect to such solicitation which has become effective in the manner prescribed in paragraph (d) of this section.

(b) *Exceptions*—(1) *Solicitations of a limited number.* Paragraph (a) of this section shall not apply to a solicitation of not more than 15 owners of securites or claims (or of such larger number as the Commission for cause shown may, by order, authorize in any case) by any person, either alone or in cooperation or conjunction with others. For the

purpose of computing such number of owners, all persons having any legal or beneficial interest in any specific security or claim shall be counted as only a single owner.

(2) *Depositaries*. Action merely as a depositary or custodian of securities solicited by others shall not be subject to paragraph (a) of this section and the depositary or custodian shall be under no duty to ascertain that there has been compliance with this section by others.

(c) *Contents of declaration*. Every declaration pursuant to this section shall, if in connection with any reorganization, be filed on Form U–R–1. Every other declaration subject to this section may be filed in connection with the appplication or declaration with respect to the proposed transaction, and shall contain, in addition to the information otherwise specified in such application or declaration, copies of any letters of solicitation proposed to be used, copies of all other documents proposed to be transmitted with such letter of solicitation, and a full statement of the manner in which the solicitation is proposed to be made.

(d) *Effective date*. A declaration as to a solicitation in connection with a reorganization shall, unless the Commission shall order a hearing thereon, become effective on (1) the 11th day after the filing thereof, or the 4th day (excluding Saturdays, Sundays and holidays) after the filing of the last amendment thereto, whichever is the later; or (2) such earlier date as the Commission may, upon a showing of unusual circumstances, permit in writing or otherwise; or (3) such later date as declarant may designate in such declaration, in any amendment thereto, or in written notice to the Commission. Any other declaration shall, unless otherwise ordered by the Commission or unless the Commission shall order a hearing thereon, become effective at the same time as the application or declaration with respect to the proposed transaction; post-amendments to such declarations shall become effective on the 4th day (excluding Saturdays, Sundays and holidays) after the filing thereof unless otherwise therein provided or unless an order for hearing is issued by the Commission.

(e) *Order for hearing*. If the Commission shall issue an order for hearing on a declaration under this section, such declaration shall become effective only pursuant to the further order of the Commission and subject to such terms and conditions as the Commission may prescribe.

(f) *Supplementary solicitations*. The text of any supplementary or follow-up letters of solicitation or reports, or statements of account shall be filed as post-amendments to a declaration and shall be subject to the same requirements as other amendments to declarations, except that no declaration or post-amendment need be filed with respect to supplementary or follow-up letters which do not include financial or other information or representations and which merely call attention to prior solicitations and urge action in accordance therewith, or with respect to replies to persons making specific inquiries asking for further explanation as to details of such solicitation.

(g) *Conditions imposed on persons making solicitations*. (1) All persons who make any solicitation subject to this section shall submit, if so directed by the Commission annual reports and statements of accounts to the persons from whom authorizations are procured.

(2) No securities of the company or companies in reorganization, or of any subsidiary of such company, or of any other associate company thereof which may be affected by the reorganization, shall be bought or sold by or for the account of (whether as principal, agent, trustee, or otherwise) any of the persons specified in paragraphs (g)(2) (i) to (v) of this section, or in any transaction in which any such person has any beneficial interest, direct or indirect; nor shall any investment advice with respect to any such securities be given, directly or indirectly, by:

(i) Any person who makes any solicitation subject to this section; or

(ii) Any person connected with any committee or other organization formed to act under the authorization so solicitied; or

(iii) Any company as defined in section 2(a)(2) (49 Stat. 804; 15 U.S.C. 79b) of the act controlled by any person

specified in paragraph (g)(2) (i) or (ii) of this section; or

(iv) Any company as so defined of which any person specified in paragraph (g)(2) (i) or (ii) of this section is an officer, director, partner, or employee; or

(v) Any person who is a partner or employer of any person specified in paragraph (g)(2) (i) or (ii) of this section. No person shall make any solicitation subject to this section, or act in connection with any committee or other organization formed to act under the authorization so solicited, in the event of noncompliance with the conditions of paragraph (g)(2) of this section on the part of any such person or of any company having the relation to such person specified in paragraphs (g)(2) (iii) and (iv) of this section, or of any partner or employer of such person.

(h) *Required terms of authorizations.* No authorization shall be solicited in connection with a reorganization unless the document evidencing such authorization:

(1) Provides for compliance by the person soliciting with paragraph (g) of this section; and

(2) Except as otherwise prescribed by order of the Commission, provides for the unconditional right to revoke or cancel the authority granted, without expense, at any time before such authority has been conclusively exercised; and

(3) Except in the case of a document which only evidences consent to or dissent from a specific reorganization plan, provides that no authority is granted with respect to consenting to or dissenting from any reorganization plan.

(i) *Deposits.* No solicitation of deposits of securites shall be made except in accordance with an order of the Commission pursuant to an application showing the necessity for such deposits and of any terms and conditions imposed in the deposit agreement.

(j) *Solicitation of several classes of security holders.* The solicitation of authorizations by one person, group of persons, or committee shall not be made for more than one class of securites without the approval of the Commission, by order upon application, which application shall set forth facts showing that no material conflict of interest exists between the different classes of security holders concerning the subject matter of the solicitation.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 3085, June 25, 1941; 6 FR 5485, Oct. 28, 1941; 10 FR 11283, Sept. 5, 1945; 59 FR 21928, Apr. 28, 1994]

§ 250.63 Approval of reorganization fees.

All fees, expenses and remuneration, whether interim or final, to whomsoever paid for services rendered or to be rendered in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary thereof, in any court of the United States, shall be subject to approval by the Commission as to the maximum amount that may be paid for such services. This section shall not apply to any payments approved by a court of the United States. in any proceeding in which the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

§ 250.64 Scope of applications for approval of reorganization plans.

Any application for approval of a plan of reorganization under section 11 (49 Stat. 820; 15 U.S.C. 79k), or otherwise, shall be deemed to include all applications and declarations under the act which would otherwise be required as to any action necessary to consummate such plan. (See § 250.24(c)(3).)

§ 250.65 Expenditures in connection with solicitation of proxies.

(a) *General provision.* Except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23 and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act, no registered holding company or subsidiary thereof shall expend any money or other consideration in connection with the solicitation of any

proxy, consent, or authorization regarding any security of such company.

(b) *Exceptions*. This section shall not apply to:

(1) Ordinary expenditures in connection with preparing, assembling, and mailing proxies, proxy statements, and accompanying data; or

(2) Other expenditures not in excess of $100,000 during any one calendar year.

(c) *Scope of declaration*. A declaration with respect to any matter within the scope of this section shall state the amounts and purposes of the sums proposed to be expended, and set forth any information available to the company as to any contest which has arisen, or may arise, with respect to the subject matter of such solicitation. Any such declaration may be included in any application or declaration filed with the Commission as to any related matter.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

OFFICERS, DIRECTORS AND REPRESENTATIVES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES[5]

§ 250.70 Exemptions from section 17(c) of the Act.

Notwithstanding the prohibitions contained in section 17(c) of the Act,

(a) A registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the holding company system, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those local commercial banking institutions; and

(2) No more than one director or 25% of the members of the board of directors of the holding company, whichever is greater, is affiliated with the same local commercial banking institution.

(b) A registered holding company may have up to 25% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the holding company system or investment bankers wherever located, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(c) A subsidiary company of a registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the subsidiary company, *Provided*, That:

(1) Those affiliated persons either do not serve as officers or employees of those local commercial banking institutions or, alternatively, do not serve as officers or employees of the subsidiary company; and

(2) No more than one director or 25% of the members of the board of directors of the subsidiary company, whichever is greater, is affiliated with the same local commercial banking institution.

(d) A subsidiary company of a registered holding company may have up to 25% of the members of its board of

[5] The statements which section 17(a) requires to be filed by officers and directors of registered holding company systems are filed on the forms prescribed under section 16(a) of the Securities Exchange Act of 1934.

directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located outside the state or states served by the subsidiary company or investment bankers wherever located, *Provided*, That:

(1) Those affiliated persons do not also serve as officers or employees of those banking institutions;

(2) No more than one director or 10% of the members of the board of directors, whichever is greater, is affiliated with any one investment banker or with any one commercial banking institution;

(3) The total number of directors who are affiliated with investment bankers or commercial banking institutions does not exceed 75% of the members of the board of directors; and

(4) Where an affiliated person of an investment banker serves as a director of any company within a holding company system, the investment banker:

(i) Has not acted as a managing underwriter for the distribution of securities issued by any company in the holding company system for at least twelve months prior to the director's appointment or election to the board; and

(ii) Does not act as a managing underwriter for the distribution of securities issued by any company in the holding company system while the director serves on the board.

(e) An officer of a holding company may serve as a director of a commercial banking institution, *Provided,* That:

(1) The officer of the holding company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the holding company serves as a director of that commercial banking institution.

(f) An officer of a subsidiary company may serve as a director of a commercial banking institution, *Provided,* That:

(1) The officer of the subsidiary company does not also serve as an officer or employee of that commercial banking institution; and

(2) No more than one other officer of the subsidiary company serves as a director of that commercial banking institution.

(g) A person serving as an officer or director of a holding company or subsidiary company on April 15, 1986, shall not be disqualified from continuing to serve or from serving successive terms in that capacity solely because of an affiliation with a commercial banking institution or investment banker which existed on that date.

(h) As used in section 17(c) of the Act and in this rule:

(1) An *affiliated person* of a commercial banking institution or investment banker means an officer, director, partner, appointee or representative of that commercial banking institution or investment banker, as well as any person that directly or indirectly owns or holds with power to vote 5 percent or more of the outstanding voting securities of that commercial banking institution or investment banker.

(2) A *commercial banking institution* means any person:

(i) That engages directly or indirectly in the business of a bank, trust company, bank-holding company, banking association or firm; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors, or appointment as officer, of a registered holding company or subsidiary company thereof. The term also excludes any Federal Reserve Bank, savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor.

(3) An *investment banker* means any person:

(i) That engages directly or indirectly in the business of underwriting or dealing in securities that are not exempted from registration under the Securities Act of 1933 by section 3 of that Act; and

(ii) Any enterprise in which such person owns 20 percent or more of the equity interest.

The term excludes any person that derived 15% or less of its gross revenues from commercial banking and investment banking activities during the fiscal year immediately preceding an affiliated person's appointment or election to the board of directors of a registered holding company unless those revenues were derived from acting as a managing underwriter for the distribution of securities issued by any company in such holding company system.

(4) A person's gross revenues from its own commercial and investment banking activities and from its ratable share of the commercial banking and investment banking activities of enterprises in which it owns 20 percent or more of the equity interest should be considered in determining the degree to which the person is engaged in such activities.

(5) A *director* means any director of a corporation or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust or other company.

(6) An *officer* means a chairman of the board of directors, chief executive officer, president, vice president, treasurer, secretary, and comptroller, or any individual who performs similar functions in connection with a corporation, partnership, trust, voting trust, or other company.

(7) A *managing underwriter* means an underwriter (or underwriters) who, by contract or otherwise, deals with the issuer, organizes the selling efforts, receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting, or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

[51 FR 9003, Mar. 17, 1986]

§ 250.71 Statements to be filed pursuant to section 12(i).

(a) *Ten-day statement.* Any person who engages in any activity within the scope of section 12(i) of the act, shall file with the Commission within 10 days after the date of such activity a statement on Form U–12(I)–A, except as to activity within the scope of any advance statement on Form U–12(I)–B, which is duly filed in accordance with paragraph (b).

(b) *Advance statement.* An advance statement, covering anticipated activity for the remainder of the present calendar year, and the next two calendar years, may be filed on Form U–12(I)–B by any person (whether or not the compensation of such person has been fixed in advance) who is a salaried officer or employee or an attorney, accountant or other expert regularly retained by any company or by companies in the same holding-company system, or any person specially retained in connection with a particular proceeding or enterprise which is expected to involve a series of appearances or activities, if such employment or retainer does not contemplate any expenses other than ordinary personal, traveling or sustenance expenses, stationery, postage, telephone, telecopier and telegraphic service, stenographic and clerical assistance, expenditures for the printing of briefs or other documents to be submitted to any agencies specified in section 12(i) of the Act, and similar items.

(c) *Supplemental statement.* Any person filing an advance statement on Form U–12(I)–B shall file a supplement to such advance statement within 30 days after the end of the period covered thereby, and in no event later than January 30 of the following year, giving the information specified in Items 5 and 6 thereof. Any such person renewing such advance statement may combine the renewal and supplement in the same statement.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 5950, Nov. 25, 1941; 59 FR 21928, Apr. 28, 1994]

§ 250.72 Filing of statements pursuant to section 17(a).

(a) The filing of initial statements of beneficial ownership of securities and statements of changes in such beneficial ownership, as prescribed under section 16(a) of the Securities Exchange Act of 1934, shall satisfy the

corresponding requirements of section 17(a) of the Public Utility Holding Company Act of 1935.

(b) The rules under section 16 (a) and (b) of the Securities Exchange Act of 1934, including any rules which exempt a transaction from the duties or liabilities of section 16 (a) or (b), shall apply to any duty or liability imposed with respect to a transaction involving any security of a registered holding company or subsidiary thereof under section 17 (a) or (b) of the Act.

(Sec. 17(a), 49 Stat. 830; 15 U.S.C. 79q)
[26 FR 2466, Mar. 23, 1961, as amended at 46 FR 2036, Jan. 8, 1981; 47 FR 5224, Feb. 4, 1982]

SERVICE, SALES AND CONSTRUCTION CONTRACTS

§ 250.80 Definitions of terms used in rules under section 13.

As used in the rules and regulations under section 13 of the Act (49 Stat. 825; 15 U.S.C. 79m), unless the context otherwise requires:

(a) *Service* means any managerial, financial, legal, engineering, purchasing, marketing, auditing, statistical, advertising, publicity, tax, research, or any other service (including supervision or negotiation of construction or of sales), information or data, which is sold or furnished for a charge.

(b) *Goods* means any goods, equipment (including machinery), materials, supplies, appliances, or similar property (including coal, oil, or steam, but not including electric energy, natural or manufactured gas, or utility assets) which is sold, leased, or furnished, for a charge.

(c) *Construction* means any construction, extension, improvement, maintenance, or repair of the facilities or any part thereof of a company, which is performed for a charge.

§ 250.81 Exempted transactions.

Unless otherwise expressly provided, the rules, regulations, and orders of the Commission pertaining to the performance of services or construction or the sale of goods shall not be applicable to the sale of water, telephone service, transportation, or a similar commodity or service, the sale of which is normally subject to public regulation, or to the furnishing of services, construction, or goods, to a customer incidentally to such a sale; and such transactions shall be exempt from the provisions of section 13 of the Act (49 Stat. 825; 15 U.S.C. 79m) and the rules and regulations thereunder: *Provided*, That, where any such transaction is with an associate company in its capacity as a consumer, comparable services, construction, or goods are offered to customers other than associate companies on terms which are comparable having due regard to any differences of quality or quantity.

§ 250.82 Temporary exemption from section 13.

(a) Every registered holding company shall be exempt from the provisions of section 13 (49 Stat. 825; 15 U.S.C. 79m) and the rules and regulations adopted thereunder for a period of 30 days after the date when such company shall first become a registered holding company, and every subsidiary of such a registered holding company and every company principally engaged in performing services or construction for, or making sales to, associates of such registered holding company shall likewise be exempt from such provisions for said period: *Provided*, That, during such period, such company shall comply with the provisions of § 250.90 with respect to the performance of services or construction for associate companies on the basis of cost and with the provisions of § 250.92 with respect to sales of goods produced by the seller. As to any company principally engaged in performing services or construction for, or selling goods to, associate companies, such exemption shall expire on the first day of the calendar month immediately succeeding the effective date of such registration unless on and after the first day of such month all accounts and records of such company with respect to such matters shall be maintained in accordance with the provisions of § 250.93 or other rule of the Commission with respect to the accounts and records of mutual service companies and subsidiary service companies.

(b) If, within said period of 30 days after registration of any such holding company, or 30 days after the date of its becoming a holding company in the

event of such company filing a notification prior to becoming a holding company, an application or a declaration pursuant to § 250.88 shall be filed with the Commission by or on behalf of any company desiring to perform services or construction for, or make sales of goods to, associate companies in such holding company system, such applicant or declarant may, to the extent set forth in such document, perform services or construction for, or make sales of goods to, such companies until the Commission shall take final action on such application or declaration: *Provided, however,* That, during such period such applicant or declarant shall comply with all provisions of the act and of the rules and regulations thereunder that would have been applicable to it if the Commission had previously taken favorable action on such application or declaration.

§ 250.83 Exemption in the case of transactions with foreign associates.

(a) Any subsidiary company of a registered holding company, which subsidiary is or is about to become engaged in the performance of any service, sales, or construction contract for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States, may make application to the Commission for exemption, in whole or in part, from the standards established by section 13(b) of the Act (49 Stat. 825; 15 U.S.C. 79m), and the rules and regulations promulgated thereunder, relating to the performance of any service, sales, or construction contract for such associate companies.

(b) No form is prescribed therefor, but every such application shall comply with the provisions of § 250.20. Every such application shall fully set forth information regarding ownership of security issues, servicing activities of the applicant, and such other data as may be necessary to enable the Commission to determine if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, or for any other reason, such an application for exemption should be granted as necessary or appropriate in the public interest or for the protection of investors.

(c) Upon filing such an application in good faith, the applicant shall be entitled to a temporary exemption from all provisions of section 13(b) of the Act, and the rules and regulations promulgated thereunder, as to which an exemption is sought, pending action by the Commission upon the application.

(d) Any subsidiary company of a registered holding company (including a mutual service company) may perform service, sales, or construction contracts for any associate company which does not derive, directly or indirectly, any material part of its income from sources within the United States and which is not a public utility company operating within the United States without complying with the standards established by section 13(b) of the Act, and the rules and regulations thereunder, and without the necessity of filing an application for or securing an order of exemption from those standards, so long as the aggregate cost to all such associate companies for services, sales, or construction performed by virtue of the exemption granted by this paragraph (whether performed by one or more subsidiary companies or mutual service companies in the same holding company system) does not exceed $10,000 within any one calendar year.

§ 250.84 Prohibition of unauthorized transactions by registered holding companies.

Except as authorized by rule, regulation, or order of the Commission, no registered holding company shall—whether or not pursuant to a contract heretofore or hereafter entered into—perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so.

§ 250.85 Service, sales, and construction by registered holding companies.

Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable (including § 250.90), a registered holding company may perform services or construction for, or sell goods to, an associate company thereof, which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, and such transaction shall be exempt from the provisions of section 13(a) of the Act (49 Stat. 825; 15 U.S.C. 79m), if:

(a) Such holding company is principally engaged in the business of an operating electric or gas utility company, or any business or businesses other than that of selling goods to associate companies, that of performing services or construction, that of a holding company or fiscal or financial agency of a holding company, or that of an investment company or investment trust; and, incidentally to such business, performs such services or construction or sells such goods; or

(b) Such services, construction, or goods are reasonably required by such associate to meet a break-down or other emergency, and the parties believe in good faith that, under the conditions then existing, such transaction will be to the advantage of such associate; or

(c) Such transaction consists of performance of a contract made before August 26, 1935, for the construction of a specific project, building, or unit, pursuant to which contract substantial expenses were incurred before August 26, 1935; or

(d) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such holding company for its own use; or

(e) Such transaction consists of a sale of goods which is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods; or

(f) Such transaction, although not exempted by any of the foregoing paragraphs of this section, is not in the regular course of business of such holding company and does not involve a cost to the associate of more than $2,500, including the cost of such associate of all previous transactions with such holding company consummated in the same fiscal year which were exempted only by this paragraph.

§ 250.86 Prohibition of unauthorized transactions by subsidiaries.

Except as authorized by rule, regulation, or order of the Commission, no subsidiary company (including a mutual service company) of a registered holding company shall—whether or not pursuant to a contract heretofore or hereafter entered into—perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so.

§ 250.87 Subsidiaries authorized to perform services or construction or to sell goods.

(a) Subject to compliance with the provisions of such rules, regulations, or orders of the Commission as may be applicable (including § 250.90), the following classes of subsidiary companies of registered holding companies may perform services or construction for, or sell goods to, associate companies thereof:

(1) An approved mutual service company.

(2) A subsidiary company whose organization and conduct of business the Commission has found, pursuant to § 250.88, sufficient to meet the requirements of section 13(b) of the Act.

(3) A subsidiary company which is principally engaged in the business of an operating electric or gas utility company, or any business or businesses other than that of selling goods to associate companies, that of performing services or construction, that of a holding company of fiscal or financing agency of a holding company, or that of an investment company or investment trust; and which, incidentally to such business, performs such services or construction or sells such goods.

(b) Any subsidiary of a registered holding company, whether or not it is a company specified in paragraph (b)(1), (2), or (3) of this section, may perform services or construction for; or

sell goods to, an associate company thereof if:

(1) Such associate company is not an electric or gas utility company and is principally engaged in a business or businesses other than that of a holding company or fiscal or financing agency of a holding company, or that of an investment company or investment trust; or

(2) Such services, construction, or goods are reasonably required by such associate to meet a break-down or other emergency, and the parties believe in good faith that, under the conditions then existing, such transaction will be to the advantage of such associate; or

(3) Such transaction consists of performance of a contract made before August 26, 1935, for the construction of a specific project, building, or unit, pursuant to which contract substantial expenses were incurred before August 26, 1935; or

(4) Such transaction consists of the sale, at not more than cost less depreciation, of goods purchased by such subsidiary company for its own use; or

(5) Such transaction consists of a sale of goods which is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods; or

(6) Such transaction consists of a sale of goods produced by the seller.

(c) This section shall not be applicable to a subsidiary which is itself a registered holding company. Such a company may perform services or construction for, or sell goods to, associate companies as provided in § 250.85.

§ 250.88 Approval of mutual service companies; organization and conduct of business of subsidiary service companies.

(a) Application for approval of a company as a mutual service company shall be filed by the company, or the persons proposing to organize it, with the Commission on Form U–13–1, as specified in the instructions for that form. The Commission will not approve any company as a mutual service company unless it finds that the company is so organized as to capitalization, ownership by, and representation of, member companies, costs, revenues, and the sharing thereof, and other matters as reasonably to insure the efficient and economical performance of services or construction or sale of goods by the company for or to its member companies, at cost fairly and equitably allocated among them and at a reasonable saving over the cost of comparable services or construction performed or goods sold by independent persons.

(b) A finding by the Commission that a subsidiary company of a registered holding company (other than a mutual service company) is so organized and conducted or to be conducted, as to meet the requirements of section 13(b) of the Act (49 Stat. 825; 15 U.S.C. 79m) with respect to reasonable assurance of efficient and economical performance of services or construction or sale of goods for the benefit of associate companies, at cost fairly and equitably allocated among them (or as permitted by § 250.90), will be made only pursuant to a declaration filed with the Commission on Form U–13–1, as specified in the instructions for that form, by such company or the persons proposing to organize it.

(c) Within a reasonable time after the filing of an application for approval of a mutual service company, the Commission shall, after notice and opportunity for hearing, enter an order granting or refusing approval or otherwise disposing of the application.

(d) Within a reasonable time after the filing of a declaration with respect to the organization and conduct of business of a subsidiary service company, the Commission shall, after notice and opportunity for hearing, enter an order finding that the company's organization and conduct of business meet the requirements of section 13(b) of the Act, or refusing so to find, or otherwise disposing of the declaration.

(e) Unless the Commission shall otherwise by order provide, the approval of a mutual service company, or the finding that a subsidiary service company's organization and conduct of business are sufficient to meet the requirements of section 13(b) of the Act, shall continue in effect until the Commission, after notice and opportunity for hearing, shall find that the conditions which led to such approval or finding

are not satisfied or shall find that the company in question has persistently violated a provision of section 13 of the Act, or of any rule, regulation, or order of the Commission.

§ 250.89 Termination of contracts.

Every service, sales, or construction contract made after April 1, 1936, between a registered holding company and an associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or between a subsidiary company of a registered holding company (including a mutual service company) and any associate company thereof, shall contain provision for its termination to the extent that performance may conflict with any rule, regulation or order of the Commission adopted before or after the making of such contract.

§ 250.90 Transactions limited to cost.

(a) Except as permitted by this section, or any other appliable rule, regulation, or order of the Commission:

(1) No registered holding company shall perform any service or construction for, or sell any goods to, any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing service or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and

(2) No subsidiary company of a registered holding company (including a mutual service company) shall perform any service or construction for, or sell any goods to, any associate company thereof, or enter into any contract to do so, at more than cost as determined pursuant to § 250.91 or any other applicable rule, regulation, or order of the Commission, or in the absence thereof, in accordance with sound methods of determining cost. In the case of a sale of used goods the price shall be not more than cost less depreciation. Any charges on a basis of estimated cost shall be readjusted to actual cost at least annually, if for services or goods, and upon completion of individual projects, in case of construction.

(b) In the case of construction for an associate company of a specific project, building, or unit on which substantial expenses were incurred before August 26, 1935, pursuant to a contract made before that date, the holding company or subsidiary performing the construction shall be entitled to the proportion of its profit or fee earned prior to April 1, 1936.

(c) If a sale of goods is merely incidental to a sale of an entire business or a substantial portion thereof, or to a sale of assets other than goods, a lump sum price for the entire transaction may include such goods without the assignment of a specific portion of the price to the cost of such goods.

(d) The price of services, construction, or goods need not be limited to cost although the transaction comes within the terms of paragraph (a) of this section if:

(1) Neither the company performing the services or construction, or selling the goods, nor the associate company receiving such services or construction, or buying such goods, is (i) a public utility or holding company, (ii) an investment company or investment trust, including any company or trust which is a medium of investment in securities for the benefit of a registered holding company or its employees or officers, or (iii) a company engaged in the business of selling goods to associate companies or performing services or construction, or (iv) a company controlling, directly or indirectly, any company specified in paragraph (d)(1)(i), (ii), or (iii) of this section; or

(2) Such transaction consists of a sale of goods produced by the seller.

§ 250.91 Determination of cost.

(a) Subject to the provisions of this section and of any other applicable rule, regulation, or order of the Commission, a transaction shall be deemed to be performed at not more than cost if the price (taking into account all charges) does not exceed a fair and equitable allocation of expenses (including the price paid for goods) plus reasonable compensation for necessary capital procured through the issuance

of capital stock (or similar securities of an unincorporated company).

(b) Direct charges shall be made so far as costs can be identified and related to the particular tranactions involved without excessive effort or expense. Other elements of cost, including taxes, interest, other overhead, and compensation for the use of capital procured by the issuance of capital stock (or similar securities of an unincorporated company) shall be fairly and equitably allocated. Interest on borrowed capital and compensation for the use of capital shall represent a reasonable return on only the amount of capital reasonably necessary for the performance of services or construction for, or the selling of goods to, customers for whom transactions are required by the rules of the Commission to be performed at cost. Such amount shall not include the cost of assignment of, or any capitalization of, any service, sales, or construction contract.

(c) Any expense (including the price paid for goods) incurred in a transaction with an associate company of the performing or selling company (directly or through one or more other associate companies thereof), to the extent that it exceeds the cost of such transaction to such associate company, shall not be included in determining cost to such performing or selling company.

(d) Any expense (including the price paid for goods) incurred in a transaction with a person other than an associate company but not at arm's-length, to the extent that it exceeds the expense at which the performing or selling company might reasonably be expected to obtain elsewhere, or to furnish itself, comparable performance, goods, capital, or other items of expense involved (giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price), shall not be included in determining cost to such performing or selling company.

§ 250.92 Sales of goods produced by seller.

(a) No registered holding company shall sell any goods produced by it to any associate company thereof which is a public utility company, a mutual service company, or a company engaged in the business of performing services or construction for, or selling goods to, associate public utility companies, or enter into any contract to do so, and,

(b) No subsidiary company of a registered holding company (including a mutual service company) shall sell any goods produced by it to any associate company thereof, or enter into any contract to do so,

at a price which exceeds the price at which the purchaser might reasonably be expected to obtain comparable goods elsewhere, or to furnish them itself, giving due regard to quality, quantity, regularity of supply, and other factors entering into the calculation of a fair price.

§ 250.93 Accounts and records of mutual and subsidiary service companies.

Every mutual service company and every company whose organization and conduct of business the Commission has found, pursuant to § 250.88, to meet the requirements of section 13(b) (49 Stat. 825; 15 U.S.C. 79m) shall keep such accounts, cost-accounting procedures, correspondence, memoranda, papers, books, and other records in such manner and preserve them for such periods, as are prescribed in 17 CFR part 257, and shall keep no other records with respect to the same subject matter except (a) records other than accounts, (b) records required by state law, (c) subaccounts or supporting accounts which are not inconsistent with the accounts required by the Uniform System of Accounts (17 CFR part 256), and (d) such other accounts as may be authorized by the Commission.

(Sec. 15(a) and 20(a), 15 U.S.C. 79o and 79t)
[49 FR 27310, July 3, 1984]

§ 250.94 Annual reports by mutual and subsidiary service companies.

(a) On or before the first day of May in each calendar year, every mutual service company and every subsidiary service company whose organization and method of conducting business the Commission, pursuant to § 250.88, has found sufficient to meet the requirements of section 13(b) (49 Stat. 825; 15

U.S.C. 79m), and every company whose application for approval, or declaration pursuant to § 250.88, is pending, shall file with the Commission a report for the prior calendar year, or any portion thereof during which there was effective as to such company any uniform system of accounts presecribed by any rules of the Commission. Every such report shall be submitted on the Form U–13–60 then in effect and shall be prepared in accordance with the instructions incorporated in such form. For appropriate cause shown, the Commission may extend the time within which any such report is to be filed.

(Secs. 13, 15, and 20(a), 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79*o*, 79t)
[45 FR 14548, Mar. 6, 1980, as amended at 61 FR 49961, Sept. 24, 1996]

§ 250.95 Reports required from affiliate service companies and companies principally engaged in performing services.

No affiliate of a registered holding company or subsidiary company thereof shall take any step in the performance of any service or construction for, or any sale of goods to, any company of which it is an affiliate and no company whose principal business is the performance of service or construction for, or sale of goods to, one or more registered holding companies or public utility subsidiary companies thereof, either directly or through one or more other companies, shall take any step in the performance of any such service, construction or sale of goods, unless such affiliate or company:

(a) Has filed with the Commission a report on Form U–13E–1 containing the information prescribed by that form, and

(b) Files with the Commission such information supplementing its report on Form N–13E–1 and regarding its accounts, costs, charges, maintenance of competitive conditions, disclosure of interests, duration of contracts, and other similar matters at such times and in accordance with such forms and instructions as the Commission shall designate. The provisions of this section are not applicable to a company authorized to perform service or construction for, or sell goods to, associate companies by §§ 250.85, 250.87 or 250.88.

MISCELLANEOUS RULES

§ 250.100 Orders granting[6] or withdrawing exemptions.

(a) *Orders granting exemption from rules.* Any transaction subject to the requirements of any rule promulgated under the act may be exempted therefrom by the Commission upon application, or upon its own motion provided an application for approval of such transaction or a declaration with respect thereto is pending, if it appears to the Commission that such requirements as applied to such transaction are not necessary or appropriate in the public interest or for the protection of investors or consumers.

(b) *Orders withdrawing exemption.* Any unexecuted transaction which is within the exemption provided in any rule from the requirements of any provision of the act or of the rules, may nevertheless be subjected thereto by order, after notice and opportunity for hearing, if it appears to the Commission that the withdrawal of such exemption as applied to such transaction would be appropriate in the public interest or the interest of investors or consumers. The Commission may by such notice suspend the applicability of any such exemption to any transaction pending final determination.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 47 FR 5224, Feb. 4, 1982]

§ 250.101 Standards and interpretations of rules.

All rules shall be construed in the light of, and so as to be consistent with, any applicable requirements of, and standards contained in, the act. Such standards shall be deemed to be incorporated in and a part of every rule.

§ 250.102 Effective date of rules.

Unless the Commission otherwise prescribes in any case, the manner of publication of rules of the Commission shall be by making a copy of such rule or amendment available for public inspection in the office of the Secretary of the Commission, by filing a copy thereof with the Office of the Federal Register, The National Archives, and

[6] See § 250.20(a).

by publication in the FEDERAL REGISTER. Rules shall not become effective prior to the effective date therein specified if such date is later than the date of publication. In any case where the method of publication prescribed as to any rule is other than that above specified, such rule shall not be effective as against any person who has not had actual knowledge thereof prior to the filing of a copy thereof with the Office of the Federal Register, and the making available for inspection of such a copy as prescribed in section 7 of the Federal Register Act (49 Stat. 502; U.S.C. 307).

§250.103 References and definitions.

As used in the rules in this part, unless the context indicates otherwise:

(a) The term *Commission* means the Securities and Exchange Commission.

(b) The term *act* means the Public Utility Holding Company Act of 1935.

(c) The term *section* refers to a section of the act.

(d) The term *rule* includes *rule* and *regulation*, as those words are used in the Act and refers to the rules prescribed by the Commission pursuant to the Act. All forms and instructions thereto shall be deemed rules and regulations adopted by the Commission pursuant to the Act.

(e) Any definition of a term contained in the act shall be applicable to such term as used in the rules.

(f) The term *parent* or *parent company* of a specified company means a company of which such specified company is a subsidiary, whether by virtue of direct or indirect ownership or control of securities.

(g) The phrase *direct subsidiary* of a specified company means a company of which such specified company itself directly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities, and directly owns a greater percentage of such voting securities than are owned by any other company.

(h) The phrase ''any person having a bona fide interest as used in sections 11(d), 11(f), and 11(g) (49 Stat. 820; 15 U.S.C. 79k), shall, with respect to the reorganization of any company, be deemed to include such company; any creditor or stockholder of such company or any authorized representative thereof; any receiver or trustee of such company; any trustee under an indenture pursuant to which securities of such company are outstanding; any State commission having regulatory jurisdiction over such company; any person authorized to prepare a plan by any court before which a reorganization proceeding is pending; and any other person found by the Commission to have a substantial interest in the reorganization.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 30 FR 4129, Mar. 30, 1965]

§250.103A Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) of this section which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, §249.308a of this chapter, or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement: *Provided*, That;

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements

of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K and Form 10–KSB; or, if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information which is disclosed in a document filed with the Commission, in part I of a quarterly report on Form 10–Q and Form 10–QSB or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934 and which relates to:

(i) The effects of changing prices on the business enterprise, presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter), ''Management's discussion and analysis of financial condition and results of operations,'' or Item 302 of Regulation S–K (§ 229.302 of this chapter), ''Supplementary financial information,'' or

(ii) The value of proved oil and gas reserves (such as a standardized measure of discounted future net cash flows relating to proved oil and gas reserves as set forth in paragraphs 30–34 of Statement of Financial Accounting Standards No. 69) presented voluntarily or pursuant to Item 302 of Regulation S–K (§ 229.302 of this chapter).

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter); or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraph (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Public Utility Holding Company Act of 1935 and other acts referred to in section 16(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 13991, Feb. 25, 1981, as amended at 46 FR 19457, Mar. 31, 1981; 47 FR 11474, Mar. 16, 1982; 47 FR 57915, Dec. 29, 1982]

§ 250.104 Public disclosure of information and objections thereto.

PRELIMINARY NOTE: If any person wishes to object to the public disclosure of any information contained in a filing with the Commission under any provision of the Act then that portion thereof which contains such information shall be submitted in paper format only, whether or not the filer is an electronic filer.

(a) *General provision.* Unless otherwise directed by the Commission, all information contained in any notification, statement, application, declaration, report, or other document filed with the Commission shall be available to the public, and copies of any or all information filed in connection with or as a part of any of the above documents will be furnished to any person upon request and upon the payment of the charge therefor.

(b) *Confidential treatment.* If any person filing a notification, statement, application, declaration, report, or other

document with the Commission under any provision of the act, or of any rules or order of the Commission thereunder, wishes to object to the public disclosure of any information contained therein, he shall file that portion thereof which contains such information separately from the remainder and shall plainly mark it ''Confidential Treatment''. There shall also be filed with such information written objection to its public disclosure which (1) shall identify that portion of the notification, statement, application, declaration, report or other document to the public disclosure of which objection is made, (2) shall state the reasons why public disclosure thereof is not necessary or appropriate in the public interest or for the protection of investors or consumers, and (3) may request a hearing on the question of public disclosure. Thereafter such information shall not be made available to the public unless and until the Commission so directs.

(c) *Information obtained in the course of examinations, studies, and investigation.* Information or documents obtained by officers or employees of the Commission in the course of any examination, study or investigation pursuant to section 13(g), section 15(f) (49 Stat. 825, 828; 15 U.S.C. 79m, 79o), or paragraph (a) or (d) of section 18 (49 Stat. 831; 15 U.S.C. 79r) shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer, or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court, and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this rule.

(d) Any officer or employee who is served with such a subpoena, shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 20 FR 7036, Sept. 20, 1955; 26 FR 3102, Apr. 12, 1961; 44 FR 50836, Aug. 30, 1979; 53 FR 17459, May 17, 1988; 58 FR 15005, Mar. 18, 1993]

§ 250.105 Disclosure detrimental to the national defense or foreign policy.

(a) Any requirement to the contrary notwithstanding, no notification, statement, application, declaration, report, or other document filed with the Commission shall contain any document or information which, pursuant to Executive order, has been classified by an appropriate department or agency of the United States for protection in the interests of national defense or foreign policy.

(b) Where a document or information is omitted pursuant to paragraph (a) of this section, there shall be filed, in lieu of such document or information, a statement from an appropriate department or agency of the United States to the effect that such document or information has been classified or that the status thereof is awaiting determination. Where a document is omitted pursuant to paragraph (a) of this section, but information relating to the subject matter of such document is nevertheless included in material filed with the Commission pursuant to a determination of an appropriate department or agency of the United States that disclosure of such information would not be contrary to the interests of national defense or foreign policy, a statement from such department or agency to that effect shall be submitted for the information of the Commission. A registrant may rely upon such statement in filing or omitting any document or information to which the statement relates.

(c) The Commission may protect any information in its possession which

may require classification in the interests of national defense or foreign policy pending determination by an appropriate department or agency as to whether such information should be classified.

(d) It shall be the duty of the registrant to submit the documents or information referred to in paragraph (a) of this section to the appropriate department or agency of the United States prior to filing them with the Commission and to obtain and submit to the Commission, at the time of filing such documents or information, or in lieu thereof, as the case may be, the statements from such department or agency required by paragraph (b) of this section. All such statements shall be in writing.

[33 FR 7682, May 24, 1968]

§§ 250.106—250.107 [Reserved]

§ 250.110 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the terms ''small business'' and ''small organization,'' for purposes of the Public Utility Holding Company Act of 1935, shall mean a holding company system whose gross consolidated revenues from sales of electric energy or of natural or manufactured gas distributed at retail for its previous fiscal year did not exceed $1,000,000. There may be excluded from such gross revenues:

(a) Sales or electric energy or natural or manufactured gas to tenants or employees of any operating subsidiary company of such holding company for their own use and not for resale; and

(b) Sales of gas to industrial consumers or in enclosed portable containers.

[47 FR 5222, Feb. 4, 1982]

PART 251—INTERPRETATIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of policy regarding first mortgage bonds subject to the Public Utility Holding Company Act of 1935.	13105	Feb. 16, 1956	21 FR 1286.
Statement of policy regarding preferred stock subject to the Public Utility Holding Company Act of 1935.	13106	Feb. 16, 1956	21 FR 1288.
Opinion and statement of the Commission in regard to proper reporting of deferred income taxes arising from installment sales.	15359	Dec. 7, 1965	30 FR 15420.
Statement of the Commission to clarify the meaning of "beneficial ownership of securities" as relates to beneficial ownership of securities held by family members.	15381	Jan. 19, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	15403	Feb. 14, 1966	31 FR 3175.
Statement of the Commission authorizing the adoption of modifications of policies regarding provisions of long-term debt securities issued and sold under the Holding Company Act; 5-year refunding limitation.	16369	May 8, 1969	34 FR 9553.
Conclusion of the Commission that it is appropriate to permit the issuers of preferred stock under the Holding Company Act of 1935 to include a 5-year refunding limitation on all stocks sold on and after June 22, 1970.	16758	June 22, 1970	35 FR 10585.
Announcement by the Commission that no informal exceptions from the requirements (17 CFR 250.50) of competitive bidding will be granted.	16832	Sept. 17, 1970	35 FR 15210.
Publication of the Commission's procedure to be followed if requests are to be net for no action or interpretative letters and responses thereto to be made available for public use.	16972	Jan. 25, 1971	36 FR 2600.
Commission endorses the establishment by all publicly held companies of audit committees composed of outside directors.	17514	Mar. 23, 1972	37 FR 6850.
Commission's statement and policy on misleading pro rata stock distributions to shareholders.	17583	June 1, 1972	37 FR 11559.
Commission's guidelines on independence of certifying accountants; example cases and Commission's conclusions.	17636	July 5, 1972	37 FR 14294.
Commission's interpretation of risk-sharing test in pooling-of-interest accounting.	17712	Sept. 29, 1972	37 FR 20937.

PART 251—INTERPRETATIVE RELEASES RELATING TO THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Commission reaffirms proper accounting treatment to be followed by a lessee when the lessor is created as a conduit for debt financing.	17772	Nov. 17, 1972	37 FR 26516.
Amendment of previous interpretation (AS–130) of risk-sharing test in pooling-of-interest accounting.	17841	Jan. 5, 1973	38 FR 1734.
Commission's conclusion as to certain problems relating to the effect of treasury stock transactions or accounting for business combinations.	18067	Aug. 24, 1973	38 FR 24635.
Commission request for comments on Accounting Series Release No. 146 ...	18112	Oct. 5, 1973	38 FR 28819.
Statement by the Commission on disclosure of the impact of possible fuel shortages on the operations of issuers.	18225	Dec. 20, 1973	39 FR 1511.
Commission's statement of policy and interpretations	18067A	Apr. 12, 1974	39 FR 14588.
Commission's practices on reporting of natural gas reserve estimates	18640	June 14, 1974	39 FR 27556.
Commission's examples of unusual risks and uncertainties	18723	Dec. 23, 1974	40 FR 2678.
Commission's guidelines on Accounting Series Release No. 148	19039	June 13, 1975	40 FR 27441.
Commission's statement regarding disclosure of impact of Wage and Price Standards for 1979 on the operations of issuers.	20798	Nov. 29, 1978	43 FR 57596.
Investment bankers and banks in Rule 70	21967	Mar. 18, 1981	46 FR 18535.
Lease transactions under Economic Recovery Tax Act of 1981	22259	Nov. 4, 1981	46 FR 55510.
Statement of policy concerning application of Rule 50 under the Public Utility Holding Company Act of 1935.	22623	Sept. 2, 1982	47 FR 39810.
Public statements by corporate representatives	23199	Jan. 13, 1984	49 FR 2468.
Ownership reports and trading by officers, directors and principal security holders.	25303	Apr. 26, 1991	56 FR 19928.

PART 256—UNIFORM SYSTEM OF ACCOUNTS FOR MUTUAL SERVICE COMPANIES AND SUBSIDIARY SERVICE COMPANIES, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

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256.931 Rents.
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AUTHORITY: Secs. 13, 15, 20, 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79o, 79t.

SOURCE: 44 FR 8250, Feb. 9, 1979, unless otherwise noted.

GENERAL INSTRUCTIONS

CROSS REFERENCES: . For general rules and regulations, Public Utility Holding Company Act of 1935, see Part 250 of this chapter. For rule adopting this Uniform System of Accounts, see § 250.93. For regulations under section 13 of the Act, see §§ 250.80 to 250.95.

NOTE: Cross references to accounts are made by citing the account number, e.g., account 201 instead of the corresponding section number (§ 256.201).

§ 256.00–1 Preface.

(a) The accompanying Uniform System of Accounts for Mutual Service

and Subsidiary Service Companies represents a modernization of the accounting system for such companies to provide a detailed system of accounts which is tailored to present and expanded services, including data processing, modeling, rate analysis, system analysis, budgeting and other support services such as fuel management and analysis, being rendered by such companies. This Uniform System of Accounts is not applicable to gas or electric utility companies, or companies primarily engaged (1) in production of goods, including exploration and development of fuel resources, (2) in the provision of water, telephone, or similar services, the sale of which is normally subject to public rate regulation, (3) in provision of transportation, whether or not so regulated, or (4) in the ownership of property, including leased property and fuel reserves, for the use of associate companies.

(b) It has been the Commission's task to provide a system comprehensive enough to cover the traditional services and the present services being performed by such companies, yet elastic enough to permit adaptation to varying requirements; a system which, faithfully applied, will provide information essential in the administration of section 13 of the Public Utility Holding Company Act of 1935, will be workable and reasonably simple from an operating viewpoint, and free from unnecessary complexities or burdensome requirements which might render it incompatible with the interests of investors or consumers.

(c) This Uniform System of Accounts requires the service company to (1) design subaccounts and keep memorandum and time records to facilitate the preparation of reports and statements required by regulatory commissions and the conduct of audit and account inspection programs, (2) establish a work order system to accumulate reimbursable costs and charges to customers, and (3) account for compensation for use of capital, if paid.

(d) Credits to the accounts or memorandum records may be made upon the basis of estimated costs to associate companies which shall conform as nearly as may be practicable to actual costs: *Provided,* That at stated intervals adjustments of the estimated costs to actual costs shall be made. Invoices to associate companies shall clearly indicate any adjustments to estimated cost previously billed. Such adjustments may be made at intervals during the fiscal year, but final adjustments shall be made at the end of such year. Overbillings or underbillings arising from these adjustments shall be cleared through the appropriate account and offset by adjustments to other accounts involved.

(e) The ''expense'' accounts provided have been designed to show the cost of each general class of service furnished by the service company and with a view toward securing an equitable allocation thereof to the associate companies served.

(f) Consideration was given in the preparation of this system to the necessity of providing for a more detailed classification of service costs in order to permit these costs to be identified with the functional processes of the associate companies served. In this connection, each service company shall maintain a work order system for accumulating reimbursable costs and charges to customers and maintain time records for all service company employees in order to support the accounting allocation of all expenses assignable to the types of services performed and chargeable to the companies served.

(g) It is believed that the results to be obtained from the system now prescribed, together with the more detailed information to be called for in the annual reports, will provide a better basis for identifying cost than is presently available.

§ 256.01–1 Companies for which this system of accounts is prescribed.

(a) This Uniform System of Accounts is designed for use by: (1) Any company operating, or organized to operate, as a mutual service company under the provisions of section 13 of the Public Utility Holding Company Act of 1935, and (2) any subsidiary company whose organization and conduct of business the Commission has found to meet the requirements of section 13(b) of the Public Utility Holding Company Act of 1935, with respect to the performance of

services or construction work for, or the sale of goods to, associate companies.

(b) This Uniform System of Accounts is not applicable to gas or electric utility companies; or companies primarily engaged (1) in production of goods, including exploration and development of fuel resources, (2) in the provision of water, telephone, or similar services, the sale of which is normally subject to public rate regulation, (3) in provision of transportation, whether or not so regulated, or (4) in the ownership of property, including leased property and fuel reserves, for the use of associate companies.

§ 256.01–2 Application to service companies doing business with nonassociate companies.

While this Uniform System of Accounts is designed for companies whose principal business is the performance of services or construction for associate companies at cost, it contemplates situations in which the service company may perform service or construction for nonassociate companies in transactions in which charges are not limited to cost. In recognition of such charges account 458–4 is included in the ''Income'' group for ''Excess or deficiency on servicing nonassociate companies.'' A deficiency incurred in a project deemed beneficial to the associate companies may be charged to associate companies subject to disallowance by a State or Federal Commission having jurisdiction over the rates or services of such associates. To the extent not so chargeable, or if disallowed, such a deficiency will be charged to account 458–4. In computing charges to associate companies for any fiscal year, any net credit in this account must be deducted from amounts reimbursable by associate companies as compensation for use of capital invested in the service company.

§ 256.01–3 General structure of accounting system.

(a) The accounts provided herein are in two general categories: Balance sheet accounts and income and expense accounts. Subsidiary accounts are provided for the details of account 101, Service company property.

(b) The income and expense accounts include, under separate divisions, accounts for recording the revenue or income earned or received and also appropriate accounts for all expenses of operation, maintenance, taxes, interest, all elements of cost allocable to the service performed, and compensation for the use of capital. Appropriate subdivisions or subaccounts should be provided for each service company department or division.

(c) All disbursements and expenses of the service company for service performed for associate companies are recoverable from such companies. In the interest of minimizing questions as to the propriety of charges for reimbursement, each service company shall maintain a work order system for accumulating all costs. To the maximum extent possible, such costs shall be accumulated by direct charges. All employees, including officers, of the service company shall keep, within reasonable cost benefit standards, time records which permit ready identification of the hours worked, account numbers charged, department work order number and other code designations that facilitate proper classification.

(d) The numbers to the right of the decimal point in most cases correspond with the respective account numbers in the Uniform System of Accounts for Public Utilities and Licensees (18 CFR Part 101) of the Federal Energy Regulatory Commission and shall be considered as parts of the account titles. Each service company, however, may adopt for its own purposes a different system of account numbers provided that the account numbers herein prescribed shall appear in the descriptive headings of the ledger accounts and, if practicable, on original source documents. Service companies adopting a different system of account numbers for their own purposes shall keep readily available a list which indicates its account numbers and the corresponding account numbers provided herein. Records of service companies shall be maintained in a manner permitting ready analysis by prescribed accounts (with direct reference to the source of each item in the books of original entry) and permitting preparation of financial operating statements directly

from such records at the end of each accounting period.

§ 256.01–4 Construction or service contracts, and centralized procurement accounting.

(a) Specific accounts have not been provided in which to classify expenditures made in the performance of construction or service contracts, under which the service company undertakes projects to construct physical property for associate or nonassociate companies. The difference in the nature of undertakings which will be embraced in such contracts renders impracticable an attempt to prescribe the accounts applicable in all cases. The service company shall keep records pursuant to its work order system indicating the cost of each contract or project, the amount of service costs allocated thereto, and such additional classification of expenditures relating to projects as will meet the accounting requirements of the company for which the work is performed.

(b) Service costs allocated to construction shall include the proper proportion of salaries, expense of officers and employees, pay of employees on the service company's regular staff specifically assigned to construction work, and other expenses of maintaining the service company's organization and equipment. Cost of materials, construction payrolls, outside services, and other expenses directly attributable to construction work shall be excluded from the accounting system of the service company and charged directly by the vendor or supplier to the construction project.

(c) Service costs allocated to centralized procurement activities shall include only the cost of the support services performed by the service company in connection with the procurement of goods for associate companies. Cost of goods procured shall be excluded from the accounting system of the service company and charged directly by the vendor or supplier to the associate company concerned. The service company shall keep records indicating the cost of goods, if any, which it procures for each associate company and the amount of service costs allocated thereto. These records should be maintained to meet the Federal Energy Regulatory Commission's accounting requirements for electric and gas companies.

§ 256.01–5 Determination of service cost accounting.

Service at cost and fair allocation of costs require, first of all, an accurate accounting for the elements which make up the aggregate expense of conducting the business of the service company. In the accounts herein prescribed, the total amounts included in the expense accounts during any period plus such amount as appropriately may be added as compensation for the use of capital, if paid, constitute cost during such period.

§ 256.01–6 Departmental classification required.

The importance of ''salaries and wages'' as an element of cost requires analysis of this item of expense by departmental or other functional category in accordance with the departmental organization of the service company. To the extent practicable, such departmental organization should be established along lines which will provide a readily available basis for analysis.

§ 256.01–7 Records.

(a) The books of account and other records of the service company shall be so kept as to show fully the facts pertaining to all entries in these accounts. All such entries shall be supported by detailed information sufficient to permit ready identification and audit.

(b) The books and records referred to herein shall include not only accounting records in a limited technical sense but all other records such as minute books, stock books, reports, working papers, memoranda, etc., which may be useful in developing the history of or facts regarding any transactions of the service company.

(c) No company shall destroy any records except as authorized by the provisions of part 257 of this chapter.

(d) The accounts may be further subdivided: *Provided,* Such subdivisions do not impair the integrity of the prescribed accounts. The titles of all subdivisions or subaccounts shall refer by

number to the accounts of which they are subdivisions.

(e) Clearing-accounts shall be kept when necessary or useful in making the proper distribution of items to the appropriate accounts prescribed herein or in accumulating general overhead cost such as rent, utility, employee benefits, and other general and support services that are to be allocated to work orders.

(f) On or before the effective date of this Uniform System of Accounts, the several accounts prescribed herein shall be opened by transferring thereto the balances carried in the accounts previously maintained by the service company. The service company is authorized to make such subdivisions, reclassification, or consolidations of such balances as are necessary to meet the requirements of this Uniform System of Accounts.

(g) Except where this Uniform System of Accounts accords specific treatment for specified accounts, all accounts and financial statements shall be maintained in accordance with Regulation S–X and Accounting Series Releases of this Commission. The Uniform System of Accounts promulgated by the Federal Energy Regulatory Commission, as amended from time to time, and the interpretations thereof adopted from time to time by the Federal Energy Regulatory Commission, and accounting regulations and orders of any other Federal or State Commission having jurisdiction over associate companies shall be complied with unless expressly inconsistent with the requirements of this system.

[44 FR 8250, Feb. 9, 1979, as amended at 49 FR 27310, July 3, 1984]

§ 256.01–8 Definitions.

Definitions contained in the Public Utility Holding Company Act of 1935 shall be applicable to terms not specifically defined herein.

(a) *Accounts* means the accounts prescribed by this Uniform System of Accounts.

(b) *Associate company* means any company in the same holding company system.

(c) *Company* or *the company*, when not otherwise indicated in the context, means the service company.

(d) *Commission* means the Securities and Exchange Commission.

(e) *Direct cost* shall include labor cost and expenses which can be identified through a work order system as being applicable to services performed for a single or group of associate and nonassociate companies. Cost incidental to or related to a directly charged item shall be classified as direct costs.

(f) *Federal commission* means any Federal agency, including the Securities and Exchange Commission, which has jurisdiction to regulate public utility companies in some relevant respect.

(g) *Federal Energy Regulatory Commission* means the Federal Energy Regulatory Commission or any successor thereto.

(h) *Holding company system* means any holding company, together with all of its subsidiary companies and all mutual service companies of which such holding company or any subsidiary company thereof is a member company.

(i) *Indirect cost* shall include those costs of a general overhead nature such as general services, housekeeping costs, and other support cost which cannot be separately identified to a single or group of associate and nonassociate companies and therefore must be allocated. Indirect costs shall be accumulated on a departmental basis.

(j) *Mutual service company, service company* or *subsidiary service company* means a company approved by the Commission as a mutual service company or a subsidiary company of a registered holding company found by the Commission to be organized and conducted as to meet the requirements of section 13(b) of the Act and the provisions of Rule 88 promulgated thereunder.

(k) *Nonassociate companies* means a person, partnership, organization, government body or company which is not a member of the holding company system.

(l) *Operating company* means an electric utility company or gas utility company as defined in the Public Utility Holding Company Act of 1935.

(m) *Person* means an individual or company.

(n) *State commission* means any commission, board, agency, or officer, by whatever name designated, or a State, municipality, or other political subdivision of a State which under the laws of such State has jurisdiction to regulate public-utility companies.

(o) *Uniform system of accounts* means the Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies prescribed herein, as amended from time to time.

(p) *Work order system* means a system for the accumulation of service company cost on a job, project, or functional basis. It includes schedules and worksheets used to account for charges billed to single and groups of associate and nonassociate companies.

§ 256.01–9 Unbilled items.

When the amount of any known item affecting these accounts cannot be accurately determined in time for inclusion in the accounts of the fiscal year in which the transaction occurs, the amount of the item shall be estimated and included in the proper accounts. When the amount is ascertained, the necessary adjustments shall be made through the accounts in which the estimate was recorded. If it is determined during the interval that a material adjustment will be required, the estimate shall be adjusted through the current accounts. The service company is not required to anticipate minor items which would not appreciably affect these accounts.

§ 256.01–10 Billing procedures.

All invoices for services rendered to associate companies shall be submitted monthly with sufficient information and in sufficient detail to permit the associate company to identify and classify the charge in terms of the system of accounts prescribed by the regulatory authorities to which it is subject. Each month a statement shall be rendered to the associate company containing a summary of the accounts by work order by which the charges, classified as direct cost, indirect cost, and compensation for use of capital, can be entered in the accounts of the associate company.

§ 256.01–11 Methods of allocation.

Indirect costs and compensation for use of capital shall be allocated to work orders in accordance with the service company's applicable and currently effective methods of allocation filed with the Commission. Both direct and allocated indirect costs of work orders for two or more associate companies shall be allocated among such companies in the same manner. Each work order should identify the methods of allocation to associate companies and the accounts to be charged. The associate companies should be notified in writing of any change in the methods of allocation.

§ 256.01–12 Compensation for use of capital.

Paragraph (a) of Rule 91 provides in pertinent part that a servicing transaction shall be deemed to be performed at no more than cost if the price of such service does not exceed a fair and equitable allocation of expenses plus reasonable compensation for necessary capital procured through the issuance of capital stock. Interest on borrowed capital and compensation for the use of capital shall only represent a reasonable return on the amount of capital reasonably necessary for the performance of services or construction work for, or the sale of goods to, associate companies. Such compensation may be estimated and shall be computed monthly in the manner prescribed by the Commission. The amount of compensation shall be stated separately in each billing to the associate companies. An annual statement to support the amount of compensation for use of capital billed for the previous twelve months and how it was calculated shall be supplied to each associate company at the end of the calendar year.

§ 256.01–13 Submission of questions.

To promote and maintain uniformity in accounting, the service companies shall submit all questions of doubtful interpretation of the prescribed accounting to the Division of Corporate Regulation or its successor for consideration and decision.

BALANCE SHEET ACCOUNTS: ASSETS AND OTHER DEBIT ACCOUNTS

1. SERVICE COMPANY PROPERTY

§ 256.101 Service company property.

This account shall include the cost of service company property included in accounts 301 and 303 through 311 prescribed herein.

§ 256.107 Construction work in progress.

This account shall include the total of the balances of work orders for service company property in process of construction. Work orders shall be cleared from this account as soon as practicable after completion of the job.

§ 256.108 Accumulated provision for depreciation and amortization of service company property.

(a) This account shall be credited with the amount charged to account 403, Depreciation and amortization expense.

(b) At the time of retirement of depreciable service company property, this account shall be charged with the book cost of the property retired and the cost of removal, and shall be credited with the salvage value and any other amounts recovered, such as insurance, unless the company maintains costs and related reserves for specific units or types of property.

(c) Individual subaccounts for each classification of property listed under account 101, Service company property, shall be maintained.

2. INVESTMENTS

§ 256.123 Investment in associate companies.

This account shall only include notes receivable, advances, and other balances in open accounts with associate companies, which are not subject to current settlement.

§ 256.124 Other investments.

This account shall include the cost or current value of investments, whichever is less, in securities, club memberships, associations, life insurance policies for employees, or other investments in nonassociate companies, other than account 136, Temporary cash investments. This account shall not be used for advances to associate companies. The account shall be maintained in such manner as to show by subaccounts, or otherwise, the nature and amount of each investment.

3. CURRENT AND ACCRUED ASSETS

§ 256.131 Cash.

This account shall include the amount of current cash funds except working funds.

§ 256.134 Special deposits.

This account shall include deposits with fiscal agents or others for special purposes. Entries to this account shall specify the purpose for which the deposit is made.

§ 256.135 Working funds.

This account shall include cash advanced to officers, agents, employees and others as petty cash or working funds.

§ 256.136 Temporary cash investments.

This account shall include the cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury obligations, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

§ 256.141 Notes receivable.

This account shall include the cost of all notes receivable and similar evidences of amounts due within one year from persons other than associate companies. The account shall be so maintained as to show separately amounts due from officers, directors, employees and others.

§ 256.143 Accounts receivable.

This account shall include amounts due on open accounts, other than amounts due from associate companies.

§ 256.144 Accumulated provision for uncollectable accounts.

This account shall be credited with amounts provided for losses on notes and accounts receivable which may become uncollectable, and also with collections on accounts previously charged hereto.

§ 256.146 Accounts receivable from associate companies.

This account shall include notes and balances in open accounts due from associate companies which are expected to be paid in full within one year.

NOTE: Occasional payments to accommodate an associate company for emergency purposes or where obvious increased cost or time problems would be incurred shall be included in this account, but shall be segregated in a subaccount. Expenditures which do not pertain to performance of services by the service company shall be paid directly by the associate company.

§ 256.152 Fuel stock expenses undistributed.

The service company shall utilize this account, where appropriate, to include the cost of service company labor and of office supplies used and operating expenses incurred with respect to the review, analysis and management of fuel supply contracts or agreements, the accumulation of fuel information and its interpretation, the logistics and handling of fuel, and other related support functions, as a service to the associate company engaged in the procurement and transportation of fuel. This account shall be maintained to show the expenses attributable to each associate company through the use of work orders. All expenses of a service company's fuel department or functions shall be cleared through this account.

§ 256.154 Materials and supplies.

(a) The service company may utilize this account, where appropriate, to include the costs of materials and supplies held for use by the service company in performing its services. The cost of material and supplies attributable to work orders for service company property in process of construction shall be charged to account 107, Construction work in progress.

(b) Materials and supplies issued shall be credited hereto and charged to the appropriate expense or other accounts on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or such other method of inventory accounting as conforms with generally accepted accounting standards consistently applied.

§ 256.163 Stores expense undistributed.

(a) The service company shall utilize this account, where appropriate, to include the service cost of labor and expenses incurred with respect to centralized procurement activities rendered to associate or nonassociate companies.

ITEMS

(b)(1) Supervision of purchasing and stores department to extent assignable to materials handled through stores.

(2) Purchasing department activities in checking material needs, investigating sources of supply, analyzing prices, preparing and placing orders, and related activities to extent applicable to materials handled through stores.

(3) Unloading from shipping facility and putting in storage.

(4) Inspecting and testing materials and supplies when not assignable to specific items.

(5) Keeping stock records, including recording and posting of material receipts and issues and maintaining inventory record of stock.

(6) Communication service.

(7) Cash and other discounts not practically assignable to specific materials, freight, express, etc., when not assignable to specific items, transportation expense, and excise and other similar taxes not assignable to specific materials.

(c) This account shall be maintained to show the expenses attributable to each associate company through the use of work orders. All expenses of a service company's centralized procurement activities shall be cleared through this account.

(d) Any amounts applicable to fuel costs should be included in account 152, Fuel stock expenses undistributed.

§ 256.165 Prepayments.

This account shall include amounts representing prepayments of insurance, rents, taxes, interest and miscellaneous items, and appropriate subaccounts shall be maintained in respect of each class of prepayment.

§ 256.174 Miscellaneous current and accrued assets.

This account shall include the cost of all other current and accrued assets not provided for elsewhere. The records supporting this account shall be maintained so as to show the nature of each asset included herein.

4. DEFERRED DEBITS

§ 256.181 Unamortized debt expense.

This account shall include expenses related to the issuance or assumption of debt securities. Amounts recorded in this account shall be amortized over the life of each respective issue under a plan which will distribute the amount equitably over the life of the security. The amortization shall be on a monthly basis, and the amounts thereof shall be charged to account 431, Other interest expense.

§ 256.184 Clearing accounts.

This account shall include undistributed balances in clearing accounts at the date of the balance sheet. Balances shall be substantially cleared not later than the end of the calendar year.

§ 256.186 Miscellaneous deferred debits.

This account shall include all debits not provided for elsewhere, such as the costs of service performed which have not been billed to associate or nonassociate companies and unusual or extraordinary expenses, not included in other accounts, and items the proper final disposition of which is uncertain. The records supporting the entries to this account shall be so kept that the service company can furnish full information as to the purpose, monthly balance, status, write-off and duration of each deferred debit.

§ 256.188 Research, development, or demonstration expenditures.

(a) The service company shall utilize this account, where appropriate, for the cost of all expenditures for research, development or demonstration undertaken by or sponsored through the service company. To the extent such costs are incurred for customers, or for construction work in progress, this account will serve as a clearing account to identify the total research and development activity.

(b) All cost shall be transferred from this account by the end of each fiscal year.

(c) This account shall be so maintained as to show separately each project along with complete detail of the nature and purpose of the research, development and demonstration project together with the related costs.

§ 256.190 Accumulated deferred income taxes.

(a) This account shall be debited and account 411, Provision for deferred income taxes—credit, or account 421, Miscellaneous income or loss, as appropriate, shall be credited with an amount equal to that by which income taxes payable for the year are higher because of the inclusion of certain items in income for tax purposes, which items for general accounting purposes will not be fully reflected in the service company's determination of annual net income until subsequent years.

(b) This account shall be credited and account 410, Provision for deferred income taxes, or account 421, Miscellaneous income or loss, as appropriate, shall be debited with an amount equal to that by which income taxes payable for the year are lower because of prior payment of taxes as provided by paragraph (a) of this section, because of difference in timing for tax purposes of particular items of income or income deductions from that recognized by the service company for general accounting purposes.

(c) Vintage year records with respect to entries to this account, as described above, and the account balance shall be so maintained as to show the factor of calculation with respect to each annual amount of the item or class of items for which deferred tax accounting by the service company is utilized.

LIABILITIES AND OTHER CREDIT ACCOUNTS

5. PROPRIETARY CAPITAL

§ 256.201 Common stock issued.

This account shall include the par or stated value of all common capital stock issued and outstanding.

§ 256.211 Miscellaneous paid-in capital.

This account shall include the balance of all other credits for paid-in capital which are not properly includable in the foregoing accounts.

§ 256.215 Appropriated retained earnings.

This account shall include the amount of retained earnings which has been appropriated or set aside for specific purposes. Separate subaccounts shall be maintained under such titles as will designate the purpose for which each appropriation was made.

§ 256.216 Unappropriated retained earnings.

This account shall include the balance, either debit or credit, arising from earnings. All dividends shall be charged to this account. It shall not include amounts properly includable in account 211—Miscellaneous paid-in capital. Entries to this account shall be sufficiently detailed for ready analysis of the account.

6. LONG-TERM DEBT

§ 256.223 Advances from associate companies.

This account shall include the principal amount of notes and balances on open accounts due to associate companies. It does not include notes and open accounts representing indebtedness subject to current settlement which are includable in account 233, Notes payable to associate companies or account 234, Accounts payable to associate companies.

NOTE: Subaccounts shall be maintained for each class of obligation, and records shall be maintained to show for each class the terms of the obligation, including the date of obligation, date of maturity, interest dates and rates, and security, if any.

§ 256.224 Other long-term debt.

This account shall include all long-term debt to nonassociates and not subject to current settlement.

NOTE: Subaccounts shall be maintained for each class of obligation, and records shall be maintained to show for each class the terms of the obligation, including the date of obligation, date of maturity, interest dates and rates, and security, if any.

§ 256.225 Unamortized premium on long-term debt.

(a) This account shall include the excess of the cash value of consideration received over the face value upon the issuance or assumption of long-term debt securities.

(b) Amounts recorded in this account shall be amortized over the life of each respective issue under a plan which will distribute the amount equitably over the life of the security. The amortization shall be on a monthly basis, with the amounts thereof to be credited to account 427, Interest on long-term debt, or account 431, Other interest expense.

§ 256.226 Unamortized discount on long-term debt-debit.

(a) This account shall include the excess of the face value of long-term debt securities over the cash value of consideration received therefor, related to the issue or assumption of all types and classes of debt.

(b) Amounts recorded in this account shall be amortized over the life of the respective issues under a plan which will distribute the amount equitably over the life of the securities. The amortization shall be on a monthly basis, with the amounts thereof charged to account 427, Interest on long-term debt, or account 431, Other interest expense.

7. CURRENT AND ACCRUED LIABILITIES

§ 256.231 Notes payable.

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding one year from date of issue, to other than associate companies.

§ 256.232 Accounts payable.

This account shall include all amounts payable by the service company within one year other than amounts payable to associate companies.

§ 256.233 Notes payable to associate companies.

§ 256.234 Accounts payable to associate companies.

These accounts shall include notes and balances in open accounts due to associate companies within one year.

§ 256.236 Taxes accrued.

(a) This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known the amount of the periodic credits shall be adjusted so as to include as nearly as can be determined in each year the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet shall be shown under account 165, Prepayments.

(b) The records supporting the entries to this account shall be kept so as to show for each class of taxes the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of tax paid.

§ 256.237 Interest accrued.

This account shall include the amount of interest accrued on all liabilities of the service company. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

§ 256.238 Dividends declared.

This account shall include the amount of dividends which have been declared but not paid.

§ 256.241 Tax collections payable.

This account shall include the amount of taxes collected by the service company through payroll deductions or otherwise pending transmittal of such taxes to the proper taxing authority.

§ 256.242 Miscellaneous current and accrued liabilities.

This account shall include the amount of all other current and accrued liabilities not provided for elsewhere. The records supporting this account shall be maintained so as to show the nature of each liability included herein.

8. DEFERRED CREDITS

§ 256.253 Other deferred credits.

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received. Subaccounts by category of credits should be established.

§ 256.255 Accumulated deferred investment tax credits.

(a) This account shall be credited and account 411.5, Investment tax credit, debited with investment tax credits deferred by companies which do not apply such credits as a reduction of the overall income tax expense in the year in which a tax credit is realized. A proportionate amount shall be debited to account 411.5, Investment tax credit, as determined in relation to the average useful life of service company property to which the tax credit relates or such lesser period of time as may be adopted.

(b) Records shall be maintained identifying the service company property giving rise to the investment tax credits for each year with the weighted-average service life of such properties and any unused balances of such credits. Such records are not necessary unless the tax credits are deferred.

9. ACCUMULATED DEFERRED INCOME TAXES

§ 256.282 Accumulated deferred income taxes.

(a) The text of these accounts is designed primarily to cover deferrals of Federal income taxes. However, they are also to be used when making deferrals of state and local income taxes. Service companies which have service company property and which have deferred taxes on income with respect thereto shall separately classify such deferrals in the accounts provided below so as to allow ready identification.

(b) This account shall be credited and account 410, Provision for deferred incomes taxes, shall be debited with tax effects related to property described in paragraph (a) of this section where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(c) This account shall be debited and account 411, Provision for deferred income taxes—credit, shall be credited with tax effects related to property described in paragraph (a) of this section where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

(d) Records with respect to entries to this account, as described above, and the account balance shall be so maintained as to show the factors of calculation and the separate amounts applicable to the additions of each vintage year for each class, group, or unit. The underlying calculations to segregate and associate deferred tax amounts with the respective vintage years may be based on reasonable methods of approximation, if necessary, consistently applied.

SERVICE COMPANY PROPERTY ACCOUNTS

§ 256.301 Organization.

This account shall include all fees paid to federal or state governments for the privilege of incorporation and expenditures incident to organizing a corporation or other form of organization and putting it into readiness to do business including cost of obtaining certificates authorizing the service company to engage in its business, fees and expenses for incorporation, fees and expenses for mergers or consolidations, office expenses incident to organizing the service company, and other expenditures incident to the organization of the service company such as stock, minute books and corporate seal.

NOTE: This account shall not include any discounts upon securities issued or assumed nor shall it include any costs or expenses in connection with the authorization, issuance and sale of securities of the service company.

§ 256.303 Miscellaneous intangible plant.

(a) This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of the service company's operations and not specifically chargeable to any other account.

(b) This account shall be maintained in such a manner that the service company can furnish full information with respect to the amounts included herein.

NOTE: When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to account 426.5, Other deductions.

§ 256.304 Land and land rights.

(a) This account shall include the cost of any right, title, or interest to land held by the service company, including without limitation the cost of land owned in fee by the service company and the cost of easements, rights of way, and any other similar interests in land.

(b) When special assessments for improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account. Interest on unpaid balances shall be charged to the appropriate interest account. If any part of the cost of improvement is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

(c) Separate entries shall be made for the acquisition, transfer, or sale of each parcel of land, and each land right. A record shall be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county and tax district in which situated, from whom purchased or to whom sold, payment given or received, other costs,

contract date and number, date of recording of deed, and book and page number of record.

(d) If at the time of acquisition of an interest in land such interest extends to buildings or other improvements which are then devoted to the service company's operations, the land and improvements shall be separately appraised and the cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of the land is recorded.

§ 256.305 Structures and improvements.

(a) This account shall include the cost of all buildings and facilities and fixtures permanently attached thereto which are owned by the service company.

(b) The cost of foundations which are specially provided for machinery, apparatus, or other equipment of the company shall be charged to the same account as the cost of such machinery, apparatus, or equipment.

(c) Other fixtures temporarily attached to buildings shall not be included in the cost of the building but in the equipment account.

§ 256.306 Leasehold improvements.

This account shall include all costs incurred by the service company in improvements of, remodeling of, or installation of additional facilities in rented offices or buildings to suit tenant's needs.

§ 256.307 Equipment.

This account shall include the cost of equipment owned by the service company and used in rendering services such as micro-wave, communications and dispatching, automatic data processing, information storage and retrieval, research and laboratory testing, construction, meter repairing, and printing and stationery. Subaccounts shall be maintained by classes of equipment for each service rendered.

§ 256.308 Office furniture and equipment.

This account shall include the cost of office furniture and equipment owned by the service company and used in rendering services, e.g., bookcases, shelves, desks, tables, chairs, desk equipment, safes, drafting-room equipment, filing cabinets, storage and other cabinets, floor covering, library equipment, accounting machines, electronic claculators, typewriters and other mechanical office equipment.

§ 256.309 Automobiles, other vehicles, and related garage equipment.

This account shall include the delivered cost of all service company owned automobiles, vans, trucks, and other vehicles used by the service company in its operations. The cost of all tools, implements, and other equipment used in the inspection, maintenance, repair and overhaul of vehicles shall also be included in this account.

§ 256.310 Aircraft and airport equipment.

This account shall include the delivered cost of all service company owned aircraft and accessories thereto used by the service company in its operations. The cost of all tools, implements and other equipment used in the inspection, maintenance, repair and overhaul of aircraft shall also be included in this account.

§ 256.311 Other service company property.

(a) This account shall include the cost of service company property owned by the service company not provided for elsewhere.

(b) This account shall be maintained in such a manner that the service company can furnish full information with respect to the amounts included herein.

INCOME AND EXPENSE ACCOUNTS

1. INCOME

§ 256.403 Depreciation and amortization expense.

This account shall include the amount of depreciation and amortization for all service plant, and leasehold

improvements, the cost of which is includable in accounts 305 through 311. Provide subaccounts by each class of service company property owned and leased.

§ 256.408 Taxes other than income taxes.

(a) This account shall include the amount of state unemployment insurance, franchise taxes, federal excise taxes, social security taxes, and all other taxes assessed by Federal, State, County, Municipal, or other local governmental authorities, except income taxes.

(b) When it is not possible to determine the exact amount of taxes, the amount shall be estimated and adjustments made in current accruals as the actual tax levies become known.

(c) This account shall be kept in such manner as to show the amount of each class of taxes.

NOTE A: Taxes applicable to property construction or investments may be charged to the account in which the property construction or investment is included. Special assessments for street and similar improvements shall be included in the appropriate service company property account. Gasoline and other miscellaneous taxes shall be charged, where practicable, to the same account as the materials on which the tax is levied.

NOTE B: Interest on tax refunds or deficiencies shall not be included in this account but in account 421, Miscellaneous income or loss, or account 431, Other interest expense, as appropriate.

§ 256.409 Income taxes.

(a) This account shall include the amount of local, State and Federal taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. As the exact amount of taxes become known, the current tax accruals shall be adjusted accordingly so that this account, as nearly as can be ascertained, shall include the actual taxes payable which are chargeable to service company operations.

(b) Interest on tax refunds or deficiencies shall not be included in this account but in account 421, Miscellaneous income or loss, or account 431, Other interest expense, as appropriate.

§ 256.410 Provision for deferred income taxes.

This account shall be debited and Accumulated Deferred Income Taxes shall be credited with an amount equal to any deferral of taxes on income as provided by the text of account 282, Accumulated deferred income taxes. No entries required to be made to this account shall be netted against any credit amounts appropriately includable in account 411, Provision for deferred income taxes—credit.

§ 256.411 Provision for deferred income taxes—credit.

This account shall be credited and Accumulated Deferred Income Taxes debited with an amount equal to the portion of taxes on income payable for the year which is attributable to a deferral of taxes on income in a prior year, in accordance with the plan of deferred tax accounting provided by the text of account 282, Accumulated deferred income taxes. No entries required to be made to this account shall be netted against any debit amount appropriately includable in account 410, Provision for deferred income taxes.

§ 256.411.5 Investment tax credit.

(a) This account shall be debited with the amounts of investment tax credits related to service company property that are credited to account 255, Accumulated deferred investment tax credits, by service companies which do not apply the entire amount of the benefits of the investment credit as a reduction of the overall income tax expense in the year in which such credit is realized (see account 255).

(b) This account shall be credited with the amounts debited to account 255 for proportionate amounts of tax credit deferrals allocated over the average useful life of property to which the tax credits relate or such lesser period of time as may be adopted by the service company.

§ 256.421 Miscellaneous income or loss.

This account shall include all income or loss items not provided for elsewhere.

(Secs. 13, 15, 20, 49 Stat. 825, 828, 833; 15 U.S.C. 79m, 79o, 79t)
[45 FR 41135, June 18, 1980]

§ 256.426.1 Donations.

This account shall include all payments or donations for charitable, social or community welfare purposes.

§ 256.426.5 Other deductions.

(a) This account shall include other miscellaneous expenses which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

(b) Records shall be so maintained by subaccount to permit ready analysis showing the nature of the expenses and identity of the person furnishing the service.

NOTE: Preliminary survey and investigation expenses related to abandoned projects, when not written-off to the appropriate operating expense account, shall be included in this account.

§ 256.427 Interest on long-term debt.

This account shall include the amount of interest accrued on outstanding long-term debt owed by the service company to nonassociate persons.

§ 256.430 Interest on debt to associate companies.

This account shall include interest accrued on amounts included in account 223, Advances from associate companies, and account 233, Notes payable to associate companies. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest and the principal amount of the advances or other obligations on which the interest is accrued. Separate subaccounts should be maintained for each related debt account.

§ 256.431 Other interest expense.

This account shall include all interest charges not provided for elsewhere.

§ 256.457 Services rendered to associate companies.

This control account shall include amounts billed to associate companies for services rendered at cost. See accounts 457–1 through 457–3. Overbillings or underbillings arising from adjustments of estimated costs to actual costs shall be cleared through this account and concurrent adjustments made to other accounts involved.

§ 256.457–1 Direct costs charged to associate companies.

This account shall include those direct costs which can be identified through a work order system as being applicable to services performed for associate companies. This account shall not include any compensation for use of equity capital or intercompany interest on indebtedness.

§ 256.457–2 Indirect costs charged to associate companies.

This account shall include recovery of those indirect costs which cannot be separately identified to a single or group of associate companies and therefore must be allocated. Journal or memorandum entries should be prepared monthly, by departments, for all such cost accumulated and billed to customers. This account shall not include any compensation for use of equity capital or intercompany interest on indebtedness.

§ 256.457–3 Compensation for use of capital-associate companies.

This account shall include only the portion of compensation for use of equity capital and intercompany interest on indebtedness before income taxes which is properly allocable to services rendered to each associate company.

§ 256.458 Services rendered to nonassociate companies.

This account shall include amounts billed for services rendered to nonassociate persons. See accounts 458–1 through 458–4.

§ 256.458–1 Direct costs charged to nonassociate companies.

This account shall include those direct costs which can be identified through a work order system as being applicable to services performed for nonassociate persons. This account shall not include any compensation for use of equity capital or interest on indebtedness.

§ 256.458–2 Indirect costs charged to nonassociate companies.

This account shall include recovery of those indirect costs of services performed for nonassociate persons which cannot be separately identified to nonassociate persons and therefore must be allocated. The amounts would be as set forth in the same monthly departmental journal or memorandum entries referred to for these costs in account 457–2, Indirect costs charged to associated companies. This account shall not include any compensation for use of equity capital or intercompany interest on indebtedness.

§ 256.458–3 Compensation for use of capital—nonassociate companies.

This account shall include only the portion of compensation for use of equity capital and intercompany interest on indebtedness before income taxes which is properly allocable to services rendered to nonassociate persons. A statement to support the basis for the compensation and how it was calculated should be attached to a separate journal entry, ledger system, or memorandum file.

§ 256.458–4 Excess or deficiency on servicing nonassociate companies.

This account shall include the amount by which the aggregate price received for services rendered to nonassociate persons differs from the sum of the total direct and indirect costs and compensation for use of capital which are properly allocable to such services. (Accounts 458–1 through 458–3).

2. EXPENSE

§ 256.920 Salaries and wages.

(a) This account shall include salaries, wages, bonuses and other consideration for services, with the exception of director's fees paid directly to officers and employees of the service company.

(b) This account shall be supported by time records and appropriately referenced to detailed records subdividing salaries and wages by departments or other functional organization units. See General Instructions.

§ 256.921 Office supplies and expenses.

(a) This account shall include office supplies and expenses incurred in connection with the general administration of service company operations assignable to specific administrative or general departments and not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are includable in account 920.

(b) This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the service company.

ITEMS

1. Automobile service, including charges through clearing account.
2. Bank messenger and service charges.
3. Books, periodicals, bulletins and subscriptions to newspapers, newsletters, tax service, etc.
4. Building service expenses for customer accounts, sales, and administrative and general purposes.
5. Communication service expenses to include telephone, telegraph, wire transfer, micro-wave, etc.
6. Cost of individual items of office equipment used by general departments which are of small value or short life.
7. Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships are includable in account 930.2, Miscellaneous general expenses.)
8. Office supplies and expenses.
9. Payment of court costs, witness fees, and other expenses of legal department.
10. Postage, printing and stationery.
11. Meals, traveling, entertainment and incidental expenses.

(c) Records shall be so maintained to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§ 256.922 Administrative expenses transferred—credit.

This account shall be credited with administrative expenses recorded in accounts 920 and 921 which are transferred to construction costs of the asset and other debit accounts.

§ 256.923 Outside services employed.

(a) This account shall include the fees and expenses of professional consultants and others for general services with the exception of fees and expenses for outside services of account 928, Regulatory commission expense, and account 930.1, General advertising expenses. Separate subaccounts shall be provided for auditing, legal, engineering, management consulting fees and, if material in amount, any other fees of professional or outside services.

(b) Records shall be so maintained to permit ready analysis showing nature of service, identity of the person furnishing the service, affiliation to the service company, and, if allocated to more than one company, the specific method of allocation.

§ 256.924 Property insurance.

(a) This account shall include the cost of insurance premiums to protect the service company against losses and damages to owned or leased property used in its operations. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

(b) Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

§ 256.925 Injuries and damages.

(a) This account shall include the cost of premiums for insurance to protect the service company against claims for injury, liability and damage claims of employees or others and losses of such character not covered by outside insurance.

(b) Reimbursements from insurance companies or others for expenses charged hereto on account of injuries and damages and insurance dividends or refunds shall be credited to this account.

§ 256.926 Employee pensions and benefits.

This account shall include pensions paid to or on behalf of retired employees, or payments for the purchase of annuities for this purpose, when the service company has committed itself to a pension plan under which the pension funds are devoted to pension purposes. This account shall also include payments made under employee benefit programs such as medical and surgical benefits, disability benefits, life insurance, savings and thrift plans, and other similar benefits. Include, also, expenses incurred in medical, educational or recreational activities for the benefit of employees.

§ 256.928 Regulatory commission expense.

This account shall include all expenses, properly includable in service company operating expenses, incurred by the service company in connection with formal cases before regulatory commissions, or other regulatory bodies, on its own behalf or on behalf of associated companies, including payments made to a regulatory commission for fees assessed to the service company for pay and expenses of such commission, its officers, agents and employees, and for filings or reports made under regulations of regulatory commissions. The service company shall be prepared to show the cost of each formal case.

§ 256.930.1 General advertising expenses.

This account shall include the cost of materials used and expenses incurred in advertising and related activities, the costs of which by their content and purpose are not provided for elsewhere.

ITEMS

1. Advertising in newspapers, periodicals, billboards, radio, etc.
2. Advertising matter such as posters, bulletins, booklets and related items.
3. Fees and expenses of advertising agencies and commercial artists.
4. Postage and direct mail advertising.
5. Printing of booklets, dodgers, bulletins, etc.
6. Supplies and expenses in preparing advertising materials.
7. Office supplies and expenses.

§256.930.2 Miscellaneous general expenses.

(a) This account shall include the cost of expenses incurred in connection with the general management of the service company not provided for elsewhere.

ITEMS

1. Industry association dues for company memberships.
2. Contributions for conventions and meetings of the industry.
3. Communication service not chargeable to other accounts.
4. Trustee, registrar, and transfer agent fees and expenses.
5. Stockholders meeting expenses.
6. Dividend and other financial notices.
7. Printing and mailing dividend checks.
8. Directors' fees and expenses.
9. Publishing and distributing annual reports to stockholders.
10. Public notices of financial, operating and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.
11. Other general expenses not provided for elsewhere.

(b) Records shall be so maintained to permit ready analysis by item showing the nature of the expense and identity of the person furnishing the service.

§256.931 Rents.

This account shall include rents, including taxes, paid for the property of others used, occupied or operated in connection with service company functions. Provide subaccounts for major grouping such as office space, warehouses, other structure, office furniture, fixtures, computers, data processing equipment, micro-wave and telecommunication equipment, airplanes, automobiles, etc. The cost, when incurred by the lessee, of operating and maintaining leased property, shall be charged to the accounts appropriate for the expense as if the property were owned.

§256.932 Maintenance of structures and equipment.

This account shall include materials used and expenses incurred in the maintenance of property owned, the cost of which is includable in accounts 305 through 311, and of property leased from others. Provide subaccounts by major classes of structures and equipment, owned and leased.

PART 257—PRESERVATION AND DESTRUCTION OF RECORDS OF REGISTERED PUBLIC UTILITY HOLDING COMPANIES AND OF MUTUAL AND SUBSIDIARY SERVICE COMPANIES

Sec.
257.1 General instructions.
257.2 Schedule.

§257.1 General instructions.

(a) *Scope of regulations.* The General Instructions and Schedule apply to any holding company, except an electric or gas utility company, registered as a holding company under the Public Utility Holding Company Act of 1935, and to companies found by the Commission, pursuant to §250.88 to meet the requirements of section 13 of the Act as mutual or subsidiary service companies.

(1) Company means a service company subject to §250.93, or a holding company subject to §250.26, which is not an electric utility company or a gas utility company, and any predecessor or inactive or dissolved associate company, the records of which are in the possession or control of such company.

(2) Records include any records prepared, maintained or held by any agent or employee of a company, including any such records of a stock transfer agent, registrar, paying agent, indenture trustee or other person employed by a company to perform services with respect to the securities of the company, insofar as such person is accountable to the company or to its security holders for such records. The specification in the schedule of a record related to a type of transaction includes all documents and correspondence, not redundant or duplicative of other records retained, needed to explain or verify such transaction. Supporting documents such as checks or vouchers, which are separately scheduled may, nevertheless, be destroyed in accordance with the schedule for their respective class, when the company determines that the lapse of time has

made it unlikely that it will need to prove the details evidenced thereby.

(3) Any company subject to this regulation, which, as agent, operator, lessor or otherwise, maintains or has possession of any records relating to the operation, property or obligations of an electric or gas utility company or natural gas company or a nuclear licensee, as defined in the Federal Power Act, the Natural Gas Act, the Atomic Energy Act or the laws of any state within which such utility company operates, shall comply with the laws or regulations as to record retention and destruction which would apply to such records if they were records of such utility company or licensee.

(4) Except for the certifications, indices and cross references specified herein, the regulation shall not be construed as requiring the preparation or maintenance of records not required to be prepared or maintained by other rules or regulations of the Commission.

(5) The regulation shall not excuse compliance with any other lawful requirement for the preservation of records for periods longer than those prescribed in the regulation.

(6) Duplicate copies of records which contain no significant information not shown on the copy preserved may be destroyed at any time. If the same document would be required under more than one scheduled item, such as an indenture also included as an exhibit in a filing required to be retained, only one copy need be preserved if cross references are substituted for the additional copies.

(7) Notwithstanding the provisions of the regulation, the Commission may, upon the request of any company, authorize the destruction of any specified records of such company and the Commission, on its own motion or on the motion of any regulatory agency, may direct that records which would be useful in developing facts relevant to any transaction recorded by the company be preserved for such period as the Commission may specify.

(b) *Designation of supervisory official.* Each company subject to the regulation shall designate one or more officials to supervise the preservation or authorized destruction of its records. Insofar as its records include those in the possession of a transfer agent, indenture trustee or other independent custodian, the terms of the agreement with the custodian may include provisions, not inconsistent with this regulation, for the preservation and destruction of such records by the custodian and the responsibility of the company's designated official shall be to make reasonable inquiry as to the due performance of the custodian's obligation.

(c) *Protection and storage of records.* The company shall provide reasonable protection from damage by fire, flood, and other hazards for records required by the regulation to be preserved and, in the selection of storage space, safeguard such records from unnecessary exposure to deterioration from excessive humidity, dryness, or lack of proper ventilation.

(d) *Index of records.* At each office of the company where records are kept or stored, such records as are required by the regulation to be preserved shall be so arranged, filed, and currently indexed that such records shall be readily available for inspection by authorized representatives of regulatory agencies concerned.

(e) *Definition of record media.* (1) The data constituting the records listed in the schedules may be retained in any of th media forms in Figure 1 of this section, if the media selected has a standard life expectancy equal to or in excess of the specified retention period. In cases where media regeneration to achieve full length of period retention becomes necessary, the company shall take such action as prudence calls for and notify the Commission immediately thereafter. The specifications in Figure 1 are generic. At the request of a company, the Commission may authorize alternative media reasonably equivalent to those specified.

(2) If the media form of the record retained is other than a readable paper copy, then reader and/or printer equipment and related printout programs, if required, shall be provided by the company for data reference.

(3) The media form initially selected for the record becomes the ''original'' for that particular record. If subsequent conditions (e.g., improved media

life expectancy, increased company resources, increased securities sales) require and the remaining retention period permits a change in the media forms, the company may convert to another media and dispose of its old equipment, provided the certification processes described in paragraph (f) of this section are observed and data referencing capability is maintained.

FIGURE 1.—RECORD MEDIA

Record media/form	Comments and standards
1. Paper and card stock (hardcopy).	For each document, paper stock should be selected with a life expectancy equal to or greater than the retention period specified for that document.
2. Tape:	
a. Magnetic (Including video tape).	Assumes storage in a controlled environment with a temperature and humidity range of 60°–80° F. and 40–60%, respectively.
b. Punched	For each record, tape media (paper, mylar, metallic base) should be selected with a life expectancy equal to or greater than the retention period for that record.
3. Microforms:	
a. Microfilm (including Computer Output Microfilm (''COM''), Microfiche jackets and aperture cards).	Assumes processing to standards and storage in a controlled environment with a temperature and humidity range of 60°–80° F. and 40–50%, respectively. (Ref. American National Standards Institute (''ANSI'') standards PH 5.4–1970, PH 1.41–1976, PH 1.28–1979, PH 1.43–1981, or most current standards as accepted by the National Archives for use by federal agencies. (See 41 CFR 101–11.5).
b. Metallic recording data strips.	Same storage conditions as for microfilm.

(f) *Microform, tape and computer output certification*—(1) *As the initial recording media.* (i) Each microform record series shall contain, at the beginning, a microform introduction stating the title of the record series, the date prepared, the name of the official responsible for validating or confirming the data contained therein. Each microform record series shall be closed with a clear and standard microform notation indicating the completion of the series and the date. If the microform record series is a product of Computer Output Microfilm (''COM''), the certification required of this section is not required if the series is prepared in accordance with written standard procedures developed by the company that ensure the integrity of record series which are the product of COM. Such procedures must include the name of the official responsible for validating or confirming the data contained in the record series and confirming that a particular COM record was produced in accordance with the standard procedures.

(ii) If a record series is a computer output product (i.e., output paper or microfiche, or aperture cards), any certification that may otherwise be required under paragraph (f)(l)(i) of this section is not required if:

(A) The series is prepared in accordance with written standard procedures developed, or accepted general business practices followed, by the company that ensure the integrity of record series that are the product of computer output; and

(B) Such procedures include the name or title of the official responsible for validating or confirming the data contained in the record series and confirming that a particular computer output record series was produced in accordance with the standard procedures or practices.

(iii) Each tape record series shall be externally labeled and there shall be prepared for that series an introduction stating the record series title, date prepared, the name of the official responsible for validating or confirming the data contained therein and an index where appropriate. Each record series shall be closed with a clear and standard notation indicating the completion of that series and the date.

(2) *Conversion from other media.* (i) Each microform record series shall include, as an integral part, a certificate(s) stating that the microforms are direct and facsimile reproductions of the original records and that they have been made in accordance with prescribed instructions. Such certificate(s) shall be executed by a person(s) having personal knowledge of the facts covered thereby.

(ii) Each microform record series shall commence and end with a statement as to the nature and arrangement of the records reproduced, and the date. Rolls of film shall not be cut except to produce jacketed microfiche. Supplemental or retaken film, whether of misplaced of omitted documents or of

portions of microform found to be defective, shall be attached to the beginning of the microform record series. If supplemental or retaken film of misplaced or omitted documents, or of portions of microfilm found to be defective, are attached to the microfilm record series, the certificate described in paragraph (f)(l)(i) shall cover the supplemental or retaken film and shall state the reasons for the attachment.

When a retrieval system (*e.g.*, image count indexing (''blipping'')) is used, the supplemental or retaken film may be attached at the end of the series, if the provisions at the beginning of the series advise the viewer of the location of the problem frames and the supplemental or retaken images.

(iii) If, in accordance with the provisions of paragraph (g) of this section, the company elects to convert records to the tape media, the same certification provisions specified in paragraph (f)(l)(iii) of this section must be provided in the conversion program.

(g) *Change of media for existing records.* Those records prepared and maintained under previous regulations in a paper media and whose remaining retention period falls within the life expectancy range of any of the media detailed in Figure 1, may be converted to that media at the company's option, provided the applicable certification processes described in paragraph (f) of this section are observed and an audit referencing capability maintained.

(h) *Media.* (1) All records created or maintained in a media shall—

(i) Be prepared, arranged, classified, identified, and indexed as to permit the subsequent location, examination, and reproduction of the record to a readable media;

(ii) Be stored in such a manner as to provide reasonable protection from hazards such as fire, flood, theft, etc., and be maintained in a controlled environment; and

(iii) Be regenerated, including proper certification, when damaged.

(2) The company shall be prepared to furnish, at its own expense, standard facilities for reading media and shall additionally provide, if the Commission so directs, copies of records in a readable form.

(3) All film stock shall be of approved operationally-permanent-record microcopying type, which meets the current specifications of the American National Standards Institute.

(4) Punched cards, tape or similar media used as intermediate records or steps in data processing for assembling data to be posted to the records of the company or used in a report or study can be destroyed at the option of the company.

(i) *Destruction of records.* The destruction of the records permitted to be destroyed under the provisions of the regulations in this part may be performed in any manner elected by the company. Precautions should be taken, however, to macerate or otherwise destroy the legibility of records, the content of which is forbidden by law to be divulged to unauthorized persons.

(j) *Premature destruction or loss of records.* When records are destroyed or lost before the expiration of the prescribed period of retention, a statement listing, as far as may be determined, the records destroyed and describing the circumstances of accidental or other premature destruction or loss shall be filed with the Commission within ninety (90) days from the date of discovery of such destruction or loss.

(k) *Schedule of records and periods of retention.* The schedules of records retention periods constitute a part of this regulation. The schedules prescribe the periods of time that designated records shall be preserved.

(l) *Retention periods designated ''Destroy at Option.''* Use of the retention period, ''Destroy at option,'' in the regulation constitutes authorization for such destruction under the conditions specified for the particular types of records only if such optional destruction is based on a reasonable judgment that the records are unlikely to be needed and if such optional destruction is not in conflict with other legal retention requirements. Optional destruction of records relevant to pending or expected regulatory or legal actions is not authorized. ''Destroy at option after audit'' requires retention until the company has received an opinion of its independent accountants

with respect to the financial statements including the transactions to which such records relate.

(m) *Use of technical accounting terms.* For purposes of the schedules, traditional accounting terms such as ledgers, journals, registers and vouchers refer to the function rather than the form of the record. All refer to quasi-permanent records, designed to collect, classify and in some aspects summarize, various types of the company's transactions. They are interrelated and, in another traditional term, are the principal constituents of the books of account, including subsidiary ledgers and registers. The retention periods apply to records serving this function, regardless of form. A multiple purpose record, such as a service company stock stub which also serves as the shareholder's ledger, or a voucher file which also serves as the journal, referred to more than once in the schedule, is governed by the longest retention period applying to any of its functions. For brevity, the term ''note'' is used in the schedule to refer to an evidence of debt maturing within one year of its creation, which was not the subject of an offering registered under the Securities Act of 1933. The term ''debenture'' refers to a document evidencing any other unsecured debt. The term ''mortgage'' refers to any form of secured obligation, ''bond'' refers to a document evidencing a secured debt in whole or part, and ''mortgagee'' refers to the holder of a mortgage or bond and includes any person, such as an indenture trustee, authorized to act for a mortgagee.

(Approved by the Office of Management and Budget under control number 3235–0306)

(Secs. 15 and 20(a); Public Utility Holding Company Act of 1935, and § 250.26(d) and § 250.93 of Title 17 CFR)
[49 FR 27310, July 3, 1984]

§ 257.2 Schedule.

SCHEDULE OF RECORDS RETENTION PERIODS

Description of records	Retention period
CORPORATE AND GENERAL	
1. Records of Securities:	
(a) Capital stock and debt ledgers	3 years after the holder's account is closed.
(b) Subscription accounts, warrants, requests for allotments, and other essential papers related thereto.	Destroy at option after settlement and audit.
(c) Stubs or similar records of the issuance of securities	3 years after cancellation of certificate.
(d) Paid or cancelled notes	Destroy at option after changes are recorded.
(e) Letters, notices reports, statements and other communications distributed to all holders of a particular class:	
(1) Annual reports	50 years.
(2) Solicitations of consents or waivers	Destroy at option after expiration of consent or waiver and audit.
(3) Notices of redemption or invitations for tender	Destroy at option after consummation and audit.
(4) Interim reports, dividend notices, notices of change of corporate address, and similar communications of information of only current significance.	Destroy at option after audit.
(f) Dividend interest and coupon registers, lists or similar records	3 years after payment.
(g) Paid dividend or interest checks	3 years after issuance.
(h) Trust indentures, loan agreements or other contracts or agreements securing debt securities issued.	3 years after redemption.
(i) Copies of reports, statements, letters or memoranda filed with Trustee(s) pursuant to provisions of trust indenture or other security instrument or agreement securing debt securities issued.	3 years after redemption.
(j) Leases pertaining to rentals of property to or from others	3 years after expiration.
(k) Contracts, agreements, and other records needed to administer or audit a dividend reinvestment plan or an employee benefit plan involving the purchase or issuance of securities.	6 years after expiration or cancellation.
2. Lists of holders of voting securities represented at meeting and executed proxies or lists certified by a person or persons qualified to do so under the applicable corporation law, showing the attendance and votes by each holder for or against each issue voted on.	3 years after date of meeting. Executed proxies may be destroyed at option; if replaced by certified lists, unless a contest of the vote is expected or pending.

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

Description of records	Retention period
3. Filings with and authorizations by regulatory agencies:	
(a) Applications, registrations or other documents filed by the company with any Federal or state regulatory agency for authorization or validation of transactions; the opinion, order or other document evidencing the agency's action thereon; and any report of consummation or compliance, with respect to:	
(1) The issue, pledge or sale of securities	Until all securities covered thereby are retired.
(2) The acquisition or disposition of assets or investments	Period specified by Item 18 or 19 for the asset or investment.
(3) Contracts with affiliates	3 years after expiration.
(4) Organization or conduct or business of the company and changes therein, including mergers.	Life of corporation.
(b) Periodic or special reports filed by the company on its own behalf with the Securities and Exchange Commission or with any other Federal or state rate-regulatory agency, including exhibits or amendments to such reports:	
(1) Annual financial, operating and statistical reports	10 years after date of report.
(2) Monthly and quarterly reports of operating revenues, expenses, and statistics.	Destroy at option after audit..
(3) Transaction with associated companies	6 years.
(4) Budgets of expenditures	6 years.
(5) Accidents	6 years.
(6) Employees and wages	5 years.
(7) Loans to officers and employees	3 years after fully paid.
(8) Purchases and sales of property	For period specific refer to property records (See Item 18).
4. Organization Documents:	
(a) Title, franchises, and licenses:	
(1) Certificates of incorporation, or equivalent agreements and amendments thereto.	Life of corporation.
(2) Deeds leases and other title papers (including abstracts of title and supporting data), and contracts and agreements related to the acquisition or disposition of property or investments.	6 years after property or investment is disposed of unless delivered to transferee.
(b) Minute books of stockholders, directors' and directors' committee meetings.	50 years.
(c) Minutes of meetings of system committees	6 years after close of fiscal year.
(d) Organization diagrams and charts	Destroy at option after expiration or supersession.
(e) Permits or Licenses:	
(1) Permits or licenses to conduct any part of the company's business	6 years after expiration.
(2) Permits or licenses for vehicles or equipment, or for other activities in the ordinary course of business.	Destroy at option after expiration and audit.
5. Contracts and Agreements:	
(a) Contracts and agreements entered into by the company for the procurement of services, such as management, consulting, accounting, legal, financial or engineering services.	6 years after cancellation or expiration.
(b) Contracts or agreements with individual employees, labor unions and other employee organizations relative to wage rates, hours, and similar matters.	6 years after expiration of contract.
(c) Memoranda essential to clarify or explain provisions of contracts and agreements.	For same period as contract to which they relate.
(d) Card or book records of contracts or agreements showing renewal or expiration of same and records of performance.	For same peirod as contract to which they relate.
ACCOUNTING	
6. Books of Account:	
(a) General and subsidiary ledgers	50 years.
(b) Trial balance sheets of general and subsidiary ledgers or equivalent records.	Destroy at option after audit.
(c) Journals: General and subsidiary journals or ledgers of original entry	50 yerars.
(d) Cash books: General and subsidiary or auxillary books	6 years.
(e) Voucher registers: Voucher registers or similar records	6 years.
7. Journal Vouchers and Other Papers Supporting Entries:	
(a) Vouchers supporting general and subsidiary journal entries and papers forming part of or necessary to support and explain vouchers relating to:	
(1) Organization, fixed assets, investments, issuance of capital stock, funded debt, and related accounts.	50 years, except for supporting documents included in Item 4(a)(2), or Items 8, 18 or 19.
(2) All other accounts	6 years after settlement.
(b) Schedules for recurring journal entries	6 years after settlement. Destroy when superseded if not a part of a journal entry in which event Item 6(c) applies.

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

Description of records	Retention period
(c) Lists of standard journal entry numbers	Destroy when superseded.
(d) Material and supplies disbursement and labor distribution records	6 years.
8. Vouchers Evidencing Disbursements:	
(a) Paid and cancelled vouchers, including analysis sheets showing detailed distribution of charges on individual vouichers and other supporting papers.	6 years.
(b) Original bills and invoices for materials, services, etc., paid by vouchers.	6 years.
(c) Authorization for the payment of specific vouchers	6 years.
(d) Lists of unaudited bills (accounts payable), lists of vouchers transmitted and memoranda recording changes in unaudited bills.	6 years.
(e) Voucher indices	Destroy at option.
(f) Paid checks other than interest dividend and payroll checks. (See Item 1(k) for interest and dividend checks and Item 16(d) for payroll checks.	6 years.
(g) Purchases and stores records related to disbursement vouchers	6 years.
9. Accounts Receivable:	
(a) Records of all accounts receivable, indices to accounts receivable and summaries of distribution of such accounts.	3 years after settlement.
(b) Accounting department copies of invoices issued and supporting papers which do not accompany the original invoices and authorizations for charges including supporting papers.	3 years after settlement.
INSURANCE AND TAXES	
10. Insurance Records:	
(a) Records of insurance policies in force showing coverage, premiums paid and expiration dates.	Destroy at option after expiration of such policies but not less than 6 years.
(b) Insurance policies	Destroy at option after expiration of such policies but not less than 6 years.
(c) Records of self-insurance against (1) losses from fire and casualty, (2) damage to property of others, and (3) personal injuries.	6 years after date of last accounting entry with respect thereto.
(d) Records of amounts recovered from insurance companies in connection with losses and records of claims against insurance companies including reports of losses and supporting papers.	6 years after settlement.
(e) Inspectors' reports and reports of condition of property	Destroy when superseded.
(f) Reports of losses not covered by insurance	Destroy at option after audit.
(g) Insurance maps of property and structures erected thereon	Destroy when superseded.
(h) Records and statements relating to insurance requirements	Destroy at option.
11. Injuries and Damages:	
(a) Claim registers, card or book indices and similar records in connection with accidents resulting in damage to the property of others or personal injuries.	Destroy at option after settlement and audit.
(b) Detailed schedules or spread sheets of payments to others for personal injuries or for property damage.	Destroy at option after settlement and audit.
12. Tax Records:	
(a) Copies of schedules, returns and supporting working papers to taxing authorities and records of appeals:	
(1) Federal income taxes	6 years after settlement.
(2) Agreements between and schedule of allocation by associate companies of consolidated federal income taxes.	6 years after settlement.
(3) Other taxes, including state or local property or income taxes	Destroy at option after settlement and audit.
(b) Tax bills from taxing authorities and receipts for payment	3 years after settlement.
(c) Summaries of taxes paid by classes of taxes, location, or taxing authority.	6 years.
TREASURY	
13. Statements of Funds and Deposits:	
(a) Summaries and periodic statements of cash balances on hand and with depositories for company or associate.	Destroy at option.
(b) Requisitions and receipts for funds furnished associates and others	Destroy at option after funds have been returned or accounted for.
(c) Records of fidelity bonds of employees and others responsible for funds of the company.	Destroy at option after liability of bonding company has expired.
14. Records of Deposits with Banks and Others:	
(a) Bank deposit slips or similar records, including authorizations for and statements of transfers of funds from one depository to another.	Destroy at option after audit.
(b) Statements from depositories showing the details of funds received, disbursed, and transferred and balances on deposit.	Destroy at option after audit.
(c) Bank reconcilement papers	Destroy at option after audit.

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

Description of records	Retention period
(d) Statements from banks of interest credits	Destroy at option after audit.
(e) Check registers or other records of checks issued, including correspondence.	6 years.
15. Records of Receipts and Disbursements:	
(a) Daily or other periodic statement or receipts or disbursements of funds.	Destroy at option after audit.
(b) Records of periodic statements of outstanding vouchers, checks, drafts, etc., issued and not presented.	Destroy at option after audit.
(c) Reports of associates showing working fund transactions and summaries thereof.	Destroy at option after audit.
PAYROLL AND PERSONNEL RECORDS	
16. Payroll Records:	
(a) Payroll sheets or registers of payments of salaries and wages, pensions and annuities paid by company or by contractors of its account.	6 years.
(b) Records showing the distribution of salaries and wages paid for each payrll period and summaries or recapitulations of such distribution.	6 years.
(c) Time tickets, timesheets, timecards, workmen's reports, and other records showing hours worked, description of work, and accounts to be changed.	Destroyed at option if the basic information contained thereon is transferred to work orders or other records.
(d) Paid checks, receipts for wages paid in cash and other evidences of payment.	3 years.
(e) Authorizations for changes in wage and salary rates, summaries and reports of changes in payrolls and similar records.	6 years.
(f) Payroll authorizations, records of authorized positions, and terminations.	6 years.
(g) Comparative or analytical statements of payroll	6 years.
17. Personnel and Employee Benefit Records:	
(a) Records of employees' service, and rates of compensation	3 years after termination of employment.
(b) Detailed records of company's computation for its contribution, plus a copy of plan.	6 years after termination of pension or annuity plan.
(c) Records pertaining to employees' benefit programs, including pension and profit sharing plans.	6 years after termination of program.
(d) Bulletins or memoranda of general instructions issued by the company to employees pertaining to accounting, engineering, maintenance and construction methods and policies.	3 years after expiration or supersession.
PROPERTY, DEPRECIATION AND INVESTMENTS	
18. Property Records, excluding documents included in Item 4(a)(2):	
(a) Land and land rights records	6 years after disposition.
(b) Building, permanent facilities and leasehold investment records	3 years after disposition, termination of lease, or write-off of property or investment.
(c) Operating equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(d) Office furniture and equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(e) Automobiles, other vehicles and related garage equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(f) Aircraft and airport equipment records	3 years after disposition, termination of lease or write-off of property or investment.
(g) Other property records not defined elsewhere	3 years after disposition, termination of lease or write-off of property or investment.
(h) Construction work in progress records, income ledgers, work order sheets, authorizations for expenditures, requisitions, performance reports and analysis or cost reports.	10 years after clearance to property accounts.
(i) Depreciation and amortization of property records	Destroy at option after expiration of retention period as described for respective type of property records in 18(a) through 18(g).
19. Investment Records:	
(a) Records of investment in associate companies	3 years after disposition of investment.
(b) Records of other investments, including temporary investments of cash.	3 years after disposition of investment.
20. Appraisals and valuations made by the company of its properties or investments or of the properties or investments of any associated companies.	3 years after disposition, termination of lease or write-off of property or investment.

SCHEDULE OF RECORDS RETENTION PERIODS—Continued

Description of records	Retention period
WORK ORDER AND JOB ORDER RECORDS	
21. Work order and job order records including authorization documents, estimated cost memoranda, work order sheets for posting labor, material and other services, and summaries of expenditures for clearance to other accounts.	6 years after completion of work order.
22. Production maps, geological maps, reproductions, including aerial photographs, showing the location of all facilities the subject matter of which falls within the work orders of the company.	6 years after completion of work order.
23. Engineering records, drawings, supporting data to include diagrams, profiles, photographs, field-survey notes, plot plans, detail drawings, and records of engineering studies that are part of or performed by the company within the work order system.	6 years after completion of work order.
24. Records of building space occupied by various departments of the company.	6 years.
AUDIT, BUDGET AND STATISTICAL REPORTS	
25. Financial, Operating, and Statistical Reports not subject to Item 3(b)(1):	
(a) Reports of examinations and audits by accountants and auditors not in the regular employ of the Company. (Including reports of public accounting firms and regulatory commission accountants.)	6 years after date of report.
(b) Internal audit reports and working papers	6 years after date of report.
(c) Annual reports regularly prepared in the course of business for internal administrative or operating purposes.	6 years after date of report.
(d) Quarterly, monthly or other periodic reports	Destroy at option after audit.
26. Budgets and other forecasts (prepared for internal administrative or operating purposes) of estimated future income, receipts and expenditures in connection with financing, construction and operations and acquisitions or disposals of properties or investments by the company and its associated companies, including revisions of such estimates and memoranda showing reasons for revisions; also records showing comparison of actual income and receipts and expenditures with estimates.	6 years.
27. Other Miscellaneous Records:	
(a) Copies of advertisements by the company on behalf of itself or any associate company in newspapers, magazines and other publications including records thereof. (Excluding advertising of product, appliances, employment opportunities, services, territory, routine notices and invitations for bids for securities, all of which may be destroyed at option.)	6 years after date of publication.
(b) Indices of forms used by the company	Destroy at option when superseded.

(Approved by the Office of Management and Budget under control number 3235–0306)

(Secs. 15 and 20(a); Public Utility Holding Company Act of 1935, and § 250.26(d) and § 250.93 of title 17 CFR)
[49 FR 27310, July 3, 1984]

PART 259—FORMS PRESCRIBED UNDER THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

Sec.
259.0–1 Availability of forms.

Subpart A—Forms for Registration and Annual Supplements

259.5a Form U5A, for notification of registration filed under section 5(a) of the Act.
259.5b Form U5B, for registration statement filed under section 5(b) of the Act.
259.5s Form U5S, for annual reports filed under section 5(c) of the Act.

Subpart B—Forms for Applications and Declarations

259.101 Form U–1, application or declaration under the Public Utility Holding Company Act of 1935.
259.113 Form U–13–1, for applications for approval of mutual service companies pursuant to Rule 88 (§ 250.88 of this chapter).

Subpart C—Forms for Statements and Reports

259.206 Form U–6B–2, for notification of security issues exempt under section 6(b) of the Act.

259.207 Form U–57, for notification of foreign utility company status pursuant to Rule 57(a) (§ 250.57 of this chapter).
259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).
259.212a Form U–12(I)–A, for statement of activity within scope of section 12(i) of the Act, pursuant to Rule 71(a) (§ 250.71(a) of this chapter).
259.212b Form U–12(I)–B, for advance statement of activity within scope of section 12(i) of the Act pursuant to Rule 71(b) (§ 250.71(b) of this chapter).
259.213 Form U–13E–1, for report by affiliate companies and independent service companies pursuant to Rule 95 (§ 250.95 of this chapter).
259.221 Form U–R–1, for solicitations pursuant to Rule 62 (§ 250.62 of this chapter), in connection with reorganizations.

Subpart D—Forms for Periodic Accounting Reports

259.313 Form U–13–60, for annual reports pursuant to Rule 94 (§ 250.94 of this chapter) by mutual and subsidiary service companies required by section 13 of the Act.

Subpart E—Forms for Statements and Reports From Nonregistered (Exempt) Companies

259.402 Form U–3A–2, for annual reports pursuant to Rule 2 (§ 250.2 of this chapter) for exempt holding companies which are intrastate or predominantly operating companies.
259.403 Form U–3A3–1, for annual reports pursuant to Rule 3 (§ 250.3 of this chapter) for banks which are exempt holding companies.
259.404 Certificate to be filed pursuant to § 250.7(d) of this chapter.
259.405 Form U–33–S, for annual reports pursuant to Rule 57(b) (§ 250.57 of this chapter).

Subpart F—Forms for Amendments [Reserved]

Subpart G—Forms for Electronic Filing

259.601 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.
259.602 Form ID, uniform application for access codes to file on EDGAR.
259.603 Form SE, form for submission of paper format exhibits by electronic filers.
259.604 Form TH—Notification of reliance on temporary hardship exemption.

AUTHORITY: 15 U.S.C. 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t.

SOURCE: 33 FR 19001, Dec. 20, 1968, unless otherwise noted.

§ 259.0–1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Public Utility Holding Company Act of 1935.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of SEC regional and district offices)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5946, Feb. 9, 1994]

Subpart A—Forms for Registration and Annual Supplements

§ 259.5a Form U5A, for notification of registration filed under section 5(a) of the Act.

This form shall be filed pursuant to Rule 1(a) (§ 250.1(a) of this chapter) for the notification required under section 5(a) of the Public Utility Holding Company Act of 1935 by every public utility holding company required to register under the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U5A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.5b Form U5B, for registration statement filed under section 5(b) of the Act.

This form shall be filed pursuant to Rule 1(b) (§ 250.1(b) of this chapter) for the registration statement required to be filed under section 5(b) of the Act by every public utility holding company required to register under the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U5B, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.5s Form U5S, for annual reports filed under section 5(c) of the Act.

This form shall be filed pursuant to Rule 1(c) (§ 250.1(c) of this chapter) for the annual report required to be filed under section 14 of the Act by every registered public utility holding company.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U5S, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart B—Forms for Applications and Declarations

§ 259.101 Form U–1, application or declaration under the Public Utility Holding Company Act of 1935.

This form shall be used pursuant to Rule 20(c) (§ 250.20(c) of this chapter) by any person filing an application or declaration or amendment thereto pursuant to sections 6(b), 7, 9(c)(3), 10, 12(b), (c), (d), or (f) of the Public Utility Holding Company Act of 1935 or any rules and regulations under such sections, where no other form is authorized or prescribed.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.113 Form U–13–1, for applications for approval of mutual service companies pursuant to Rule 88 (§ 250.88 of this chapter).

This form shall be filed pursuant to Rule 88 (§ 250.88 of this chapter) for approval of a company as a mutual service company, by the company or person proposing to organize it under section 13 of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–13–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart C—Forms for Statements and Reports

§ 259.206 Form U–6B–2, for notification of security issues exempt under section 6(b) of the Act.

This form shall be filed pursuant to section 6(b) of the Act as the certificate of notification of the issue, sale, renewal, or guaranty of securities exempted from the application of section 6(a) of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–6B–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.207 Form U–57, for notification of foreign utility company status pursuant to Rule 57(a) (§ 250.57 of this chapter).

This form shall be filed pursuant to section 33(a)(3)(B) of the Act by a company claiming foreign utility company status.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–57, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.208 Form U–9C–3, for notification of acquisition of securities exempt from section 9(a) pursuant to rule 58 (§ 250.58 of this chapter).

This form shall be filed pursuant to § 250.58(c) as the certificate of notification of an acquisition of securities exempted from the application of section 9(a) of the Act (15 U.S.C. 79a *et seq.*) pursuant to § 250.58.

[62 FR 7917, Feb. 20, 1997]

§ 259.212a Form U–12(I)–A, for statement of activity within scope of section 12(i) of the Act pursuant to Rule 71(a) (§ 250.71(a) of this chapter).

This form shall be filed pursuant to Rule 71(a) (§ 250.71(a) of this chapter) by any person who engages in any activity within the scope of section 12(i) of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–12(I)–A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.212b Form U–12(I)–B, for advance statement of activity within scope of section 12(i) of the Act pursuant to Rule 71(b) (§ 250.71(b) of this chapter).

This form may be filed as an advance statement pursuant to Rule 71(b) (§ 250.71(b) of this chapter) by certain persons designated therein covering anticipated activity within the scope of section 12(i) of the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–12(I)–B, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.213 Form U–13E–1, for report by affiliate companies and independent service companies pursuant to Rule 95 (§ 250.95 of this chapter).

This form shall be filed pursuant to Rule 95 (§ 250.95 of this chapter) by an affiliate of a registered public utility holding company or subsidiary company thereof in connection with the performance of any service, construction or sale of goods to an affiliate.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–13E–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.221 Form U–R–1, for solicitations pursuant to Rule 62 (§ 250.62 of this chapter), in connection with reorganizations.

This form shall be filed for the declaration pursuant to Rule 62 (§ 250.62 of this chapter) for solicitations in connection with any reorganization subject to the rule.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–R–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart D—Forms for Periodic Accounting Reports

§ 259.313 Form U–13–60, for annual reports pursuant to Rule 94 (§ 250.94 of this chapter) by mutual and subsidiary service companies required by section 13 of the Act.

This form shall be filed pursuant to Rule 94 (§ 250.94 of this chapter) by every mutual service company and every subsidiary service company required thereunder to file annual reports under section 13 of the Act. (See uniform system of accounts for mutual and subsidiary service companies, Part 256 of this chapter.)

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–13–60, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart E—Forms for Statements and Reports From Nonregistered (Exempt) Companies

§ 259.402 Form U–3A–2, for annual reports pursuant to Rule 2 (§ 250.2 of this chapter) for exempt holding companies which are intrastate or predominantly operating companies.

This form shall be filed as the annual report under Rule 2 (§ 250.2 of this chapter) by every public utility holding company claiming exemption under section 3 of the Act as an intrastate or predominantly operating company.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–3A–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.403 Form U–3A3–1, for annual reports pursuant to Rule 3 (§ 250.3 of this chapter) for banks which are exempt holding companies.

This form shall be filed pursuant to paragraph (c) of Rule 3 (§ 250.3(c) of this chapter) by any bank claiming exemption from any obligation, duty or liability as a holding company under the Act.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–3A3–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.404 Certificate to be filed pursuant to § 250.7(d) of this chapter.

This form must be filed with the Commission by any lessor or beneficial owner of a utility facility which has been leased by it to an operating public utility company, within 30 days after execution of the lease, if any beneficial owner of such facility seeks exclusion from the status of an electric or gas utility company under the Act pursuant to § 250.7(d) of this chapter.

[38 FR 16999, June 28, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–7D, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.405 Form U–33–S, for annual reports pursuant to Rule 57(b) (§ 250.57 of this chapter).

This form shall be filed by a public utility company that is an associate of

one or more foreign utility companies, unless such public-utility company is an associate of a registered holding company, or of a holding company exempt from registration under § 250.2 of this chapter.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form U–33–S, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart F—Forms for Amendments [Reserved]

Subpart G—Forms for Electronic Filing

§ 259.601 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.

This form shall accompany electronic filings submitted on magnetic tape or diskette under the EDGAR system.

[57 FR 18219, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ET, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.602 Form ID, uniform application for access codes to file on EDGAR.

(a) Form ID is to be used by registrants, third party filers, or their agents for the purpose of requesting assignment of access codes to permit filing on EDGAR, as follows:

(1) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(2) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(3) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(4) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

(b) Form ID also may be used for the purpose of requesting a reassignment of their CCC, PW and PMAC.

[57 FR 18219, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ID, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.603 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in rule 311 of Regulation S–T (§ 232.311 of this chapter).

[58 FR 15007, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 259.604 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by rule 201(a) of Regulation S–T (§ 232.201(a) of this chapter).

[58 FR 15007, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TH, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

TERMS USED IN THE RULES AND REGULATIONS

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260.0–1 Application of definitions contained in the act.
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260.0–4 Sequential numbering of documents filed with the Commission.

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260.0–5 Business hours of the Commission.
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RULES UNDER SECTION 303

260.3 (4)–1 Definition of ''commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions'' in section 303(4), for certain transactions.
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260.4c–1 Form for applications under section 304(c).
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260.5a–1 Forms for statements of eligibility and qualification.
260.5a–2 General requirements as to form and content of statements of eligibility and qualification.
260.5a–3 Number of copies; filing; signatures; binding.
260.5b–1 Application pursuant to section 305(b)(2) of the Trust Indenture Act for determining eligibility of a person designated as trustee for offerings on a delayed basis.
260.5b–2 General requirements as to form and content of applications.
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APPLICATIONS FOR QUALIFICATION OF INDENTURES

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260.7a–3 Number of copies; filing; signatures; binding.
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260.7a–7 Effective date of amendment filed under section 8(a) of the Securities Act with the consent of the Commission.
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260.7a–9 Delaying amendments.
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GENERAL REQUIREMENTS AS TO FORM AND CONTENT OF APPLICATIONS, STATEMENTS AND REPORTS

GENERAL

260.7a–15 Scope of §§ 260.7a–15 to 260.7a–37.

FORMAL REQUIREMENTS

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INCORPORATION BY REFERENCE

260.7a–28 Incorporation of matter in application, statement or report, other than exhibits, as answer to item.
260.7a–29 Incorporation of exhibits as such.
260.7a–30 Identification of material incorporated; form of incorporation.
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EXHIBITS

260.7a–33 Additional exhibits.
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AMENDMENTS

260.7a–35 Formal requirements as to amendments.
260.7a–36 Signatures to amendments.

INSPECTION AND PUBLICATION OF APPLICATIONS, STATEMENTS AND REPORTS

260.7a–37 Inspection of applications, statements and reports.

RULES UNDER SECTION 310

260.10a–1 Application for determining eligibility of a foreign person to act as sole trustee pursuant to section 310(a)(1) of the Act.
260.10a–2 General requirements as to form and content of applications.
260.10a–3 Number of copies—Filing—Signatures.
260.10a–4 Consent of trustee to service of process.
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260.10b–1 Calculation of percentages.
260.10b–2 Applications under section 310(b)(1)(ii).
260.10b–3 Applications relative to affiliations between trustees and underwriters.
260.10b–4 Application for stay of trustee's duty to resign pursuant to section 310(b) of the Act.
260.10b–5 Content.
260.10b–6 Notices—Exemptive Application Procedure.

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260.11b–4 Definition of ''cash transaction'' in section 311(b)(4).
260.11b–6 Definition of ''self-liquidating paper'' in section 311(b)(6).

RULES UNDER SECTION 314

PERIODIC REPORTS

260.14a–1 Application of §§260.7a–15 to 260.7a–38.

AUTHORITY: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

SOURCE: 5 FR 293, Jan. 25, 1940, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes to this part see 57 FR 36501, Aug. 13, 1992, and 57 FR 47409, Oct. 16, 1992.

NOTE: In §§260.0–1 to 260.14a–1 the numbers to the right of the decimal point correspond with the respective rule number of the general rules and regulations under the Trust Indenture Act of 1939.

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

TERMS USED IN THE RULES AND REGULATIONS

§ 260.0–1 Application of definitions contained in the act.

Unless the context otherwise requires, the terms defined in the act shall, when used in the rules and regulations, have the respective meanings given in the act.

§ 260.0–2 Definitions of terms used in the rules and regulations.

Unless the context otherwise requires, the following terms, when used in this part, shall have the respective meanings indicated in this section:

(a) *Act*. The term ''act'' means the Trust Indenture Act of 1939. (53 Stat. 1149; 15 U.S.C. 77aaa)

(b) *Affiliate*. The term ''affiliate'' means a person controlling, controlled by, or under common control with, another person. The terms ''affiliated'' and ''affiliation'' have meanings correlative to the foregoing.

(c) *Agent for service*. The term ''agent for service'' means the person authorized to receive notices and communications from the Commission.

(d) *Amount*. The term ''amount'' when used in regard to securities, shall have the meaning given in §260.10b–1(c).

(e) *Class*. The term ''class'', when used in regard to securities, shall have the meaning given in §260.10b–1(e).

(f) *Control*. The term ''control'' means the power to direct the management and policies of a person, directly or through one or more intermediaries, whether through the ownership of voting securities, by contract, or otherwise. The terms ''controlling'' and ''controlled'' have meanings correlative to the foregoing. (See §260.a–26.)

(g) *Electronic filer*. The term *electronic filer* means a person or an entity that submits filings electronically pursuant to Rules 100 and 101 of Regulation S–T (§§232.100 and 232.101 of this chapter, respectively).

(h) *Electronic filing*. The term *electronic filing* means a document under the federal securities laws that is transmitted or delivered to the Commission in electronic format.

(i) *Outstanding*. The term ''outstanding'', when used in regard to securities,

shall have the meaning given in § 260.10b–1(d).

(j) *Parent*. The term ''parent'' means a person controlling one or more other persons.

(k) *Rules and regulations*. The term ''rules and regulations'' means all rules and regulations adopted by the Commission pursuant to the act, including the forms and instructions thereto.

(l) *Section*. The term ''section'' means a section of the act.[1]

(m) *Subsidiary*. The term ''subsidiary'' means a person controlled by another person.

[5 FR 293, Jan. 25, 1940, as amended at 58 FR 14686, Mar. 18, 1993; 62 FR 36459, July 8, 1997]

§ 260.0–3 Definition of "rules and regulations" as used in certain sections of the Act.

(a) The term *rules and regulations* as used in section 305 of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto, and the forms for information, documents and statements under section 305 of the Act.

(b) The term *rules and regulations* as used in section 307 of the Act shall include the forms for applications under section 307 of the Act and the related instructions thereto.

[21 FR 1046, Feb. 15, 1956]

§ 260.0–4 Sequential numbering of documents filed with the Commission.

The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Trust Indenture Act of 1939 shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

[1] References to ''this section'' or to section number preceded by a section symbol are to sections in the Code of Federal Regulations.

(15 U.S.C. 77s (48 Stat. 85); 15 U.S.C. 78w (48 Stat. 901); 15 U.S.C. 79c and 79t (49 Stat. 810, 833); 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss (53 Stat. 1154, 1156, 1167, 1173); 15 U.S.C. 80w–37, 80c–39 (54 Stat. 841, 842); 15 U.S.C. 80b–3, 80b–4, 80b–11 (54 Stat. 850, 852, 855))

[44 FR 4666, Jan. 23, 1979]

OFFICE OF THE COMMISSION

§ 260.0–5 Business hours of the Commission.

(a) *General*. The principal office of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, except Saturdays, Sundays and federal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, *provided that* the hours for the filing of documents with the Commission are as set forth in paragraphs (b) and (c) of this section.

(b) *Submissions made in paper or on magnetic tape or diskette*. Paper documents filed with or otherwise furnished to the Commission, as well as electronic filings and submissions on magnetic tape or diskette under cover of Form ET (§§ 239.62, 249.445, 259.601, 269.6 and 274.401 of this chapter), may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

(c) *Electronic filings*. Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays and federal holidays, from 8 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

[58 FR 14687, Mar. 18, 1993]

§ 260.0–6 Nondisclosure of information obtained in the course of examinations and investigations.

Information or documents obtained by officers or employees of the Commission in the course of any examination or investigation under section 8(e) of the Securities Act of 1933 (48 Stat. 79; 15 U.S.C. 77h), pursuant to section 307(c) of the Trust Indenture Act of 1939 (53 Stat. 1156; 15 U.S.C. 77ggg), or any examination or investigation under

section 20(a) of the Securities Act of 1933 (48 Stat. 86; 15 U.S.C. 77t), pursuant to section 321(a) of the Trust Indenture Act of 1939 (53 Stat. 1174; 15 U.S.C. 77uuu), shall, unless made a matter of public record, be deemed confidential. Except as provided by 17 CFR 203.2, officers and employees are hereby prohibited from making such confidential information or documents or any other non-public records of the Commission available to anyone other than a member, officer or employee of the Commission, unless the Commission or the General Counsel, pursuant to delegated authority, authorizes the disclosure of such information or the production of such documents as not being contrary to the public interest. Any officer or employee who is served with a subpoena requiring the disclosure of such information or the production of such documents shall appear in court and, unless the authorization described in the preceding sentence shall have been given, shall respectfully decline to disclose the information or produce the documents called for, basing his or her refusal upon this section. Any officer or employee who is served with such a subpoena shall promptly advise the General Counsel of the service of such subpoena, the nature of the information or documents sought, and any circumstances which may bear upon the desirability of making available such information or documents.

(Sec. 19, 48 Stat. 85; sec. 20, 48 Stat. 86; sec. 21, 48 Stat. 899; sec. 23, 48 Stat. 901; sec. 18, 49 Stat. 831; sec. 20, 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 321, 53 Stat. 1174; sec. 38, 54 Stat. 841; sec. 42, 54 Stat. 842; sec. 209, 54 Stat. 853; sec. 211, 54 Stat. 855; sec. 1, 76 Stat. 394. (15 U.S.C. 77s, 77t, 78u, 78w, 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 89b–11, 78d–1))

[44 FR 50836, Aug. 30, 1979, as amended at 53 FR 17459, May 17, 1988; 54 FR 33501, Aug. 15, 1989]

§ 260.0–7 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term ''small business'' or ''small organization,'' for purposes of the Trust Indenture Act of 1939 shall mean an issuer whose total assets on the last day of its most recent fiscal year were $5 million or less that is engaged or proposing to engage in small business financing. An issuer is considered to be engaged or proposing to be engaged in small business financing under this section if it is conducting or proposing to conduct an offering of securities which does not exceed the dollar limitation prescribed by § 260.4a–2.

[47 FR 5223, Feb. 4, 1982, as amended at 51 FR 25362, July 14, 1986]

§ 260.0–11 Liability for certain statements by issuers.

(a) A statement within the coverage of paragraph (b) below which is made by or on behalf of an issuer or by an outside reviewer retained by the issuer shall be deemed not to be a fraudulent statement (as defined in paragraph (d) of this section), unless it is shown that such statement was made or reaffirmed without a reasonable basis or was disclosed other than in good faith.

(b) This rule applies to the following statements:

(1) A forward-looking statement (as defined in paragraph (c) of this section) made in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, § 249.308a of this chapter, or in an annual report to share-holders meeting the requirements of Rules 14a–3(b) and (c) or 14c–3(a) and (b) under the Securities Exchange Act of 1934, a statement reaffirming such forward-looking statement subsequent to the date the document was filed or the annual report was made publicly available, or a forward-looking statement made prior to the date the document was filed or the date the annual report was made publicly available if such statement is reaffirmed in a filed document, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, or in an annual report made publicly available within a reasonable time after the making of such forward-looking statement; *Provided*, That:

(i) At the time such statements are made or reaffirmed, either the issuer is subject to the reporting requirements

of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and has complied with the requirements of Rule 13a–1 or 15d–1 thereunder, if applicable, to file its most recent annual report on Form 10–K and Form 10–KSB or Form 20–F or Form 40–F; or if the issuer is not subject to the reporting requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934, the statements are made in a registration statement filed under the Securities Act of 1933 or pursuant to section 12(b) or (g) of the Securities Exchange Act of 1934, and

(ii) The statements are not made by or on behalf of an issuer that is an investment company registered under the Investment Company Act of 1940; and

(2) Information relating to the effects of changing prices on the business enterprise presented voluntarily or pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter) or Item 9 of Form 20–F (§ 249.220f of this chapter), management's discussion and analysis of financial condition and results of operations, or Item 302 of Regulation S–K (§ 229.302 of this chapter), supplementary financial information, or Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter), and disclosed in a document filed with the Commission, in Part I of a quarterly report on Form 10–Q and Form 10–QSB, or in an annual report to shareholders meeting the requirements of Rules 14a–3 (b) and (c) or 14c–3 (a) and (b) under the Securities Exchange Act of 1934.

(c) For the purpose of this rule, the term *forward-looking statement* shall mean and shall be limited to:

(1) A statement containing a projection of revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure or other financial items;

(2) A statement of management's plans and objectives for future operations;

(3) A statement of future economic performance contained in management's discussion and analysis of financial condition and results of operations included pursuant to Item 303 of Regulation S–K (§ 229.303 of this chapter) or Item 9 of Form 20–F; or

(4) Disclosed statements of the assumptions underlying or relating to any of the statements described in paragraphs (c) (1), (2), or (3) of this section.

(d) For the purpose of this rule the term *fraudulent statement* shall mean a statement which is an untrue statement of a material fact, a statement false or misleading with respect to any material fact, an omission to state a material fact necessary to make a statement not misleading, or which constitutes the employment of a manipulative, deceptive, or fraudulent device, contrivance, scheme, transaction, act, practice, course of business, or an artifice to defraud, as those terms are used in the Trust Indenture Act of 1939 and other acts referred to in section 323(b) thereof or the rules or regulations promulgated thereunder.

[46 FR 19458, Mar. 31, 1981, as amended at 47 FR 54790, Dec. 26, 1982; 56 FR 30077, July 1, 1991]

RULES UNDER SECTION 303

§ 260.3(4)–1 Definition of "commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commissions" in section 303(4), for certain transactions.

(a) The term *commission* in section 303(4) shall include such remuneration, commonly known as a spread, as may be received by a distributor or dealer as a consequence of reselling securities bought from an underwriter or dealer at a price below the offering price of such securities, where such resales afford the distributor or dealer a margin of profit not in excess of what is usual and customary in such transactions.

(b) The term *commission from an underwriter or dealer* in section 303(4) shall include commissions paid by an underwriter or dealer affiliated with the issuer.

(c) The term *usual and customary distributors' or sellers' commission* in section 303(4) shall mean a commission or remuneration, commonly known as a spread, paid to or received by any person selling securities either for his own account or for the account of others, which is not in excess of the amount usual and customary in the distribution and sale of issues of similar type

and size, and not in excess of the amount allowed to other persons, if any, for comparable service in the distribution of the particular issue; but such term shall not include amounts paid to any person whose function is the management of the distribution of all of a substantial part of the particular issue, or who performs the functions normally performed by an underwriter or underwriting syndicate.

§ 260.3(4)–2 Definition of "distribution" in section 303(4) for certain transactions.

A person, the chief part of the business of which consists in the purchase of the securities of any one issuer and/or its affiliate and in the sale of its own securities to furnish the proceeds with which to acquire the securities of such issuer and/or affiliate, is to be regarded as engaged in the distribution of the securities of such issuer and/or affiliate within the meaning of section 303(4).

§ 260.3(4)–3 Definitions of "participates" and "participation" as used in section 303(4), in relation to certain transactions.

(a) The terms *participates* and *participation* in section 303(4) shall not include the interest of a person (1) who is neither in privity of contract with the issuer nor affiliated with the issuer, and (2) who has no association with any principal underwriter of the securities being distributed, and (3) whose function in the distribution is confined to an undertaking to purchase all or some specified proportion of the securities remaining unsold after the lapse of some specified period of time, and (4) who purchases such securities for investment and not with a view to distribution.

(b) As used in this section:

(1) The term *association* shall include a relationship between two persons under which one (i) is affiliated with the other, or (ii) has, in common with the other, one or more partners, directors, officers, trustees, branch managers, or other persons occupying a similar status or performing similar functions or (iii) has a participation, direct or indirect, in the profits of the other, or has a financial stake, by debtor-or-creditor relationship, stock ownership, contract or otherwise, in the income or business of the other.

(2) The term *principal underwriter* means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

RULES UNDER SECTION 304

§ 260.4a–1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been or will be issued otherwise than under an indenture. The same issuer may not claim this exemption within a period of twelve consecutive months for more than $5,000,000 aggregate principal amount of any securities.

[57 FR 36501, Aug. 13, 1992]

§ 260.4a–2 Exempted securities under section 304(d).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security that has been issued or will be issued in accordance with the provisions of Regulation A (17 CFR 230.251 *et seq.*) under the Securities Act of 1933.

[57 FR 36501, Aug. 13, 1992]

§ 260.4a–3 Exempted securities under section 304(a)(9).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $10,000,000 or less, but this exemption shall not be applied within a period of thirty–six consecutive months to more than $10,000,000 aggregate principal amount of securities of the same issuer.

(Secs. 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939, (sec. 302, Pub. L. 96–477; secs. 304(a)(8), 304(a)(9), 53 Stat. 1153; 15 U.S.C. 77ddd(a)(8), 77ddd(a)(9)))

[46 FR 63256, Dec. 31, 1981. Redesignated and amended at 57 FR 36501, Aug. 13, 1992]

§ 260.4c–1 Form for applications under section 304(c).

Form T–4 shall be used for applications for exemption filed pursuant to section 304(c) of the act.

[6 FR 981, Feb. 15, 1941]

§ 260.4c–2 General requirements as to form and content of applications.

Sections 260.7a–15 to 260.7a–38 shall be applicable to applications on Form T–4.

[6 FR 981, Feb. 15, 1941]

§ 260.4c–3 Number of copies; filing; signatures; binding.

(a) Three copies of every application and of every amendment thereto shall be filed with the Commission at its principal office.

(b) At least the original of each application or amendment filed with the Commission shall be signed in the manner prescribed by Form T–4 (§ 269.4 of this chapter).

(c) The application proper and the exhibits thereto shall be bound on the left side in one or more parts, but without stiff covers.

[16 FR 8737, Aug. 29, 1951]

§ 260.4c–4 Applications under section 304(c)(1).

(a) An applicant under section 304(c)(1) may, if it so desires, waive a hearing and request the Commission to decide the application without a formal hearing on the basis of the application and such other information and documents as the Commission shall designate as a part of the record. However, a hearing may be called upon order of the Commission notwithstanding that the applicant shall have filed such a waiver and request whenever, in the judgment of the Commission, such a hearing is necessary or appropriate in the public interest.

(b) If the applicant waives a hearing and requests the Commission to decide the application without a hearing and if no hearing has been ordered by the Commission:

(1) The applicant shall, at the request of the Commission, furnish such additional information or documents as the Commission may deem necessary to decide the application.

(2) The Commission may, with the consent of the applicant, make a part of the record any pertinent information or documents filed with the Commission by the applicant or by any other person.

(3) The Commission shall, in its order deciding the application, designate and describe the information and documents comprising the record on which the decision is based.

[6 FR 981, Feb. 15, 1941]

§ 260.4c–5 Applications under section 304(c)(2).

A hearing shall be held upon every application filed pursuant to section 304(c)(2).

[6 FR 981, Feb. 15, 1941]

§ 260.4d–7 Application for exemption from one or more provisions of the Act.

(a) Three copies of every application for an order under section 304(d) of the Act (15 U.S.C. 77ddd(d)) and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by a duly authorized officer of the applicant (or individual customarily performing similar functions with respect to an organization, whether incorporated or unincorporated), or by a natural person seeking exemption under section 304(d) of the Act.

(c) Such applications shall be on paper no larger 8½ × 11 inches in size. If reduction of large documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin shall be at least 1½ inches wide and if the application is bound, it shall be bound on the left side.

(d) The application shall be typed, printed, copied, or prepared by a process which produces copies suitable for repeated photocopying and microfilming. All typewritten or printed matter shall be set forth in black ink to permit photocopying. If printed, the application shall be in type not smaller than 10-point, roman type, at least two points leaded.

(e) Rules 7a–28 through 7a–32 (§§ 260.7a–28 through 260.7a–32 of this chapter) relating to incorporation by

reference shall be applicable to applications for exemption pursuant to section 304(d) of the Act.

[56 FR 22319, May 15, 1991]

§ 260.4d–8 Content.

(a) Each application for an order under section 304(d) of the Act (15 U.S.C. 77ddd(d)) shall contain the name, address, and telephone number of each applicant and the name, address, and telephone number of any person to which such applicant wishes any questions regarding the application to be directed.

(b) Each application shall contain a statement of the relevant facts on which the request for relief is based, including a justification for the exemption(s) requested and a discussion of any benefit expected for security holders, trustees and/or obligors.

[56 FR 22319, May 15, 1991]

§ 260.4d–9 Exemption for Canadian Trust Indentures from Specified Provisions of the Act.

Any trust indenture filed in connection with offerings on a registration statement on Form SB–2, [§ 239.10 of this chapter] F–7, F–8, F–9, F–10 or F–80 [§§ 239.37 through 239.41 of this chapter] shall be exempt from the operation of sections 310(a)(3) and 310(a)(4) , sections 310(b) through 316(a), and sections 316(c) through 318(a) of the Act; *provided that* the trust indenture is subject to

(a) The Canada Business Corporations Act, R. S. C. 1985;

(b) The Bank Act, R. S. C. 1985;

(c) The Business Corporations Act, 1982 (Ontario), S. O. 1982; or

(d) The Company Act, R.S.B.C. 1979, C. 59.

[56 FR 30077, July 1, 1991, as amended at 57 FR 36501, Aug. 13, 1992; 58 FR 33190, June 16, 1993]

RULES UNDER SECTION 305

§ 260.5a–1 Forms for statements of eligibility and qualification.

(a) Form T–1 shall be used for statements of eligibility and qualification of corporations designated to act as trustees under trust indentures to be qualified pursuant to section 305 or 307 of the Act.

(b) Form T–2 shall be used for statements of eligibility and qualification of individuals designated to act as trustees under trust indentures to be qualified pursuant to section 305 or 307 of the Act.

§ 260.5a–2 General requirements as to form and content of statements of eligibility and qualification.

Rules 7a–15 through 7a–37 (§§ 260.7a–15 through 260.7a–37 of this chapter) under section 307 under the Trust Indenture Act shall be applicable to statements filed on Forms T–1, T–2, and T–6.

[56 FR 22320, May 15, 1991]

§ 260.5a–3 Number of copies; filing; signatures; binding.

(a) Three copies of each statement of eligibility and qualification shall be filed with the registration statement or application for qualification.

(b) At least the original of each statement of eligibility and qualification filed with the Commission shall be signed in the manner prescribed by the particular form.

(c) Each statement of eligibility and qualification and the exhibits thereto shall be bound on the left-hand side in one or more parts, without stiff covers. The binding shall be made in such manner as to leave the reading matter legible.

(d) The statement or statements shall be filed by the obligor upon the indenture securities as a separate part of the registration statement or application for qualification, as the case may be.

[6 FR 667, Jan. 30, 1941, as amended at 16 FR 8737, Aug. 29, 1951]

§ 260.5b–1 Application pursuant to section 305(b)(2) of the Trust Indenture Act for determining eligibility of a person designated as trustee for offerings on a delayed basis.

Forms T–1 and T–2 (17 CFR 269.1 and 269.2) shall be used for applications filed for the purpose of determining the eligibility under section 310(a) of the Act of a person designated as trustee for debt securities registered under the Securities Act of 1933 which are eligible to be issued, offered, or sold on a

delayed basis by or on behalf of the registrant.

[56 FR 22320, May 15, 1991]

§ 260.5b–2 General requirements as to form and content of applications.

Rule 5a–2 (§ 260.5a–2 of this chapter) and rules 7a–15 through 7a–37 [§§ 260.7a–15 through 260.7a–37 of this chapter] shall be applicable to applications pursuant to rule 5b–1 (§ 260.56b–1 of this chapter).

[56 FR 22320, May 15, 1991]

§ 260.5b–3 Number of copies—Filing—Signatures.

(a) Three copies of every application pursuant to rule 5b–1 (§ 260.5b–1 of this chapter) and of every amendment thereto shall be filed with the Commission at its principal office by the issuer upon the indenture securities. Such application shall be filed no later than the second business day following the initial date of public offering or sales after effectiveness of the registration statement with respect to such securities, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

(b) One copy shall be manually signed by the applicant's duly authorized officer (or individual customarily performing similar functions with respect to any organization, whether incorporated or unincorporated), or by the individual trustee, as applicable.

[56 FR 22320, May 15, 1991]

RULES UNDER SECTION 307

APPLICATIONS FOR QUALIFICATION OF INDENTURES

§ 260.7a–1 Form for application.

Form T–3 shall be used for applications for qualification of indentures pursuant to section 307(a).

§ 260.7a–2 Powers of agent for service named in application.

Every applicant shall be deemed, in the absence of a statement to the contrary, to confer upon the agent for service the following powers:

(a) A power to amend the application for qualification by altering the date of the proposed offering of the indenture securities.

(b) A power to make application pursuant to § 260.7 for the Commission's consent to the filing of an amendment.

(c) A power to withdraw the application for qualification or any amendment thereto.

(d) A power to consent to the entry of an order under section 8(b) of the Securities Act of 1933 (48 Stat. 79; 15 U.S.C. 77*l*), waiving notice and hearing, such order being entered without prejudice to the right of the applicant thereafter to have the order vacated upon a showing to the Commission that the application for qualification, as amended, is no longer incomplete or inaccurate on its face in any material respect.

§ 260.7a–3 Number of copies; filing; signatures; binding.

(a) Three copies of the complete application shall be filed with the Commission at its principal office.

(b) At least the original of each application filed with the Commission shall be signed in the manner prescribed by Form T–3 (§ 269.3 of this chapter).

(c) The application proper and the exhibits thereto shall be bound on the left side in one or more parts, but without stiff covers. The binding shall be made in such manner as to leave the reading matter legible.

[16 FR 8737, Aug. 29, 1951]

§ 260.7a–4 Calculation of time.

Saturdays, Sundays and holidays shall be counted in computing the effective date of applications for qualification filed under section 307(a) of the Act. The twentieth day shall be deemed to begin at the expiration of nineteen periods of twenty-four hours each from 5:30 p.m., eastern standard time or eastern daylight-saving time, whichever is in effect at the principal office of the Commission on the date of filing.

[12 FR 2941, May 2, 1947]

§ 260.7a–5 Filing of amendments; number of copies.

Except as provided in § 260.7a–6, three copies of every amendment to an application shall be filed with the Commission.

[16 FR 8737, Aug. 29, 1951]

§ 260.7a–6 Telegraphic delaying amendments.

An amendment altering the proposed date of the public offering may be made by the agent for service by telegram. In each case, such telegraphic amendment shall be confirmed within a reasonable time by the filing of three copies, one of which shall be signed by the agent for service. Such confirmation shall not be deemed an amendment.

§ 260.7a–7 Effective date of amendment filed under section 8(a) of the Securities Act with the consent of the Commission.

An applicant desiring the Commission's consent to the filing of an amendment with the effect provided in section 8(a) of the Securities Act of 1933 may apply for such consent at or before the time of filing the amendment. The application shall be signed by the applicant or the agent for service and shall state fully the grounds upon which made. The Commission's consent shall be deemed to be given and the amendment shall be treated as a part of the application for qualification upon the sending of written or telegraphic notice to that effect.

§ 260.7a–8 Effective date of amendment filed under section 8(a) of the Securities Act pursuant to order of Commission.

An amendment made prior to the effective date of the application of qualification shall be deemed to be made pursuant to an order of the Commission within the meaning of section 8(a) of the Securities Act of 1933 so as to be treated as part of the application for qualification only when the Commission shall, after the filing of such amendment, find that it has been filed pursuant to its order.

§ 260.7a–9 Delaying amendments.

(a) An amendment in the following form filed with an application for qualification, or as an amendment to such an application which has not become effective, shall be deemed to be filed on such date or dates as may be necessary to delay the effective date of such application for the period specified in such amendment:

The obligor hereby amends this application for qualification on such date or dates as may be necessary to delay its effectiveness until (i) the 20th day after the filing of a further amendment which specifically states that it shall supersede this amendment, or (ii) such date as the Commission, acting pursuant to section 307(c) of the Act, may determine upon the written request of the obligor.

(b) An amendment pursuant to paragraph (a) of this section which is filed with an application for qualification shall be set forth on the facing page thereof. Any such amendment filed after the filing of the application may be made by letter or telegram and may be signed by the agent for service. Any amendment filed to supersede an amendment filed pursuant to paragraph (a) of this section may also be made by letter or telegram. Every such telegraphic amendment shall be confirmed in writing within a reasonable time by filing a signed copy of the amendment. Such confirmation shall not be deemed an amendment.

[30 FR 12387, Sept. 29, 1965]

§ 260.7a–10 Payment of fees.

All payments of fees for applications under the Act shall be made in cash, by wire transfer, or by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. There will be no refunds. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[58 FR 15011, Mar. 18, 1993]

General Requirements as to Form and Content of Applications, Statements and Reports

General

§ 260.7a–15 Scope of §§ 260.7a–15 to 260.7a–37.

The rules contained in §§ 260.7a–15 to 260.7a–37 shall govern applications for exemption filed pursuant to section 304(c) or 304(d) of the Act, applications for qualification of indentures filed pursuant to section 307, statements of eligibility and qualifications of trustees filed pursuant to section 305, 307, or

310(a) of the Act, applications for the stay of the trustee's duty to resign filed pursuant to section 310(b) of the Act, and reports filed pursuant to section 314(a) of the Act.

[56 FR 22320, May 15, 1991]

FORMAL REQUIREMENTS

§ 260.7a–16 Inclusion of items, differentiation between items and answers, omission of instructions.

Except as expressly provided otherwise in the particular form, the application, statement, or report shall contain all of the items of the form as well as the answers thereto. The items shall be made to stand out from the answers by variation in margin or type or by other means. All instructions shall be omitted.

[6 FR 981, Feb. 15, 1941]

§ 260.7a–17 Quality, color and size of paper.

The application, statement or report, including all amendments and, where practicable, all papers and documents filed as a part thereof, shall be on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size.

[47 FR 58239, Dec. 30, 1982]

§ 260.7a–18 Legibility.

(a) The application, statement or report, including all amendments and, where practicable, all papers and documents filed as a part thereof, shall be clear, easily readable and shall be typewritten, mimeographed, printed or prepared by any similar process which, in the opinion of the Commission, produces copies suitable for repeated photocopying and microfilming.

(b) If printed, the application, statement or report shall be in type not smaller than 10-point, roman type, at least two points leaded.

(c) All printing, mimeographing, typing or other markings shall be in black ink, except that debits in credit categories and credits in debit categories may be set forth in red or black ink, but shall in all cases be designated in such manner as to be clearly distinguishable as such on photocopies.

[5 FR 293, Jan. 25, 1940, as amended at 47 FR 58239, Dec. 30, 1982]

§ 260.7a–19 Margin for binding.

The application, statement or report, including all amendments and, where practicable, all papers and documents filed as a part thereof, shall have a back or stitching margin of at least 1½ inches for binding.

§ 260.7a–20 Riders; inserts.

Riders shall not be used. If the application, statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and item shall be restated and a complete answer given.

GENERAL REQUIREMENTS AS TO CONTENTS

§ 260.7a–21 Clarity.

The answer to each item of the particular form shall be so worded as to be intelligible without the necessity of referring to the instructions or to this part.

§ 260.7a–22 Information unknown or not reasonably available.

Information required shall be given insofar as it is known or can be obtained by reasonable investigation. Responsibility for the accuracy or completeness of information obtained from persons other than affiliates may be disclaimed. As to information which is unknown and is unavailable after reasonable investigation, there shall be included a statement as to the nature of the investigation.

§ 260.7a–23 Statements required where item is inapplicable or where answer is "none".

If any item is inapplicable or the answer is ''none'', a statement to such effect shall be made.

§ 260.7a–24 Words relating to periods of time in the past.

Unless the context clearly shows otherwise, wherever any fixed period of

time in the past is indicated, such period shall be computed from the date of filing with the Commission.

§ 260.7a–25 Words relating to the future.

Unless the context clearly shows otherwise, whenever words relate to the future, they have reference solely to present intention.

§ 260.7a–26 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the applicant or the trustee, as the case may be, may disclaim the existence of control and any admission thereof; in such case, however, a statement shall be made of the material facts pertinent to the possible existence of control.

§ 260.7a–27 Title of securities.

Where the title of securities is required to be furnished in an application, statement or report, the following requirements shall be met:

(a) In the case of shares, there shall be given the full designation of the class of shares and, if not included therein, the par or stated value, if any, and the rate of dividends, if fixed, and whether cumulative or non-cumulative.

(b) In the case of funded debt, there shall be given the full designation of the issue and, if not included therein, the rate of interest and the date of maturity. If the issue matures serially, a brief indication shall be given of the serial maturities: For example, ''maturing serially from 1950 to 1960''. If the payment of interest or principal is contingent, such contingency shall be appropriately indicated. The rate of interest, however, may be omitted from the title of indenture securities on the facing page of Form T–1 and Form T–2, if the rate of interest is not determined at the time these forms are filed.

(c) In the case of other securities, a similar designation shall be given.

[5 FR 293, Jan. 25, 1940, as amended at 9 FR 750, Jan. 20, 1944]

INCORPORATION BY REFERENCE

§ 260.7a–28 Incorporation of matter in application, statement or report, other than exhibits, as answer to item.

Matter contained in any part of the application, statement or report, other than exhibits, may be incorporated by reference as answer, or partial answer, to any item in the same application, statement or report.

§ 260.7a–29 Incorporation of exhibits as such.

(a) Any exhibit or part thereof previously or concurrently filed with the Commission pursuant to any Act administered by the Commission, may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, be incorporated by reference as an exhibit to any application, statement or report filed with the Commission by the same or any other person. Any exhibit or part thereof so filed with a trustee pursuant to the Trust Indenture Act of 1939 may be incorporated by reference as an exhibit to any report filed with such trustee pursuant to section 314(a) of that Act by the same or any other person.

(b) If any modification has occurred in the text of any exhibit incorporated by reference since the filing thereof, there shall be filed with the reference a statement containing the text of any such modification and the date thereof.

(c) If the number of copies of any exhibit previously or concurrently filed is less than the number required to be filed with the application, statement or report which incorporates such exhibit, there shall be filed with the application, statement or report as many additional copies of the exhibit as may be necessary to meet the requirements of such application, statement or report.

(Sec. 19, 48 Stat. 85, as amended, secs. 13, 15, 23, 48 Stat. 894, 895, 901, as amended, sec. 20, 49 Stat. 833, secs. 38, 39, 54 Stat. 841; 15 U.S.C. 77s, 78m, 78*o*, 78w, 79t 80a–37, 80a–38)

[6 FR 667, Jan. 30, 1941, as amended at 29 FR 2421, Feb. 13, 1964; 60 FR 32825, June 23, 1995]

§ 260.7a–30 Identification of material incorporated; form of incorporation.

In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified matter is incorporated in the application, statement or report at the particular place where the information is required.

§ 260.7a–31 Incorporation by reference of contested material.

Notwithstanding any particular provision permitting incorporation by reference, no application, statement or report shall incorporate by reference any matter which is subject, at the time of filing the application, statement or report, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933 (whether pursuant to the provisions of the Trust Indenture Act of 1939, or otherwise) or to an order entered under either of those sections.

§ 260.7a–32 Incorporation by reference rendering document incomplete, unclear, or confusing.

Notwithstanding any particular provision permitting incorporation by reference, the Commission may refuse to permit such incorporation in any case in which in its judgment such incorporation would render the application, statement or report incomplete, unclear or confusing.

EXHIBITS

§ 260.7a–33 Additional exhibits.

Any application, statement or report may include exhibits in addition to those required by the particular form. Such additional exhibits shall be so marked as to indicate clearly the items to which they refer.

§ 260.7a–34 Omission of substantially identical documents.

In any case where two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, dates of execution or other details, a copy of only one of such documents need be filed, with a schedule identifying the documents omitted and setting forth the material details in which such documents differ from the document, a copy of which is filed: *Provided, however,* That the Commission may at any time in its discretion require the filing of copies of any documents so omitted.

AMENDMENTS

§ 260.7a–35 Formal requirements as to amendments.

(a) Amendments to an application, statement or report shall comply with §§ 260.7a–17 to 260.7a–19.

(b) All amendments relating to a particular application, statements or report shall be numbered consecutively in the order in which they are filed with the Commission. Amendments shall be numbered separately for each separate application, statement or report.

(c) Every amendment to an item of an application, statement or report shall contain the item number, the caption and the text of the item being amended and the complete amended answer thereto.

(d) If at any time the application, statement or report becomes unclear or confusing because of the number of amendments filed or the length or complexity thereof, there may be filed, and at the written request of the Commission there shall be filed, a complete new application, statement or report, as amended, but no additional copies of exhibits need be filed.

§ 260.7a–36 Signatures to amendments.

Subject to § 260.7a–2, at least the original of every amendment to an application, statement or report shall be signed in the manner prescribed by the particular form on which the application, statement or report was filed.

[16 FR 8737, Aug. 29, 1951]

INSPECTION AND PUBLICATION OF APPLICATIONS, STATEMENTS AND REPORTS

§ 260.7a–37 Inspection of applications, statements and reports.

All applications, statements and reports are available for public inspection during business hours at the principal office of the Commission.

[16 FR 8737, Aug. 29, 1951]

RULE UNDER SECTION 310

§ 260.10a–1 Application for determining eligibility of a foreign person to act as sole trustee pursuant to section 310(a)(1) of the Act.

Form T–6 (17 CFR 269.9 of this chapter) shall be used for an application filed to obtain authorization for a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified under the Act.

[56 FR 22320, May 15, 1991]

§ 260.10a–2 General requirements as to form and content of applications.

Rule 5a–2 (§ 260.5a–2 of this chapter) and rules 7a–15 through 7a–37 [§§ 260.7a–15 through 260.7a–37 of this chapter] under section 307 of the Act shall be applicable to applications on Form T–6 pursuant to section 310(a)(1) of the Act and Rule 10a–1 (§ 260.10a–1 of this chapter).

[56 FR 22320, May 15, 1991]

§ 260.10a–3 Number of copies—Filing—Signatures.

(a) Three copies of every application pursuant to rule 10a–1 (§ 260.10a–1 of this chapter) and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by the applicant's duly authorized officer (or individual customarily performing similar functions with respect to any organization, whether incorporated or unincorporated).

[56 FR 22320, May 15, 1991]

§ 260.10a–4 Consent of trustee to service of process.

At the time of filing an application pursuant to Rule 10a–1 (§ 260.10a–1 of this chapter) and at such time as it files a statement of eligibility to act as trustee under an indenture qualified under the Act, an indenture trustee organized and doing business under the laws of a foreign government shall furnish to the Commission on Form F–X (§ 249.250 of this chapter) a written consent of the trustee and power of attorney designating a U. S. person with an address in the United States as agent upon whom may be served any process, pleadings, subpoenas or other papers in any Commission investigation or administrative proceeding and any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in relation to which the indenture trustee proposes to act as trustee pursuant to any rule or order under section 310(a) of the Act and stipulates and agrees that any such suit, action or proceeding may be commenced by the service of process upon said agent for service of process, and that such service shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

[56 FR 30077, July 1, 1991]

§ 260.10a–5 Eligibility of Canadian Trustees.

(a) Subject to paragraph (b) of this section (17 CFR 260.10a–5), any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form SB–2 (§ 239.10 of this chapter) F–7, F–8, F–9, F–10 or F–80 (§§ 239.37 through 239.41 of this chapter) that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that is subject to supervision or examination pursuant to the Trust Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

(b) Each trustee eligible for appointment under this section (17 CFR 260.10a–5) shall file as part of the registration statement for the securities to which the trusteeship relates a consent to service of process and power of

attorney on Form F–X (§ 269.5 of this chapter).

[56 FR 30077, July 1, 1991, as amended at 57 FR 36501, Aug. 13, 1992; 58 FR 33191, June 16, 1993]

§ 260.10b–1 Calculation of percentages.

The percentages of voting securities and other securities specified in section 310(b) of the Act shall be calculated in accordance with the following provisions:

(a) A specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(b) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(c) The term *amount*, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(d) The term *outstanding* means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(1) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(2) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of securities is not in default as to principal or interest or otherwise;

(3) Securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise;

(4) Securities held in escrow is placed in escrow by the issuer otherwise;

Provided, however, That any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(e) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges: *Provided, however*, That, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes: *And, provided further*, That, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

§ 260.10b–2 Applications under section 310(b)(1)(ii).

If an application filed with the Commission pursuant to clause (ii) of section 310(b)(1) (53 Stat. 1157; 15 U.S.C. 77jjj) of the Act is based upon the claim that no material conflict of interest will be involved because prior to or concurrently with the delivery of the securities to be issued under the indenture to be qualified all securities outstanding under the other indenture or indentures, under which the person designated to act as indenture trustee is also a trustee, will be discharged or:

(a) Funds sufficient to discharge the securities will be deposited in trust for that purpose.

(b) The securities, if not presently maturing, will be called for redemption or irrevocable power to make the call will be given to some third person.

(c) All liens securing the securities will be released or all steps necessary to effect the release at the maturity or redemption date will be taken.

The application shall be deemed to have been granted unless, within 7 days after it is filed, the Commission orders a hearing thereon.

[6 FR 808, Feb. 7, 1941]

§ 260.10b–3 Applications relative to affiliations between trustees and underwriters.

(a) Any person proposing to act as trustee under indentures to be qualified under the act may make application for a finding by the Commission as to whether such person is or is not an affiliate of any specified person who may be named as an underwriter for an obligor in any registration statement or application for qualification subsequently filed with the Commission.

(b) Every application pursuant to this section shall be filed in triplicate and shall contain a statement of the material facts necessary to enable the Commission to make the finding request. The applicant may incorporate by reference in the application any information or documents contained in a statement of eligibility and qualification of the applicant filed with the Commission. The Commission may with the consent of the applicant or at the applicant's request, make a part of the record the record in any prior proceeding in which the same issues were involved.

(c) A hearing will be held, after confirmed telegraphic notice to the applicant, upon every application filed pursuant to this section.

(d) Every finding by the Commission pursuant to this section shall be limited to the facts disclosed in the application and in the hearing thereon, and shall be made solely for the purposes of sections 305(b) and 307(c) of the Act.

[6 FR 2376, May 13, 1941]

§ 260.10b–4 Application for stay of trustee's duty to resign pursuant to section 310(b) of the Act.

(a) Three copies of every application for a stay of a trustee's duty to resign under section 310(b) of the Act and of every amendment thereto shall be filed with the Commission at its principal office.

(b) One copy shall be manually signed by a duly authorized officer of the applicant (or individual customarily performing similar functions with respect to an organization, whether incorporated or unincorporated) or by a natural person seeking a stay under section 310(b) of the Act.

(c) Such applications shall be on paper no larger than 8½ × 11 inches in size. If reduction of large documents would render them illegible, such documents may be filed on paper larger than 8½ × 11 inches in size. The left margin shall be at least 1½ inches wide and if the application is bound, it shall be bound on the left side.

(d) The application shall be typed, printed, copied, or prepared by a process which produces copies suitable for repeated photocopying and microfilming. All typewritten or printed matter shall be set forth in black ink to permit photocopying. If printed, the application shall be in type not smaller than 10-point, roman type, at least two points leaded.

(e) Rules 7a–28 through 7a–32 [§§ 260.7a–28 through 260.7a–32 of this chapter] relating to incorporation by reference shall be applicable to applications for stay pursuant to section 310(b) of the Act.

[56 FR 22320, May 15, 1991]

§ 260.10b–5 Content.

(a) Each application for a stay of a trustee's duty to resign under section 310(b) of the Act shall contain the name, address, and telephone number of each applicant and the name, address, and telephone number of any person to which such applicant wishes any questions regarding the application to be directed.

(b) Each application shall contain a statement of the reasons why the applicant is deemed to be entitled to a stay of resignation with reference to the provisions of section 310(b) of the Act. The statement shall address the nature of the default, the reasonableness of the period before the default will be cured or waived, the procedures to be used to cure or obtain a waiver of the default, and the reasons why a stay will not be inconsistent with the interests of the holders of the indenture securities.

[56 FR 22321, May 15, 1991]

§ 260.10b–6 Notices—Exemptive Application Procedure.

(a) A proposed notice of the proceeding indicated by the filing of the application shall accompany each application for a stay of a trustee's duty to resign under section 310(b) as an exhibit thereto and if necessary shall be modified to reflect any amendments to such application.

(b) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter, and may request that a hearing be held stating the person's reasons therefore and the nature of his or her interest in the matter.

(c) An order disposing of the matter will be issued following the expiration of the period of time referred to in paragraph (b) of this section, unless the Commission thereafter orders a hearing on the matter.

(d) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors:

(1) Upon the request of any interested person, or

(2) Upon its own motion.

[56 FR 22321, May 15, 1991]

RULES UNDER SECTION 311

§ 260.11b–4 Definition of "cash transaction" in section 311(b)(4).

The term ''cash transaction'', as used in section 311(b)(4), means any transaction in which full payment for goods or securities sold is made within 7 days after delivery of the goods or securities in currency or in checks or other orders drawn upon banks or bankers and payable upon demand.

§ 260.11b–6 Definition of "self-liquidating paper" in section 311(b)(6).

The term *self-liquidating paper*, as used in section 311(b)(6) of the Act, means any draft, bill of exchange, acceptance or obligation which is made, drawn, negotiated or incurred by the obligor for the purpose of financing the purchase, processing, manufacture, shipment, storage or sale of goods, wares or merchandise and which is secured by documents evidencing title to, possession of or a lien upon the goods, wares or merchandise or the receivables or proceeds arising from the sale of the goods, wares or merchandise previously constituting the security: *Provided*, The security is received by the trustee simultaneously with the creation of the creditor relationship with the obligor arising from the making, drawing, negotiating or incurring of the draft, bill of exchange, acceptance or obligation.

RULES UNDER SECTION 314

PERIODIC REPORTS

§ 260.14a–1 Application of §§ 260.7a–15 to 260.7a–38.

Sections 260.7a–15 to 260.7a–38 shall be applicable to annual reports under section 314(a).

PART 261—INTERPRETATIVE RELEASES RELATING TO THE TRUST INDENTURE ACT OF 1939 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Opinion of the General Counsel relating to application of section 310(b) where trustee under one indenture is trustee under another indenture for securities of an affiliate of the obligor.	16	Nov. 14, 1941	11 FR 10989.
Opinion of the Chief Counsel to the Corporation Finance Division relating to when-issued trading of securities the issuance of which is subject to approval by a Federal district court under Chapter X of the Bankruptcy Act.	30	Aug. 28, 1944	Do.

PART 261—INTERPRETATIVE RELEASES RELATING TO THE TRUST INDENTURE ACT OF 1939 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Opinion of the Chief Counsel to the Corporation Finance Division relating to when-issued trading of securities the issuance of which has already been approved by a Federal district court under Chapter X of the Bankruptcy Act.	31	Jan. 4, 1945	11 FR 10990.
Interpretation with reference to the securities of the International Bank for Reconstruction and Development.	37	June 25, 1947	12 FR 4450.
Statement of the Commission to clarify the meaning of "beneficial ownership of securities" as relates to beneficial ownership of securities held by family members.	227	Jan. 25, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	229	Feb. 14, 1966	31 FR 3175.
Commissions statement re exemption of certain industrial revenue bonds from registration, etc. requirements in view of amendment of Securities Act of 1933 and of Securities Exchange Act of 1934 by "section 401" (Pub. L. 91–1037).	284	Nov. 6, 1970	35 FR 17990.
Publication of the Commission's procedure to be followed if requests are to be met for no action or interpretative letters and responses thereto to be made available for public use.	289	Jan. 25, 1971	36 FR 2600.
Offerings of debt securities pursuant to trust indentures	524	Apr. 25, 1979	44 FR 26739.
No-action position respecting public offerings of debt securities registered on Form SB–2 without qualification of an indenture under the Trust Indenture Act.	542	Oct. 16, 1979	44 FR 61941.
Simplified form of trust indenture	605	Jan. 8, 1981	46 FR 3500.
Retail repurchase agreements by banks and Savings and Loan Associations	658	Sept. 25, 1981	46 FR 48637.
Application of the registration provisions of the Securities Act of 1933 to the offer and sale of securities by United States branches and agencies of foreign banks.	2038	Sept. 23, 1986	51 FR 34462.

PART 269—FORMS PRESCRIBED UNDER THE TRUST INDENTURE ACT OF 1939

Sec.

269.0–1 Availability of forms.
269.1 Form T–1, for statement of eligibility and qualification for corporate trustees.
269.2 Form T–2, for statement of eligibility and qualification for individual trustees.
269.3 Form T–3, for application for qualification of trust indentures.
269.4 Form T–4, for application for exemption pursuant to section 304(c) of the Act.
269.5 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§ 239.38, 239.39, 239.40 or 239.41 of this chapter), or registering securities or filing periodic reports on Form 40–F (§ 249. 240f of this chapter), or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§ 240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§ 239.37 of this chapter), F–8, F–9, F–10 or F–80.
269.6 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.
269.7 Form ID, uniform application for access codes to file on EDGAR.
269.8 Form SE, form for submission of paper format exhibits by electronic filers.
269.9 Form T–6 for application under section 310(a)(1) of the Trust Indenture Act for determination of the eligibility of a foreign person to act as institutional trustee.
269.10 Form TH—Notification of reliance on temporary hardship exemption.

AUTHORITY: 15 U.S.C. 77ddd(c), 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77sss, 78*ll*(d), unless otherwise noted.

SOURCE: 33 FR 19002, Dec. 20, 1968, unless otherwise noted.

§ 269.0–1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Trust Indenture Act of 1939.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11

of this chapter for the addresses of SEC regional and district offices.)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5946, Feb. 9, 1994]

§ 269.1 Form T–1, for statement of eligibility and qualification for corporate trustees.

This form shall be filed pursuant to Rule 5a–1(a) (§ 260.5a–1(a) of this chapter) for statements of eligibility and qualification of corporations designated to act as trustees under thrust indentures to be qualified pursuant to section 305 or 307 of the Trust Indenture Act of 1939.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 269.2 Form T–2, for statement of eligibility and qualification for individual trustees.

This form shall be filed pursuant to Rule 5a–1(b) (§ 260.5a–1(b) of this chapter) for statements of eligibility and qualification of individuals designated to act as trustees under trust indentures to be qualified pursuant to section 305 or 307 of the Trust Indenture Act of 1939. Under sections 307, 308, 309, 310 and 319 of the Trust Indenture Act of 1939 (17 CFR part 260), the Commission is authorized to solicit the information required to be supplied by this form for statements of eligibility and qualification of individuals designated to act as trustees. Disclosure of the information specified in this form is mandatory before processing statements of eligibility and qualification. The information will be used for the primary purpose of determining relationships of trustees and whether there are any conflicting interests. This statement will be made a matter of public record. Therefore, any information given will be available for inspection by any member of the public. Because of the public nature of the information, the Commission can utilize it for a variety of purposes, including referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions. Failure to disclose the information requested by this form may result in enforcement action by the Commission to compel compliance with the Federal securities laws.

[40 FR 55320, Nov. 28, 1975, as amended at 62 FR 35342, July 1, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 269.3 Form T–3, for application for qualification of trust indentures.

This form shall be filed pursuant to Rule 7a–1 (§ 260.7a–1 of this chapter) for applications for qualification of indentures pursuant to section 307(a) of the Trust Indenture Act of 1939, but only when securities to be issued thereunder are not required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.).

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 269.4 Form T–4, for application for exemption pursuant to section 304(c) of the Act.

This form shall be filed pursuant to Rule 4c–1 (§ 260.4c–1 of this chapter) for applications for exemption filed pursuant to section 304(c) of the Trust Indenture Act of 1939.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§269.5 Form F–X, for appointment of agent for service of process by issuers registering securities on Form F–8, F–9, F–10 or F–80 (§§239.38, 239.39, 239.40 or 239.41 of this chapter) , or registering securities or filing periodic reports on Form 40–F (§249. 240f of this chapter) , or by any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F (§§240.13e–102, 240.14d–102 or 240.14d–103 of this chapter), or by any non-U.S. person acting as trustee with respect to securities registered on Form F–7 (§239. 37 of this chapter) , F–8, F–9, F–10 or F–80.

Form F–X shall be filed with the Commission:

(a) By any issuer registering securities on Form F–8, F–9, F–10 or F–80 under the Securities Act of 1933;

(b) By any issuer registering securities on Form 40–F under the Securities Exchange Act of 1934;

(c) By any issuer filing a periodic report on Form 40–F, if it has not previously filed a Form F–X in connection with the class of securities in relation to which the obligation to file a report on Form 40–F arises;

(d) By any issuer or other non-U.S. person filing tender offer documents on Schedule 13E–4F, 14D–1F or 14D–9F; and

(e) By non-U.S. person acting as trustee with respect to securities registered on Form F–7, F–8, F–9, F–10 or F–80.

[56 FR 30078, July 1, 1991]

§269.6 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.

This form shall accompany electronic filings submitted on magnetic tape or diskette under the EDGAR system.

[57 FR 18220, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ET, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§269.7 Form ID, uniform application for access codes to file on EDGAR.

(a) Form ID is to be used by registrants, third party filers, or their agents for the purpose of requesting assignment of access codes to permit filing on EDGAR, as follows:

(1) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(2) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(3) Passwork (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(4) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

(b) Form ID also may be used for the purpose of requesting a reassignment of their CCC, PW and PMAC.

[57 FR 18220, Apr. 29, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ID, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§269.8 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in Rule 311 of Regulation S–T (§232.311 of this chapter).

[58 FR 14687, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§269.9 Form T–6 for application under section 310(a)(1) of the Trust Indenture Act for determination of the eligibility of a foreign person to act as institutional trustee.

This form shall be used for the filing of an application pursuant to rule 10a–1 [§260.10a–1 of this chapter] to obtain authorization for a corporation or other person organized and doing business under the laws of a foreign government to act as sole trustee under an indenture qualified or to be qualified under the Act.

[56 FR 22321, May 15, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form T–6, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 269.10 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by Rule 201(a) of Regulation S–T (§ 232.201(a) of this chapter).

[58 FR 14687, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TH, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

Sec.

270.0–1 Definition of terms used in this part.
270.0–2 General requirements of papers and applications.
270.0–3 Amendments to registration statements and reports.
270.0–4 Incorporation by reference.
270.0–5 Procedure with respect to applications and other matters.
270.0–8 Payment of fees.
270.0–9 [Reserved]
270.0–10 Small entities for purposes of the Regulatory Flexibility Act.
270.2a–1 Valuation of portfolio securities in special cases.
270.2a–2 Effect of eliminations upon valuation of portfolio securities.
270.2a3 –1 Investment company limited partners not deemed affiliated persons.
270.2a–4 Definition of ''Current Net Asset Value'' for use in computing periodically the current price of redeemable security.
270.2a–6 Certain transactions not deemed assignments.
270.2a–7 Money market funds.
270.2a19 –1 Certain investment company directors not considered interested persons.
270.2a19 –2 Investment company general partners not deemed interested persons.
270.2a41 –1 Valuation of standby commitments by registered investment companies.
270.2a51–1 Definition of investments for purposes of section 2(a)(51) (definition of ''qualified purchaser''); certain calculations.
270.2a51–2 Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.
270.2a51–3 Certain companies as qualified purchasers.
270.3a–1 Certain prima facie investment companies.
270.3a–2 Transient investment companies.
270.3a–3 Certain investment companies owned by companies which are not investment companies.
270.3a–4 Status of investment advisory programs.
270.3a–5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.
270.3a–6 Foreign banks and foreign insurance companies.
270.3a–7 Issuers of asset-backed securities.
270.3c–1 Definition of beneficial ownership for certain section 3(c)(1) funds.
270.3c–2 Definition of beneficial ownership in small business investment companies.
270.3c–3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.
270.3c–4 Definition of ''common trust fund'' as used in section 3(c)(3) of the Act.
270.3c–5 Beneficial ownership by knowledgeable employees and certain other persons.
270.3c–6 Certain transfers of interests in section 3(c)(1) and section 3(c)(7) funds.
270.5b–1 Definition of ''total assets.''
270.5b–2 Exclusion of certain guarantees as securities of the guarantor.
270.6b–1 Exemption of employees' securities company pending determination of application.
270.6c–3 Exemptions for certain registered variable life insurance separate accounts.
270.6c–6 Exemption for certain registered separate accounts and other persons.
270.6c–7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.
270.6c–8 Exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administrative charges.
270.6c–10 Exemption for certain open-end management investment companies to impose deferred sales loads.
270.6d–1 Exemption for certain closed-end investment companies.
270.6e–2 Exemptions for certain variable life insurance separate accounts.
270.6e–3 (T) Temporary exemptions for flexible premium variable life insurance separate accounts.
270.7d–1 Specification of conditions and arrangements for Canadian management

investment companies requesting order permitting registration.
270.8b–1 Scope of §§270.8b–1 to 270.8b–32.
270.8b–2 Definitions.
270.8b–3 Title of securities.
270.8b–4 Interpretation of requirements.
270.8b–5 Time of filing original registration statement.
270.8b–6 [Reserved]
270.8b–10 Requirements as to proper form.
270.8b–11 Number of copies; signatures; binding.
270.8b–12 Requirements as to paper, printing and language.
270.8b–13 Preparation of registration statement or report.
270.8b–14 Riders; inserts.
270.8b–15 Amendments.
270.8b–16 Amendments to registration statement.
270.8b–20 Additional information.
270.8b–21 Information unknown or not available.
270.8b–22 Disclaimer of control.
270.8b–23 Incorporation by reference.
270.8b–24 Summaries or outlines of documents.
270.8b–25 Extension of time for furnishing information.
270.8b–30 Additional exhibits.
270.8b–31 Omission of substantially identical documents.
270.8b–32 Incorporation of exhibits by reference.
270.8f–1 Form for application by certain registered investment companies for orders declaring that such companies have ceased to be investment companies as defined by the Act.
270.10b–1 Definition of regular broker or dealer.
270.10f–1 Conditional exemption of certain underwriting transactions.
270.10f–2 Exercise of warrants or rights received on portfolio securities.
270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.
270.11a–1 Definition of ''exchange'' for purposes of section 11 of the Act.
270.11a–2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.
270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.
270.12b–1 Distribution of shares by registered open-end management investment company.
270.12d2–1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.
270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.
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270.57b–1 Exemption for downstream affiliates of business development companies.
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AUTHORITY: 15 U.S.C.80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

Section 270.0–1 also issued under sec. 38(a) (15 U.S.C. 80a–37(a));

Section 270.0–11 also issued under secs. 8, 24, 30 and 38, Investment Company Act (15 U.S.C. 80a–8, 80a–24, 80a–29 and 80a–37), secs. 6, 7, 8, 10 and 19(a), Securities Act (15 U.S.C. 77f, 77g, 77h, 77j, 77s(a)) and secs. 3(b), 12, 13, 14, 15(d) and 23(a), Exchange Act (15 U.S.C. 78c(b), 78l, 78m, 78n, 78o(d) and 78w(a));

Section 270.6c-9 is also issued under secs. 6(c) (15 U.S.C. 80a-6(c)) and 38(a) (15 U.S.C. 80a-37(a));

Section 270.6c–10 is also issued under sec. 6(c) (15 U.S.C. 80a–6(c));

Section 270.6e–3(T) is also issued under sec. 6(e), 15 U.S.C. 80a–5(e);

Section 270.12d1–1 is also issued under secs. 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a));

Section 270.12d3–1 is also issued under 15 U.S.C. 80a-6(c);

Section 270.17f–5 also issued under sec. 6(c) (15 U.S.C. 80a–6(c);

Section 270.19b–1 is also issued under secs. 6(c) (15 U.S.C. 80a–6(c)), 19 (a) and (b) (15 U.S.C 80a–19 (a) and (b)), and 38(a) (15 U.S.C. 80a–37(a));

Section 270.22c–1 also issued under secs. 6(c), 22(c), and 38(a) (15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a));

Section 270.23c–3 also issued under 15 U.S.C. 80a–23(c).

Section 270.24f–2 also issued under 15 U.S.C. 80a–24(f)(4).

ATTENTION ELECTRONIC FILERS

THIS REGULATION SHOULD BE READ IN CONJUNCTION WITH REGULATION S–T (PART 232 OF THIS CHAPTER), WHICH GOVERNS THE PREPARATION AND SUBMISSION OF DOCUMENTS IN ELECTRONIC FORMAT. MANY PROVISIONS RELATING TO THE PREPARATION AND SUBMISSION OF DOCUMENTS IN PAPER FORMAT CONTAINED IN THIS REGULATION ARE SUPERSEDED BY THE PROVISIONS OF REGULATION S–T FOR DOCUMENTS REQUIRED TO BE FILED IN ELECTRONIC FORMAT.

§ 270.0–1 Definition of terms used in this part.

(a) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless the context otherwise requires:

(1) The term *Commission* means the Securities and Exchange Commission.

(2) The term *act* means the Investment Company Act of 1940.

(3) The term *section* refers to a section of the act.

(4) The terms *rule* and *regulations* refer to the rules and regulations adopted by the Commission pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.

(b) Unless otherwise specifically provided, the terms used in the rules and regulations in this part shall have the meaning defined in the Act. The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (Part 232 of this chapter).

(c) A rule or regulation which defines a term without express reference to the act or to the rules and regulations, or to a portion thereof, defines such terms for all purposes as used both in the act and in the rules and regulations in this part, unless the context otherwise requires.

(d) Unless otherwise specified or the context otherwise requires, the term ''prospectus'' means a prospectus meeting the requirements of section 10(a) of the Securities Act of 1933 as amended.

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c–6, 270.6c–7, 270.6c–8, 270.11a–2, 270.14a–2, 270.15a–3, 270.16a–1, 270.22c–1, 270.22d–3, 270.22e–1, 270.26a–1, 270.26a–2, 270.27a–1, 270.27a–2, 270.27a–3, 270.27c–1, and 270.32a–2 of this chapter.

(1) As used in the rules and regulations prescribed by the Commission pursuant to the Investment Company Act of 1940, unless otherwise specified or the context otherwise requires, the term ''separate account'' shall mean an account established and maintained by an insurance company pursuant to the laws of any state or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains or losses of the insurance company and the term ''variable annuity contract'' shall mean any accumulation or annuity contract, any portion thereof, or any unit of interest or participation therein pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the separate account in which the contract participates.

(2) As conditions to the availability of exemptive Rules 6c–6, 6c–7, 6c–8, 11a–2, 14a–2, 15a–3, 16a–1, 22c–1, 22d–3, 22e–1, 26a–1, 26a–2, 27a–1, 27a–2, 27a–3, 27c–1, and 32a–2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

[Rule N–1, 5 FR 4316, Oct. 31, 1940, as amended at 19 FR 6730, Oct. 20, 1954; 30 FR 829, Jan. 27, 1965; 48 FR 36098, Aug. 9, 1983; 50 FR 42682, Oct. 22, 1985; 58 FR 14859, Mar. 18, 1993]

§ 270.0–2 General requirements of papers and applications.

(a) *Filing of papers.* All papers required to be filed with the Commission pursuant to the Act or the rules and regulations thereunder shall, unless otherwise provided by the rules and regulations in this part, be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, D.C. 20549. Except as otherwise provided by the rules and regulations, the date on which papers are actually received by the Commission shall be the date of filing thereof. If the last day for the timely filing of such papers falls on a Saturday, Sunday, or holiday, such papers may be filed on the first business day following.

(b) *Formal specifications respecting applications.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such application shall be filed in quintuplicate. One copy shall be signed by the applicant but the other four copies may have facsimile or typed signatures. Such applications should be on paper no larger than 8½ x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size. The left margin should be at least 1½ inches wide and, if the application is bound, it should be bound on the left side. The application must be typed, printed, copied or prepared by any process which, in the opinion of the commission, produces copies suitable for microfilming. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying. Every application for an order under any provision of the Act and every amendment to such application shall be submitted to the Commission in paper only, whether or not the applicant is otherwise required

to file in electronic format, unless instructions for electronic filing are included on the form, if any, prescribed for such application.

(c) *Authorizations respecting applications.* (1) Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

(2) If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

State of _____

County of _____, ss:

The undersigned being duly sworn deposes and says that he has duly executed the attached _____ dated _____, 19 ___ for and on behalf of _____ (Name of Company) that he is the _____ (Title of Officer) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

_____
(Signature)

_____
(Type or print name beneath)

Subscribed and sworn to before me a _____ (Title of Officer) this _____ day of _____, 19 ___.

[OFFICIAL SEAL] _____

My commission expires _____

(e) *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the act and of the rules and regulations under which application is made.

(f) *Name and address.* Every application shall contain the name and address of each applicant and the name and address of any person to whom any applicant wishes any question regarding the application to be directed.

(g) *Proposed notice.* A proposed notice of the proceeding initiated by the filing of the application shall accompany each application as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application.

(h) The manually signed original (or in the case of duplicate originals, one duplicate original) of all registrations, applications, statements, reports, or other documents filed under the Investment Company Act of 1940, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the

last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

(15 U.S.C. 77s (48 Stat. 85); 15 U.S.C. 78w (48 Stat. 901); 15 U.S.C. 79c and 79t (49 Stat. 810, 833); 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss (53 Stat. 1154, 1156, 1167, 1173); 15 U.S.C. 80w–37, 80c–39 (54 Stat. 841, 342); 15 U.S.C. 80b–3, 80b–4, 80b–11 (54 Stat. 850, 852, 855); secs. 38, 40, 54 Stat. 841, 842 (15 U.S.C. 80a–37, 80c–89))

[Rule N–2, 5 FR 4316, Oct. 31, 1940, as amended at 33 FR 9391, June 27, 1968; 33 FR 23325, Aug. 29, 1973; 44 FR 4666, Jan. 23, 1979; 47 FR 58239, Dec. 30, 1982; 48 FR 17065, Apr. 21, 1983; 58 FR 14859, Mar. 18, 1993]

§ 270.0–3 Amendments to registration statements and reports.

Registration statements filed with the Commission pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a–8) and reports filed with the Commission pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a–35) may be amended in the following manner:

(a) Each amendment shall conform to the requirements for the registration statement or report it amends with regard to filing, number of copies filed, size, paper, ink, margins, binding, and similar formal matters.

(b) Each amendment to a particular statement or report shall have a facing sheet as follows:

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

Amendment No. _____

to

Form _____

File No. _____

(Describe the nature of the statement or report)

Dated _____, 19 ___,

Pursuant to Section _____ of the Investment Company Act of 1940

_____

Name of Registrant

_____

Address of Principal Office of Registrant

The facing sheet shall contain in addition any other information required on the facing sheet of the form for the statement or report which is being amended. Amendments to a particular statement or report which is being consecutively in the order in which filed with the Commission.

(c) Each amendment shall contain in the manner required in the original statement or report the text of every item to which it relates and shall set out a complete amended answer to each such item. However, amendments to financial statements may contain only the particular statements or schedules in fact amended.

(d) Each amendment shall have a signature sheet containing the form of signature required in the statement or report it amends.

(Secs. 8, 30, 54 Stat. 803, 74 Stat. 201; 15 U.S.C. 80a–8, 80a–29)

[Rule N–3, 6 FR 3966, Aug. 8, 1941, as amended at 33 FR 3217, Feb. 21, 1968]

§ 270.0–4 Incorporation by reference.

(a) A registered investment company may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, incorporate by reference as an exhibit, in any registration statement, application or report filed with the Commission, any document or part thereof previously or concurrently filed with the Commission pursuant to any act administered by the Commission. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If any modification has occurred in the text of any such document since the filing thereof, the company shall file with the reference a statement containing the text of any such modification and the date thereof. If the number of copies of any document previously or concurrently filed with the Commission is less than the number required to be filed with the registration statement, application or report which incorporates such document, the company shall file therewith as many additional copies of the document as may be necessary to meet the requirements of the registration statement, application or report.

(b) A registered investment company may, subject to the limitations of § 201.24 of this chapter, incorporate by reference, in any registration statement, application or report filed with the Commission any financial statement or part thereof previously or concurrently filed with the Commission

pursuant to any act administered by the Commission, if it substantially conforms to the requirements of the form on which such registration statement, application or report is filed. The incorporation may be made whether the matter incorporated was filed by such registered company or any other person. If a certificate of an independent public accountant or accountants is required to accompany a financial statement in any registration statement, application or report, the incorporation by reference of a certificate previously or concurrently filed will not be deemed a compliance with such requirements unless the written consent of the accountant or accountants to such incorporation is filed with the registration statement, application or report.

(c) In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified matter is incorporated in the registration statement, application or report at the particular place where the information is required.

(d) Notwithstanding any particular provision permitting incorporation by reference, no registration statement, application or report shall incorporate by reference any exhibit or financial statement which:

(1) Has been withdrawn, or

(2) Was filed in connection with a registration statement under the Act, or a registration on a national securities exchange, which has ceased to be effective, or

(3) Is contained in a registration statement or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) or 8(d) of the Securities Act of 1933, section 8(e) of the Act, or to an order entered under any of those Sections, or

(4) If it is a document that has been filed in paper with respect to an electronic filer under a temporary hardship exemption (§ 232.201 of this chapter) and an electronic format copy has not been submitted.

(e) Notwithstanding any particular provision permitting incorporation by reference, the Commission may refuse to permit such incorporation in any case in which in its judgment such incorporation would render the registration statement application, or report incomplete, unclear, or confusing.

(Sec. 19, 48 Stat. 85, as amended, secs. 13, 15, 23, 48 Stat. 894, 895, 901, as amended, sec. 20, 49 Stat. 833, secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173, as amended, sec. 39, 54 Stat. 841; 15 U.S.C. 77s, 78m, 78*o*, 78w, 79t, 77eee, 77ggg, 77nnn, 77sss, 80a–38)

[Rule N–4, 9 FR 338, Jan. 8, 1944. Redesignated at 14 FR 2761, May 26, 1949, and amended at 29 FR 2421, Feb. 13, 1964; 58 FR 14860, Mar. 18, 1993; 60 FR 32825, June 23, 1995]

§ 270.0–5 Procedure with respect to applications and other matters.

The procedure herein below set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course, following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of an interested person or (2) upon its own motion.

[38 FR 23325, Aug. 29, 1973, as amended at 61 FR 49961, Sept. 24, 1996]

§ 270.0–8 Payment of fees.

All payment of fees shall be made in cash, certified check or by United

States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

[61 FR 49961, Sept. 24, 1996]

§ 270.0–9 [Reserved]

§ 270.0–10 Small entities for purposes of the Regulatory Flexibility Act.

For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term ''small business'' or ''small organization,'' for purposes of the Investment Company Act of 1940 shall mean an investment company with net assets of $50 million or less as of the end of its most recent fiscal year.

[47 FR 5223, Feb. 4, 1982]

§ 270.2a–1 Valuation of portfolio securities in special cases.

(a) Any investment company whose securities are qualified for sale, or for whose securities application for such qualification has been made, in any State in which the securities owned by such company are required by applicable State law or regulations to be valued at cost or on some other basis different from that prescribed by clause (A) of section 2(a)(41) of the Act for the purpose of determining the percentage of its assets invested in any particular type or classification of securities or in the securities of any one issuer, may, in valuing its securities for the purposes of sections 5 and 12 of the Act, use the same basis of valuation as that used in complying with such State law or regulations in lieu of the method of valuation prescribed by clause (A) of section 2(a)(41) of the Act.

(b) Any open-end company which has heretofore valued its securities at cost for the purpose of qualifying as a ''mutual investment company'' under the Internal Revenue Code, prior to its amendment by the Revenue Act of 1942, shall henceforth, for the purposes of sections 5 and 12 of the Act, value its securities in accordance with the method prescribed in clause (A) of section 2(a)(41) of the Act unless such company is permitted under paragraph (a) of this section to use a different method of valuation.

(c) A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, shall state in its registration statement filed pursuant to section 8 (54 Stat. 803; 15 U.S.C. 80a–8) of the Act, or in a report filed pursuant to section 30 (54 Stat. 836; 15 U.S.C. 80a–30) of the Act, the method of valuation adopted and the facts which justify the adoption of such method. A registered investment company which has adopted for the purposes of sections 5 and 12 of the Act a method of valuation permitted by paragraph (a) of this section, unless it shall have adopted such method for the purpose or partly for the purpose of qualifying as a ''mutual investment company'' under the Internal Revenue Code, shall continue to use that method until it has notified the Commission of its desire to use a different method, and has received from the Commission permission for such change. Such permission may be made effective on a fixed date or within such reasonable time thereafter as may be deemed advisable under the circumstances.

(d) If at any time it appears that the method of valuation adopted by any company pursuant to paragraph (a) of this section is no longer justified by the facts, the Commission may require a change in the method of valuation within a reasonable period of time either to the method prescribed in clause (A) of section 2(a)(41) of the Act or to some other method permitted by paragraph (a) of this section which is justified by the existing facts.

[Rule N–2A–1, 8 FR 3567, Mar. 24, 1943, as amended at 38 FR 8593, Apr. 4, 1973]

§ 270.2a–2 Effect of eliminations upon valuation of portfolio securities.

During any fiscal quarter in which elimination of securities from the portfolio of an investment company occur,

the securities remaining in the portfolio shall, for the purpose of sections 5 and 12 of the Act (54 Stat. 800, 808; 15 U.S.C. 80a–5, 80a–12), be so valued as to give effect to the eliminations in accordance with one of the following methods:

(a) Specific certificate,
(b) First in—first out,
(c) Last in—first out, or
(d) Average value.

For these purposes, a single method of elimination shall be used consistently with respect to all portfolio securities. In giving effect to eliminations pursuant to this section values shall be computed in accordance with section 2(a)(41)(A) of the Act (54 Stat. 790; 15 U.S.C. 80a–2(a)(41)(A)).

[38 FR 8593, Apr. 4, 1973]

§ 270.2a3–1 Investment company limited partners not deemed affiliated persons.

PRELIMINARY NOTE TO § 270.2a3–1

This § 270.2a3–1 excepts from the definition of affiliated person in section 2(a)(3)) (15 U.S.C. 80a–2(a)(3)) those limited partners of investment companies organized in limited partnership form that are affiliated persons solely because they are partners under section 2(a)(3)(D) (15 U.S.C. 80a–2(a)(3)(D)). Reliance on this § 270.2a3–1 does not except a limited partner that is an affiliated person by virtue of any other provision.

No limited partner of a registered management company or a business development company, organized as a limited partnership and relying on § 270.2a19–2, shall be deemed to be an affiliated person of such company, or any other partner of such company, solely by reason of being a limited partner of such company.

[58 FR 45838, Aug. 31, 1993]

§ 270.2a–4 Definition of "current net asset value" for use in computing periodically the current price of redeemable security.

(a) The current net asset value of any redeemable security issued by a registered investment company used in computing periodically the current price for the purpose of distribution, redemption, and repurchase means an amount which reflects calculations, whether or not recorded in the books of account, made substantially in accordance with the following, with estimates used where necessary or appropriate.

(1) Portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by the board of directors of the registered company.

(2) Changes in holdings of portfolio securities shall be reflected no later than in the first calculation on the first business day following the trade date.

(3) Changes in the number of outstanding shares of the registered company resulting from distributions, redemptions, and repurchases shall be reflected no later than in the first calculation on the first business day following such change.

(4) Expenses, including any investment advisory fees, shall be included to date of calculation. Appropriate provision shall be made for Federal income taxes if required. Investment companies which retain realized capital gains designated as a distribution to shareholders shall comply with paragraph (h) of § 210.6–03 of Regulation S–X.

(5) Dividends receivable shall be included to date of calculation either at ex-dividend dates or record dates, as appropriate.

(6) Interest income and other income shall be included to date of calculation.

(b) The items which would otherwise be required to be reflected by paragraphs (a) (4) and (6) of this section need not be so reflected if cumulatively, when netted, they do not amount to as much as one cent per outstanding share.

(c) Notwithstanding the requirements of paragraph (a) of this section, any interim determination of current net asset value between calculations made as of the close of the New York Stock Exchange on the preceding business day and the current business day may be estimated so as to reflect any change in current net asset value since the closing calculation on the preceding business day.

(Secs. 7, 19(a), 48 Stat. 78, 85, 908, 15 U.S.C. 77g, 77s(a); secs. 12, 13, 15(d), 23(a), 48 Stat. 892, 894, 895, 901; secs. 3, 8, 49 Stat. 1377, 1379, secs. 3, 4, 78 Stat. 569, 570, secs. 1, 2, 82 Stat. 454, 15 U.S.C. 78l, 78m, 78o(d), 78w(a); secs. 8,

22, 30, 31(c), 38(a), 54 Stat. 803, 823, 836, 838, 841, 15 U.S.C. 80a–8, 80a–22, 80a–29, 80a–30(c))
[29 FR 19101, Dec. 30, 1964, as amended at 35 FR 314, Jan. 8, 1970; 47 FR 56844, Dec. 21, 1982]

§ 270.2a–6 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of the investment adviser to, or principal underwriter of, an investment company is not an assignment for purposes of section 15(a)(4) or section 15(b)(2) of the act, respectively.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 80a–37(a)))
[45 FR 1861, Jan. 9, 1980]

§ 270.2a–7 Money market funds.

(a) *Definitions*.

(1) *Acquisition* (or *Acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized Cost Method* of valuation means the method of calculating an investment company's net asset value whereby portfolio securities are valued at the fund's Acquisition cost as adjusted for amortization of premium or accretion of discount rather than at their value based on current market factors.

(3) *Asset Backed Security* means a fixed income security (other than a Government security) issued by a Special Purpose Entity (as defined in this paragraph), substantially all of the assets which consist of Qualifying Assets (as defined in this paragraph). *Special Purpose Entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from Qualifying Assets, but does not include a registered investment company. *Qualifying Assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business Day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized Fully* in the case of a repurchase agreement means that:

(i) The value of the securities collateralizing the repurchase agreement (reduced by the transaction costs (including loss of interest) that the money market fund reasonably could expect to incur if the seller defaults) is, and during the entire term of the repurchase agreement remains, at least equal to the Resale Price (as defined in paragraph (a)(5)(v) of this section) provided in the agreement;

(ii) The money market fund or its custodian either has actual physical possession of the collateral or, in the case of a security registered on a book entry system, the book entry is maintained in the name of the money market fund or its custodian;

(iii) The collateral consists entirely of cash items, Government Securities or other securities that at the time the repurchase agreement is entered into are rated in the highest rating category by the Requisite NRSROs; and

(iv) Upon an Event of Insolvency with respect to the seller, the repurchase agreement would qualify under a provision of applicable insolvency law providing an exclusion from any automatic stay of creditors' rights against the seller.

(v) *Resale Price* means the Acquisition price paid to the seller of the securities plus the accrued resale premium on such Acquisition price. The accrued resale premium shall be the amount specified in the repurchase agreement or the daily amortization of the difference between the Acquisition price and the resale price specified in the repurchase agreement.

(6) *Conditional Demand Feature* means a Demand Feature that is not an Unconditional Demand Feature. A Conditional Demand Feature is not a Guarantee.

(7) *Conduit Security* means a security issued by a Municipal Issuer (as defined in this paragraph) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a Municipal Issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal Issuer* means a state or territory of the United States (including

the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A Conduit Security *does not* include a security that is:

(i) Fully and unconditionally guaranteed by a Municipal Issuer; or

(ii) Payable from the general revenues of the Municipal Issuer or other Municipal Issuers (other than those revenues derived from an agreement or arrangement with a person who is not a Municipal Issuer that provides for or secures repayment of the security issued by the Municipal Issuer); or

(iii) Related to a project owned and operated by a Municipal Issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a Municipal Issuer.

(8) *Demand Feature* means:

(i) A feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either:

(A) At any time on no more than 30 calendar days' notice; or

(B) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or

(ii) A feature permitting the holder of an Asset Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand.

(9) *Demand Feature Issued By A Non-Controlled Person* means a Demand Feature issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the Demand Feature (*control* means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(10) *Eligible Security* means:

(i) A Rated Security with a remaining maturity of 397 calendar days or less that has received a rating from the Requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(10)(i) of this section, as determined by the money market fund's board of directors; *Provided, however*, that:

(A) A security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an Unrated Security is not an Eligible Security if the security has received a long-term rating from any NRSRO that is not within the NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the Requisite NRSROs in one of the three highest rating categories;

(B) An Asset Backed Security (other than an Asset Backed Security substantially all of whose Qualifying Assets consist of obligations of one or more Municipal Issuers, as that term is defined in paragraph (a)(7) of this section) shall not be an Eligible Security unless it has received a rating from an NRSRO.

(iii) In addition, in the case of a security that is subject to a Demand Feature or Guarantee:

(A) The Guarantee has received a rating from an NRSRO or the Guarantee is issued by a guarantor that has received a rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the Guarantee, *unless*:

(*1*) The Guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the Guarantee (other than a sponsor of a Special Purpose Entity with respect to an Asset Backed Security);

(*2*) The security subject to the Guarantee is a repurchase agreement that is Collateralized Fully; or

(*3*) The Guarantee is itself a Government Security; and

(B) The issuer of the Demand Feature or Guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the Demand Feature or Guarantee is substituted with another Demand Feature or Guarantee (if such substitution is permissible under the terms of the Demand Feature or Guarantee).

(11) *Event of Insolvency* means, with respect to a person:

(i) An admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; or

(ii) The institution of similar proceedings by another person which proceedings are not contested by the person; or

(iii) The institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person.

(12) *First Tier Security* means any Eligible Security that:

(i) Is a Rated Security that has received a short-term rating from the Requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing); or

(ii) Is an Unrated Security that is of comparable quality to a security meeting the requirements for a Rated Security in paragraph (a)(12)(i) of this section, as determined by the fund's board of directors; or

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a Government Security.

(13) *Floating Rate Security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(14) *Government Security* means any ''Government security'' as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(15) *Guarantee* means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the Guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an Unconditional Demand Feature, an obligation that entitles the holder to receive upon exercise the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A Guarantee includes a letter of credit, financial guaranty (bond) insurance, and an Unconditional Demand Feature (other than an Unconditional Demand Feature provided by the issuer of the security).

(16) *Guarantee Issued By A Non-Controlled Person* means a Guarantee issued by:

(i) A person that, directly or indirectly, does *not* control, and is not controlled by or under common control with the issuer of the security subject to the Guarantee (*control* means ''control'' as defined in section 2(a)(9) of the Act (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a Special Purpose Entity with respect to an Asset Backed Security.

(17) *NRSRO* means any nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of § 240.15c3–1 of this Chapter, that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security.

(18) *Penny-Rounding Method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(19) *Rated Security* means a security that meets the requirements of paragraphs (a)(19)(i) or (ii) of this section,

in each case subject to paragraph (a)(19)(iii) of this section:

(i) The security has received a short-term rating from an NRSRO, or has been issued by an issuer that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a Guarantee that has received a short-term rating from an NRSRO, or a Guarantee issued by a guarantor that has received a short-term rating from an NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the Guarantee; but

(iii) A security is not a Rated Security if it is subject to an external credit support agreement (including an arrangement by which the security has become a Refunded Security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(19)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(19)(ii) of this section.

(20) *Refunded Security* means a debt security the principal and interest payments of which are to be paid by Government Securities (''deposited securities'') that have been irrevocably placed in an escrow account pursuant to agreement between the issuer of the debt security and an escrow agent that is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of the debt security, and, in accordance with such escrow agreement, are pledged only to the payment of the debt security and, to the extent that excess proceeds are available after all payments of principal, interest, and applicable premiums on the Refunded Securities, the expenses of the escrow agent and, thereafter, to the issuer or another party; *provided* that:

(i) The deposited securities shall not be redeemable prior to their final maturity;

(ii) The escrow agreement shall prohibit the substitution of the deposited securities unless the substituted securities are Government Securities; and

(iii) At the time the deposited securities are placed in the escrow account, or at the time a substitution of the deposited securities is made, an independent certified public accountant shall have certified to the escrow agent that the deposited securities will satisfy all scheduled payments of principal, interest and applicable premiums on the Refunded Securities; *Provided, however,* an independent public accountant need not have provided the certification described in this paragraph (a)(20)(iii) if the security, as a Refunded Security, has received a rating from an NRSRO in the highest category for debt obligations (within which there may be sub-categories or gradations including relative standing).

(21) *Requisite NRSROs* means:

(i) Any two NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that NRSRO.

(22) *Second Tier Security* means any Eligible Security that is not a First Tier Security. *Second Tier Conduit Security* means any Conduit Security that is an Eligible Security that is not a First Tier Security.

(23) *Single State Fund* means a Tax Exempt Fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(24) *Tax Exempt Fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(25) *Total Assets* means, with respect to a money market fund using the Amortized Cost Method, the total amortized cost of its assets and, with respect to any other money market fund,

the total market-based value of its assets.

(26) *Unconditional Demand Feature* means a Demand Feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(27) *United States Dollar-Denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(28) *Unrated Security* means a security that is not a Rated Security.

(29) *Variable Rate Security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(b) *Holding Out and Use of Names and Titles*. (1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3) and (c)(4) of this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company meets the conditions of paragraphs (c)(2), (c)(3), and (c)(4) of this section.

(3) For purposes of this paragraph, a name that suggests that a registered investment company is a money market fund or the equivalent thereof shall include one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share Price Calculations*. The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company (''money market fund'' or ''fund''), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1 thereunder, may be computed by use of the Amortized Cost Method or the Penny-Rounding Method; *Provided, however*, that:

(1) *Board Findings*. The board of directors of the money market fund shall determine, in good faith, that it is in the best interests of the fund and its shareholders to maintain a stable net asset value per share or stable price per share, by virtue of either the Amortized Cost Method or the Penny-Rounding Method, and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the market-based net asset value per share.

(2) *Portfolio Maturity*. The money market fund shall maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share or price per share; *Provided, however*, that the money market fund will not:

(i) Except as provided in paragraph (c)(2)(ii) of this section, Acquire any instrument with a remaining maturity of greater than 397 calendar days; or

(ii) In the case of a money market fund not using the Amortized Cost Method, Acquire a Government Security with a remaining maturity of greater than 762 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds ninety days.

(3) *Portfolio Quality*—(i) *General*. The money market fund shall limit its portfolio investments to those United States Dollar-Denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by an NRSRO) and that are at the time of Acquisition Eligible Securities.

(ii) *Second Tier Securities*. Immediately after the Acquisition of any Second Tier Security:

(A) *Taxable Funds*. A money market fund that is not a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in securities that are Second Tier Securities; and

(B) *Tax Exempt Funds*. A money market fund that is a Tax Exempt Fund shall not have invested more than five percent of its Total Assets in Conduit Securities that are Second Tier Conduit Securities.

(iii) *Securities Subject to Guarantees*. A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.

(iv) *Securities Subject to Conditional Demand Features*. A security that is subject to a Conditional Demand Feature (''Underlying Security'') may be determined to be an Eligible Security or a First Tier Security only if:

(A) The Conditional Demand Feature is an Eligible Security or First Tier Security, as the case may be;

(B) At the time of the Acquisition of the Underlying Security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the Conditional Demand Feature not being exercisable will occur; and

(*1*) The conditions limiting exercise either can be monitored readily by the fund, or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(*2*) The terms of the Conditional Demand Feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the Demand Feature in accordance with its terms; and

(C) The Underlying Security or any Guarantee of such security (or the debt securities of the issuer of the Underlying Security or Guarantee that are comparable in priority and security with the Underlying Security or Guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the Requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(4) *Portfolio Diversification*—(i) *Issuer Diversification*. The money market fund shall be diversified with respect to issuers of securities Acquired by the fund as provided in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, other than with respect to Government Securities and securities subject to a Guarantee Issued By A Non-Controlled Person.

(A) *Taxable and National Funds*. Immediately after the Acquisition of any security, a money market fund other than a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however*, that such a fund may invest up to twenty-five percent of its Total Assets in the First Tier Securities of a single issuer for a period of up to three Business Days after the Acquisition thereof; *Provided, further*, that the fund may not invest in the securities of more than one issuer in accordance

with the foregoing proviso in this paragraph at any time.

(B) *Single State Funds*. With respect to seventy-five percent of its Total Assets, immediately after the Acquisition of any security, a Single State Fund shall not have invested more than five percent of its Total Assets in securities issued by the issuer of the security; *Provided, however*, that a Single State Fund shall not invest more than five percent of its Total Assets in securities issued by the issuer of the security unless the securities are First Tier Securities.

(C) *Second Tier Securities—(1) Taxable Funds*. Immediately after the Acquisition of any Second Tier Security, a money market fund that is not a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Securities.

(*2*) *Tax Exempt Funds*. Immediately after the Acquisition of any Second Tier Conduit Security, a money market fund that is a Tax Exempt Fund shall not have invested more than the greater of one percent of its Total Assets or one million dollars in securities issued by that issuer that are Second Tier Conduit Securities.

(ii) *Issuer Diversification Calculations*. For purposes of making calculations under paragraph (c)(4)(i) of this section:

(A) *Repurchase Agreements*. The Acquisition of a repurchase agreement may be deemed to be an Acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is Collateralized Fully.

(B) *Refunded Securities*. The Acquisition of a Refunded Security shall be deemed to be an Acquisition of the escrowed Government Securities.

(C) *Conduit Securities*. A Conduit Security shall be deemed to be issued by the person (other than the Municipal Issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset Backed Securities—(1) General*. An Asset Backed Security Acquired by a fund (''Primary ABS'') shall be deemed to be issued by the Special Purpose Entity that issued the Asset Backed Security, *Provided, however*:

(*i*) *Holdings of Primary ABS*. Any person whose obligations constitute ten percent or more of the principal amount of the Qualifying Assets of the Primary ABS (''Ten Percent Obligor'') shall be deemed to be an issuer of the portion of the Primary ABS such obligations represent; and

(*ii*) *Holdings of Secondary ABS*. If a Ten Percent Obligor of a Primary ABS is itself a Special Purpose Entity issuing Asset Backed Securities (''Secondary ABS''), any Ten Percent Obligor of such Secondary ABS also shall be deemed to be an issuer of the portion of the Primary ABS that such Ten Percent Obligor represents.

(*2*) *Restricted Special Purpose Entities*. A Ten Percent Obligor with respect to a Primary or Secondary ABS shall not be deemed to have issued any portion of the assets of a Primary ABS as provided in paragraph (c)(4)(ii)(D)(*1*) of this section if that Ten Percent Obligor is itself a Special Purpose Entity issuing Asset Backed Securities (''Restricted Special Purpose Entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the Restricted Special Purpose Entity and which is not itself a Special Purpose Entity issuing Asset Backed Securities) are held by only one other Special Purpose Entity.

(*3*) *Demand Features and Guarantees*. In the case of a Ten Percent Obligor deemed to be an issuer, the fund shall satisfy the diversification requirements of paragraph (c)(4)(iii) of this section with respect to any Demand Feature or Guarantee to which the Ten Percent Obligor's obligations are subject.

(E) *Shares of Other Money Market Funds*. A money market fund that Acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (c)(4)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the Acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(iii) *Diversification Rules for Demand Features and Guarantees.* The money market fund shall be diversified with respect to Demand Features and Guarantees Acquired by the fund as provided in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section, *other than* with respect to a Demand Feature issued by the same institution that issued the underlying security, or with respect to a Guarantee or Demand Feature that is itself a Government Security.

(A) *General.* Immediately after the Acquisition of any Demand Feature or Guarantee or security subject to a Demand Feature or Guarantee, a money market fund, with respect to seventy-five percent of its Total Assets, shall not have invested more than ten percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, subject to paragraphs (c)(4)(iii) (B) and (C) of this section.

(B) *Second Tier Demand Features or Guarantees.* Immediately after the Acquisition of any Demand Feature or Guarantee (or a security after giving effect to the Demand Feature or Guarantee) that is a Second Tier Security, a money market fund shall not have invested more than five percent of its Total Assets in securities issued by or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee.

(C) *Demand Features or Guarantees Issued by Non-Controlled Persons.* Immediately after the Acquisition of any security subject to a Demand Feature or Guarantee, a money market fund shall not have invested more than ten percent of its Total Assets in securities issued by, or subject to Demand Features or Guarantees from the institution that issued the Demand Feature or Guarantee, unless, with respect to any security subject to Demand Features or Guarantees from that institution (other than securities issued by such institution), the Demand Feature or Guarantee is a Demand Feature or Guarantee Issued By A Non-Controlled Person.

(iv) *Demand Feature and Guarantee Diversification Calculations*—(A) *Fractional Demand Features or Guarantees.* In the case of a security subject to a Demand Feature or Guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered Demand Features or Guarantees.* In the case of a security subject to Demand Features or Guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (c)(4)(iv)(A) of this section, each institution shall be deemed to have provided the Demand Feature or Guarantee with respect to the entire principal amount of the security.

(v) *Diversification Safe Harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (c)(4) and (c)(5) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(5) *Demand Features and Guarantees Not Relied Upon.* If the fund's board of directors has determined that the fund is not relying on a Demand Feature or Guarantee to determine the quality (pursuant to paragraph (c)(3) of this section), or maturity (pursuant to paragraph (d) of this section), or liquidity of a portfolio security, and maintains a record of this determination (pursuant to paragraphs (c)(9)(ii) and (c)(10)(vi) of this section), then the fund may disregard such Demand Feature or Guarantee for all purposes of this section.

(6) *Downgrades, Defaults and Other Events*—(i) *Downgrades*—(A) *General.* Upon the occurrence of either of the events specified in paragraphs (c)(6)(i)(A) (*1*) and (*2*) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund and its shareholders:

(*1*) A portfolio security of a money market fund ceases to be a First Tier Security (either because it no longer

has the highest rating from the Requisite NRSROs or, in the case of an Unrated Security, the board of directors of the money market fund determines that it is no longer of comparable quality to a First Tier Security); and

(*2*) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any Unrated Security or Second Tier Security held by the money market fund has, since the security was Acquired by the fund, been given a rating by any NRSRO below the NRSRO's second highest short-term rating category.

(B) *Securities to Be Disposed Of*. The reassessments required by paragraph (c)(6)(i)(A) of this section shall not be required if, in accordance with the procedures adopted by the board of directors, the security is disposed of (or matures) within five Business Days of the specified event and, in the case of events specified in paragraph (c)(6)(i)(A)(*2*) of this section, the board is subsequently notified of the adviser's actions.

(C) *Special Rule for Certain Securities Subject to Demand Features*. In the event that after giving effect to a rating downgrade, more than five percent of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than five percent of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(ii) *Defaults and Other Events*. Upon the occurrence of any of the events specified in paragraphs (c)(6)(ii)(A) through (D) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any Demand Feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(A) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(B) A portfolio security ceases to be an Eligible Security;

(C) A portfolio security has been determined to no longer present minimal credit risks; or

(D) An Event of Insolvency occurs with respect to the issuer of a portfolio security or the provider of any Demand Feature or Guarantee.

(iii) *Notice to the Commission*. In the event of a default with respect to one or more portfolio securities (other than an immaterial default unrelated to the financial condition of the issuer) or an Event of Insolvency with respect to the issuer of the security or any Demand Feature or Guarantee to which it is subject, where immediately before default the securities (or the securities subject to the Demand Feature or Guarantee) accounted for ½ of 1 percent or more of a money market fund's Total Assets, the money market fund shall promptly notify the Commission of such fact and the actions the money market fund intends to take in response to such situation. Notification under this paragraph shall be made telephonically, or by means of a facsimile transmission or electronic mail, followed by letter sent by first class mail, directed to the attention of the Director of the Division of Investment Management.

(iv) *Defaults for Purposes of Paragraphs (c)(6) (ii) and (iii)*. For purposes of paragraphs (c)(6) (ii) and (iii) of this section, an instrument subject to a Demand Feature or Guarantee shall not be deemed to be in default (and an Event of Insolvency with respect to the security shall not be deemed to have occurred) if:

(A) In the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the fund has recovered either the principal

amount or the amortized cost of the instrument, plus accrued interest; or

(B) The provider of the Guarantee is continuing, without protest, to make payments as due on the instrument.

(7) *Required Procedures: Amortized Cost Method*. In the case of a money market fund using the Amortized Cost Method:

(i) *General*. In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, shall establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at a single value.

(ii) *Specific Procedures*. Included within the procedures adopted by the board of directors shall be the following:

(A) *Shadow Pricing*. Written procedures shall provide:

(*1*) That the extent of deviation, if any, of the current net asset value per share calculated using available market quotations (or an appropriate substitute that reflects current market conditions) from the money market fund's amortized cost price per share, shall be calculated at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions;

(*2*) For the periodic review by the board of directors of the amount of the deviation as well as the methods used to calculate the deviation; and

(*3*) For the maintenance of records of the determination of deviation and the board's review thereof.

(B) *Prompt Consideration of Deviation*. In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, the board of directors shall promptly consider what action, if any, should be initiated by the board of directors.

(C) *Material Dilution or Unfair Results*. Where the board of directors believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall cause the fund to take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results.

(8) *Required Procedures: Penny-Rounding Method*. In the case of a money market fund using the Penny-Rounding Method, in supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors undertakes, as a particular responsibility within the overall duty of care owed to its shareholders, to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the single price established by the board of directors.

(9) *Specific Procedures: Amortized Cost and Penny-Rounding Methods*. Included within the procedures adopted by the board of directors for money market funds using either the Amortized Cost or Penny-Rounding Methods shall be the following:

(i) *Securities for Which Maturity is Determined by Reference to Demand Features*. In the case of a security for which maturity is determined by reference to a Demand Feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the Demand Feature and, in the case of a security subject to a Conditional Demand Feature, the issuer of the security whose financial condition must be monitored under paragraph (c)(3)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(ii) *Securities Subject to Demand Features or Guarantees*. In the case of a security subject to one or more Demand

Features or Guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (c)(3) of this section), maturity (pursuant to paragraph (d) of this section) or liquidity of the security subject to the Demand Feature or Guarantee, written procedures shall require periodic evaluation of such determination.

(iii) *Adjustable Rate Securities Without Demand Features.* In the case of a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(iv) *Asset Backed Securities.* In the case of an Asset Backed Security, written procedures shall require the fund to periodically determine the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section; *Provided, however*, written procedures need not require periodic determinations with respect to any Asset Backed Security that a fund's board of directors has determined, at the time of Acquisition, will not have, or is unlikely to have, Ten Percent Obligors that are deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section, and maintains a record of this determination.

(10) *Record Keeping and Reporting*—(i) *Written Procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (c)(6) through (c)(9) and (e) of this section shall be maintained and preserved.

(ii) *Board Considerations and Actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record shall be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(iii) *Credit Risk Analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the NRSRO ratings (if any) used to determine the status of the security as an Eligible Security, First Tier Security or Second Tier Security shall be maintained and preserved in an easily accessible place.

(iv) *Determinations With Respect to Adjustable Rate Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determination required by paragraph (c)(9)(iii) of this section (that a Variable Rate or Floating Rate Security that is not subject to a Demand Feature and for which maturity is determined pursuant to paragraphs (d)(1), (d)(2) or (d)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(v) *Determinations with Respect to Asset Backed Securities.* For a period of not less than three years from the date when the determination was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (c)(9)(iv) of this section (the number of Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section) deemed to be the issuers of all or a portion of the Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section). The written record shall include:

(A) The identities of the Ten Percent Obligors (as that term is used in paragraph (c)(4)(ii)(D) of this section), the percentage of the Qualifying Assets constituted by the securities of each

Ten Percent Obligor and the percentage of the fund's Total Assets that are invested in securities of each Ten Percent Obligor; and

(B) Any determination that an Asset Backed Security will not have, or is unlikely to have, Ten Percent Obligors deemed to be issuers of all or a portion of that Asset Backed Security for purposes of paragraph (c)(4)(ii)(D) of this section.

(vi) *Evaluations with Respect to Securities Subject to Demand Features or Guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record shall be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (c)(9)(ii) (regarding securities subject to one or more Demand Features or Guarantees) of this section.

(vii) *Inspection of Records.* The documents preserved pursuant to this paragraph (c)(10) shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)). If any action was taken under paragraphs (c)(6)(ii) (with respect to defaulted securities and events of insolvency) or (c)(7)(ii) (with respect to a deviation from the fund's share price of more than 1/2 of 1 percent) of this section, the money market fund will file an exhibit to the Form N–SAR (17 CFR 274.101) filed for the period in which the action was taken describing with specificity the nature and circumstances of such action. The money market fund will report in an exhibit to such Form any securities it holds on the final day of the reporting period that are not Eligible Securities.

(d) *Maturity of Portfolio Securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (d)(1) through (d)(8) of this section:

(1) *Adjustable Rate Government Securities.* A Government Security that is a Variable Rate Security where the variable rate of interest is readjusted no less frequently than every 762 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A Government Security that is a Floating Rate Security shall be deemed to have a remaining maturity of one day.

(2) *Short-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-Term Variable Rate Securities.* A Variable Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day.

(5) *Long-Term Floating Rate Securities.* A Floating Rate Security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a Demand Feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase Agreements.* A repurchase agreement shall be deemed to

have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio Lending Agreements*. A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money Market Fund Securities*. An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the Acquired money market fund is required to make payment upon redemption, unless the Acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(e) *Delegation*. The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section (other than the determinations required by paragraphs (c)(1) (board findings); (c)(6)(i)(C) (rule for certain securities subject to second tier Demand Features); (c)(6)(ii) (defaults and other events); (c)(7)(i) (general required procedures: Amortized Cost Method); (c)(7)(ii)(A) (shadow pricing), (B) (prompt consideration of deviation), and (C) (material dilution or unfair results); and (c)(8) (required procedures: Penny Rounding Method) of this section) provided:

(1) *Written Guidelines*. The Board shall establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (c)(3) of this section) and procedures under which the delegate makes such determinations:

(2) *Oversight*. The Board shall take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or Event of Insolvency with respect to the issuer of the security or any Guarantee to which it is subject that requires notification of the Commission under paragraph (c)(6)(iii) of this section) to assure that the guidelines and procedures are being followed.

[62 FR 64978, Dec. 9, 1997]

§ 270.2a19–1 Certain investment company directors not considered interested persons.

(a) A director of a registered investment company will not be considered an interested person, as defined by section 2(a)(19) of the Act, of such company or of any investment adviser of or principal underwriter for such company solely because that director is a broker or dealer registered under the Securities Exchange Act of 1934 or an affiliated person of a registered broker or dealer, *Provided*, That:

(1) The broker or dealer does not execute any portfolio transactions for the company's complex, engage in any principal transactions with the complex or distribute shares for the complex for at least six months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person;

(2) The company's board of directors determines that the company and its shareholders will not be adversely affected if the broker or dealer does not execute any portfolio transactions for the company, engage in any principal transactions with the company or distribute any shares of the company; and

(3) No more than a minority of the directors f the company who are not interested persons of the company are registered brokers or dealers or affiliated persons of registered brokers or dealers.

(b) For purposes of this rule, *complex* shall mean the registered investment company, its investment adviser (including all accounts over which the adviser has brokerage placement discretion), its principal underwriter and all

other investment companies having the same investment adviser or principal underwriter.

[49 FR 40572, Oct. 17, 1984]

§ 270.2a19–2 Investment company general partners not deemed interested persons.

PRELIMINARY NOTE TO § 270.2a19–2

This § 270.2a19–2 conditionally excepts from the definition of interested person in section 2(a)(19) (15 U.S.C. 80a–2(a)(19)) general partners of investment companies organized in limited partnership form. Compliance with the conditions of this § 270.2a19–2 does not relieve an investment company of any other requirement of this Act, or except a general partner that is an interested person by virtue of any other provision.

(a) *Director General Partners Not Deemed Interested Persons.* A general partner serving as a director of a limited partnership investment company shall not be deemed to be an interested person of such company, or of any investment adviser of, or principal underwriter for, such company, solely by reason of being a partner of the limited partnership investment company, or a copartner in the limited partnership investment company with any investment adviser of, or principal underwriter for, the company, *provided* that the Limited Partnership Agreement contains in substance the following:

(1) Only general partners who are natural persons shall serve as, and perform the functions of, directors of the limited partnership investment company, except that any general partner may act as provided in paragraph (a)(2)(iii) of this section.

(2) A general partner shall not have the authority to act individually on behalf of, or to bind, the Limited Partnership Investment Company, except:

(i) In such person's capacity as investment adviser, principal underwriter, or administrator;

(ii) Within the scope of such person's authority as delegated by the board of directors; or

(iii) In the event that no director of the company remains, to the extent necessary to continue the Limited Partnership Investment Company, for such limited periods as are permitted under the Act to fill director vacancies.

(3) Limited partners shall have all of the rights afforded shareholders under the Act. If a limited partnership interest is transferred in a manner that is effective under the Partnership Agreement, the transferee shall have all of the rights afforded shareholders under the Act.

(4) A general partner shall not withdraw from the Limited Partnership Investment Company or reduce its Federal Tax Status Contribution without giving at least one year's prior written notice to the Limited Partnership Investment Company, if such withdrawal or reduction is likely to cause the company to lose its partnership tax classification. This paragraph (a)(4) shall not apply to an investment adviser general partner if the company terminates its advisory agreement with such general partner.

(b) *Definitions.* (1) ''Federal Tax Status Contribution'' shall mean the interest (including limited partnership interest) in each material item of partnership income, gain, loss, deduction, or credit, and other contributions, required to be held or made by general partners, pursuant to section 4 of Internal Revenue Service Revenue Procedure 89–12, or any successor provisions thereto.

(2) ''Limited Partnership Investment Company'' shall mean a registered management company or a business development company that is organized as a limited partnership under state law.

(3) ''Partnership Agreement'' shall mean the agreement of the partners of the Limited Partnership Investment Company as to the affairs of the limited partnership and the conduct of its business.

[58 FR 45838, Aug. 31, 1993; 58 FR 64353, Dec. 6, 1993; 59 FR 15501, Apr. 1, 1994]

§ 270.2a41–1 Valuation of standby commitments by registered investment companies.

(a) A standby commitment means a right to sell a specified underlying security or securities within a specified period of time and at an exercise price equal to the amortized cost of the underlying security or securities plus accrued interest, if any, at the time of exercise, that may be sold, transferred

or assigned only with the underlying security or securities. A standby commitment entitles the holder to receive same day settlement, and will be considered to be from the party to whom the investment company will look for payment of the exercise price. A standby commitment may be assigned a fair value of zero, Provided, That:

(1) The standby commitment is not used to affect the company's valuation of the security or securities underlying the standby commitment; and

(2) Any consideration paid by the company for the standby commitment, whether paid in cash or by paying a premium for the underlying security or securities, is accounted for by the company as unrealized depreciation until the standby commitment is exercised or expires.

(b) [Reserved]

[51 FR 9779, Mar. 21, 1986, as amended at 56 FR 8128, Feb. 27, 1991; 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.2a51–1 Definition of investments for purposes of section 2(a)(51) (definition of "qualified purchaser"); certain calculations.

(a) *Definitions*. As used in this section:

(1) The term *Commodity Interests* means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:

(i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or

(ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 of the rules under the Commodity Exchange Act [17 CFR 30.1 through 30.11].

(2) The term *Family Company* means a company described in paragraph (A)(ii) of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)].

(3) The term *Investment Vehicle* means an investment company, a company that would be an investment company but for the exclusions provided by sections 3(c)(1) through 3(c)(9) of the Act [15 U.S.C. 80a–3(c)(1) through 3(c)(9)] or the exemptions provided by §§ 270.3a–6 or 270.3a–7, or a commodity pool.

(4) The term *Investments* has the meaning set forth in paragraph (b) of this section.

(5) The term *Physical Commodity* means any physical commodity with respect to which a Commodity Interest is traded on a market specified in paragraph (a)(1) of this section.

(6) The term *Prospective Qualified Purchaser* means a person seeking to purchase a security of a Section 3(c)(7) Company.

(7) The term *Public Company* means a company that:

(i) Files reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)]; or

(ii) Has a class of securities that are listed on a ''designated offshore securities market'' as such term is defined by Regulation S under the Securities Act of 1933 [17 CFR 230.901 through 230.904].

(8) The term *Related Person* means a person who is related to a Prospective Qualified Purchaser as a sibling, spouse or former spouse, or is a direct lineal descendant or ancestor by birth or adoption of the Prospective Qualified Purchaser, or is a spouse of such descendant or ancestor, *provided that*, in the case of a Family Company, a Related Person includes any owner of the Family Company and any person who is a Related Person of such owner.

(9) The term *Relying Person* means a Section 3(c)(7) Company or a person acting on its behalf.

(10) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) *Types of Investments*. For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)], the term *Investments* means:

(1) Securities (as defined by section 2(a)(1) of the Securities Act of 1933 [15 U.S.C. 77b(a)(1)]), other than securities of an issuer that controls, is controlled by, or is under common control with, the Prospective Qualified Purchaser that owns such securities, unless the issuer of such securities is:

(i) An Investment Vehicle;

(ii) A Public Company; or

(iii) A company with shareholders' equity of not less than $50 million (determined in accordance with generally

accepted accounting principles) as reflected on the company's most recent financial statements, *provided that* such financial statements present the information as of a date within 16 months preceding the date on which the Prospective Qualified Purchaser acquires the securities of a Section 3(c)(7) Company;

(2) Real estate held for investment purposes;

(3) Commodity Interests held for investment purposes;

(4) Physical Commodities held for investment purposes;

(5) To the extent not securities, financial contracts (as such term is defined in section 3(c)(2)(B)(ii) of the Act [15 U.S.C. 80a–3(c)(2)(B)(ii)] entered into for investment purposes;

(6) In the case of a Prospective Qualified Purchaser that is a Section 3(c)(7) Company, a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)], or a commodity pool, any amounts payable to such Prospective Qualified Purchaser pursuant to a firm agreement or similar binding commitment pursuant to which a person has agreed to acquire an interest in, or make capital contributions to, the Prospective Qualified Purchaser upon the demand of the Prospective Qualified Purchaser; and

(7) Cash and cash equivalents (including foreign currencies) held for investment purposes. For purposes of this section, cash and cash equivalents include:

(i) Bank deposits, certificates of deposit, bankers acceptances and similar bank instruments held for investment purposes; and

(ii) The net cash surrender value of an insurance policy.

(c) *Investment Purposes.* For purposes of this section:

(1) Real estate shall not be considered to be held for investment purposes by a Prospective Qualified Purchaser if it is used by the Prospective Qualified Purchaser or a Related Person for personal purposes or as a place of business, or in connection with the conduct of the trade or business of the Prospective Qualified Purchaser or a Related Person, *provided that* real estate owned by a Prospective Qualified Purchaser who is engaged primarily in the business of investing, trading or developing real estate in connection with such business may de deemed to be held for investment purposes. Residential real estate shall not be deemed to be used for personal purposes if deductions with respect to such real estate are not disallowed by section 280A of the Internal Revenue Code [26 U.S.C. 280A].

(2) A Commodity Interest or Physical Commodity owned, or a financial contract entered into, by the Prospective Qualified Purchaser who is engaged primarily in the business of investing, reinvesting, or trading in Commodity Interests, Physical Commodities or financial contracts in connection with such business may be deemed to be held for investment purposes.

(d) *Valuation.* For purposes of determining whether a Prospective Qualified Purchaser is a qualified purchaser, the aggregate amount of Investments owned and invested on a discretionary basis by the Prospective Qualified Purchaser shall be the Investments' fair market value on the most recent practicable date or their cost, *provided that:*

(1) In the case of Commodity Interests, the amount of Investments shall be the value of the initial margin or option premium deposited in connection with such Commodity Interests; and

(2) In each case, there shall be deducted from the amount of Investments owned by the Prospective Qualified Purchaser the amounts specified in paragraphs (e) and (f) of this section, as applicable.

(e) *Deductions.* In determining whether any person is a qualified purchaser there shall be deducted from the amount of such person's Investments the amount of any outstanding indebtedness incurred to acquire or for the purpose of acquiring the Investments owned by such person.

(f) *Deductions: Family Companies.* In determining whether a Family Company is a qualified purchaser, in addition to the amounts specified in paragraph (e) of this section, there shall be deducted from the value of such Family Company's Investments any outstanding indebtedness incurred by an owner of the Family Company to acquire such Investments.

(g) *Special rules for certain Prospective Qualified Purchasers*—(1) *Qualified institutional buyers.* Any Prospective Qualified Purchaser who is, or who a Relying Person reasonably believes is, a qualified institutional buyer as defined in paragraph (a) of § 230.144A of this chapter, acting for its own account, the account of another qualified institutional buyer, or the account of a qualified purchaser, shall be deemed to be a qualified purchaser *provided:*

(i) That a dealer described in paragraph (a)(1)(ii) of § 230.144A of this chapter shall own and invest on a discretionary basis at least $25 million in securities of issuers that are not affiliated persons of the dealer; and

(ii) That a plan referred to in paragraph (a)(1)(i)(D) or (a)(1)(i)(E) of § 230.144A of this chapter, or a trust fund referred to in paragraph (a)(1)(i)(F) of § 230.144A of this chapter that holds the assets of such a plan, will not be deemed to be acting for its own account if investment decisions with respect to the plan are made by the beneficiaries of the plan, except with respect to investment decisions made solely by the fiduciary, trustee or sponsor of such plan.

(2) *Joint Investments.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held jointly with such person's spouse, or Investments in which such person shares with such person's spouse a community property or similar shared ownership interest. In determining whether spouses who are making a joint investment in a Section 3(c)(7) Company are qualified purchasers, there may be included in the amount of each spouse's Investments any Investments owned by the other spouse (whether or not such Investments are held jointly). In each case, there shall be deducted from the amount of any such Investments the amounts specified in paragraph (e) of this section incurred by each spouse.

(3) *Investments by Subsidiaries.* For purposes of determining the amount of Investments owned by a company under section 2(a)(51)(A)(iv) of the Act [15 U.S.C. 80a–2(a)(51)(A)(iv)], there may be included Investments owned by majority-owned subsidiaries of the company and Investments owned by a company (''Parent Company'') of which the company is a majority-owned subsidiary, or by a majority-owned subsidiary of the company and other majority-owned subsidiaries of the Parent Company.

(4) *Certain Retirement Plans and Trusts.* In determining whether a natural person is a qualified purchaser, there may be included in the amount of such person's Investments any Investments held in an individual retirement account or similar account the Investments of which are directed by and held for the benefit of such person.

(h) *Reasonable Belief.* The term ''qualified purchaser'' as used in section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)] means any person that meets the definition of qualified purchaser in section 2(a)(51)(A) of the Act [15 U.S.C. 80a–2(a)(51)(A)]) and the rules thereunder, or that a Relying Person reasonably believes meets such definition.

[62 FR 17526, Apr. 9, 1997]

§ 270.2a51–2 Definitions of beneficial owner for certain purposes under sections 2(a)(51) and 3(c)(7) and determining indirect ownership interests.

(a) *Beneficial ownership: General.* Except as set forth in this section, for purposes of sections 2(a)(51)(C) and 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a–2(a)(51)(C) and -3(c)(7)(B)(ii)], the beneficial owners of securities of an excepted investment company (as defined in section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)]) shall be determined in accordance with section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(b) *Beneficial ownership: Grandfather provision.* For purposes of section 3(c)(7)(B)(ii) of the Act [15 U.S.C. 80a–3(c)(7)(B)(ii)], securities of an issuer beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)]) (''owning company'') shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an investment company or an excepted investment company;

(2) The owning company, directly or indirectly, controls, is controlled by, or

is under common control with, the issuer; and

(3) On October 11, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the issuer were deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case, such holders shall be deemed to be beneficial owners of the issuer's outstanding voting securities.

(c) *Beneficial ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], securities of an excepted investment company beneficially owned by a company (without giving effect to section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)]) (''owning company'') shall be deemed to be beneficially owned by one person unless:

(1) The owning company is an excepted investment company;

(2) The owning company directly or indirectly controls, is controlled by, or is under common control with, the excepted investment company or the company with respect to which the excepted investment company is, or will be, a qualified purchaser; and

(3) On April 30, 1996, under section 3(c)(1)(A) of the Act as then in effect, the voting securities of the excepted investment company were deemed to be beneficially owned by the holders of the owning company's outstanding securities (other than short-term paper), in which case the holders of such excepted company's securities shall be deemed to be beneficial owners of the excepted investment company's outstanding voting securities.

(d) *Indirect ownership: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], an excepted investment company shall not be deemed to indirectly own the securities of an excepted investment company seeking a consent to be treated as a qualified purchaser (''qualified purchaser company'') unless such excepted investment company, directly or indirectly, controls, is controlled by, or is under common control with, the qualified purchaser company or a company with respect to which the qualified purchaser company is or will be a qualified purchaser.

(e) *Required consent: Consent provision.* For purposes of section 2(a)(51)(C) of the Act [15 U.S.C. 80a–2(a)(51)(C)], the consent of the beneficial owners of an excepted investment company (''owning company'') that beneficially owns securities of an excepted investment company that is seeking the consents required by section 2(a)(51)(C) (''consent company'') shall not be required unless the owning company directly or indirectly controls, is controlled by, or is under common control with, the consent company or the company with respect to which the consent company is, or will be, a qualified purchaser.

NOTES TO § 270.2A51–2:

1. On both April 30, 1996 and October 11, 1996, section 3(c)(1)(A) of the Act as then in effect provided that: (A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1).

2. Issuers seeking the consent required by section 2(a)(51)(C) of the Act should note that section 2(a)(51)(C) requires an issuer to obtain the consent of the beneficial owners of its securities and the beneficial owners of securities of any ''excepted investment company'' that directly or indirectly owns the securities of the issuer. Except as set forth in paragraphs (d) (with respect to indirect owners) and (e) (with respect to direct owners) of this section, nothing in this section is designed to limit this consent requirement.

[62 FR 17528, Apr. 9, 1997]

§ 270.2a51–3 Certain companies as qualified purchasers.

(a) For purposes of section 2(a)(51)(A)(ii) and (iv) of the Act [15 U.S.C. 80a–2(a)(51)(A) (ii) and (iv)], a company shall not be deemed to be a qualified purchaser if it was formed for the specific purpose of acquiring the securities offered by a company excluded from the definition of investment company by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)] unless each beneficial owner of the company's securities is a qualified purchaser.

(b) For purposes of section 2(a)(51) of the Act [15 U.S.C. 80a–2(a)(51)], a company may be deemed to be a qualified purchaser if each beneficial owner of the company's securities is a qualified purchaser.

[62 FR 17528, Apr. 9, 1997]

§ 270.3a–1 Certain prima facie investment companies.

Notwithstanding section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company under the Act; *Provided*, That:

(a) No more than 45 percent of the value (as defined in section 2(a)(41) of the Act) of such issuer's total assets (exclusive of Government securities and cash items) consists of, and no more than 45 percent of such issuer's net income after taxes (for the last four fiscal quarters combined) is derived from, securites other than:

(1) Government securities;

(2) Securities issued by employees' securities companies;

(3) Securities issued by majority-owned subsidiaries of the issuer (other than subsidiaries relying on the exclusion from the definition of investment company in section 3(b)(3) or (c)(1) of the Act) which are not investment companies; and

(4) Securities issued by companies:

(i) Which are controlled primarily by such issuer;

(ii) Through which such issuer engages in a business other than that of investing, reinvesting, owning, holding or trading in securities; and

(iii) Which are not investment companies;

(b) The issuer is not an investment company as defined in section 3(a)(1) or (a)(2) of the Act and is not a special situation investment company; and

(c) The percentages described in paragraph (a) of this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries.

[46 FR 6881, Jan. 22, 1981]

§ 270.3a–2 Transient investment companies.

(a) For purposes of section 3(a)(1) and 3(a)(3) of the Act, an issuer is deemed not to be engaged in the business of investing, reinvesting, owning, holding or trading in securities during a period of time not to exceed one year; *Provided*, That the issuer has a *bona fide* intent to be engaged primarily, as soon as is reasonably possible (in any event by the termination of such period of time), in a business other than that of investing, reinvesting, owning, holding or trading in securities, such intent to be evidenced by:

(1) The issuer's business activities; and

(2) An appropriate resolution of the issuer's board of directors, or by an appropriate action of the person or persons performing similar functions for any issuer not having a board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents.

(b) For purposes of this rule, the period of time described in paragraph (a) shall commence on the earlier of:

(1) The date on which an issuer owns securities and/or cash having a value exceeding 50 percent of the value of such issuer's total assets on either a consolidated or unconsolidated basis; or

(2) The date on which an issuer owns or proposes to acquire investment securities (as defined in section 3(a) of the Act) having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(c) No issuer may rely on this section more frequently than once during any three-year period.

[46 FR 6883, Jan. 22, 1981]

§ 270.3a–3 Certain investment companies owned by companies which are not investment companies.

Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, an issuer will be deemed not to be an investment company for purposes of the Act; *Provided*, That all of the outstanding securities of the issuer (other than short-term paper, directors' qualifying shares, and debt securities owned by the Small Business Administration) are directly or indirectly owned by a company which satisfies the conditions of paragraph (a) of rule 3a–1 (17 CFR 270.3a–1) under the Act and which is:

(a) A company that is not an investment company as defined in section 3(a) of the Act;

(b) A company that is an investment company as defined in section 3(a)(3) of the Act, but which is excluded from the definition of the term ''investment company'' by section 3(b)(1) or 3(b)(2) of the Act; or

(c) A company that is deemed not to be an investment company for purposes of the Act by rule 3a–1.

[46 FR 6884, Jan. 22, 1981]

§ 270.3a–4 Status of investment advisory programs.

NOTE: This section is a nonexclusive safe harbor from the definition of investment company for programs that provide discretionary investment advisory services to clients. There is no registration requirement under section 5 of the Securities Act of 1933 [15 U.S.C. 77e] with respect to programs that are organized and operated in the manner described in § 270.3a–4. The section is not intended, however, to create any presumption about a program that is not organized and operated in the manner contemplated by the section.

(a) Any program under which discretionary investment advisory services are provided to clients that has the following characteristics will not be deemed to be an investment company within the meaning of the Act [15 U.S.C. 80a, *et seq.*]:

(1) Each client's account in the program is managed on the basis of the client's financial situation and investment objectives and in accordance with any reasonable restrictions imposed by the client on the management of the account.

(2)(i) At the opening of the account, the sponsor or another person designated by the sponsor obtains information from the client regarding the client's financial situation and investment objectives, and gives the client the opportunity to impose reasonable restrictions on the management of the account;

(ii) At least annually, the sponsor or another person designated by the sponsor contacts the client to determine whether there have been any changes in the client's financial situation or investment objectives, and whether the client wishes to impose any reasonable restrictions on the management of the account or reasonably modify existing restrictions;

(iii) At least quarterly, the sponsor or another person designated by the sponsor notifies the client in writing to contact the sponsor or such other person if there have been any changes in the client's financial situation or investment objectives, or if the client wishes to impose any reasonable restrictions on the management of the client's account or reasonably modify existing restrictions, and provides the client with a means through which such contact may be made; and

(iv) The sponsor and personnel of the manager of the client's account who are knowledgeable about the account and its management are reasonably available to the client for consultation.

(3) Each client has the ability to impose reasonable restrictions on the management of the client's account, including the designation of particular securities or types of securities that should not be purchased for the account, or that should be sold if held in the account; *Provided, however*, that nothing in this section requires that a client have the ability to require that particular securities or types of securities be purchased for the account.

(4) The sponsor or person designated by the sponsor provides each client with a statement, at least quarterly, containing a description of all activity

in the client's account during the preceding period, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the period.

(5) Each client retains, with respect to all securities and funds in the account, to the same extent as if the client held the securities and funds outside the program, the right to:

(i) Withdraw securities or cash;

(ii) Vote securities, or delegate the authority to vote securities to another person;

(iii) Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and

(iv) Proceed directly as a security holder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall be considered the sponsor of the program under this section.

[62 FR 15109, Mar. 31, 1997]

§ 270.3a–5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.

(a) A finance subsidiary will not be considered an investment company under section 3(a) of the Act and securities of a finance subsidiary held by the parent company or a company controlled by the parent company will not be considered ''investment securities'' under section 3(a)(3) of the Act; *Provided*, That:

(1) Any debt securities of the finance subsidiary issued to or held by the public are unconditionally guaranteed by the parent company as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(2) Any non-voting preferred stock of the finance subsidiary issued to or held by the public is unconditionally guaranteed by the parent company as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(3) The parent company's guarantee provides that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities or non-voting preferred stock issued by the finance subsidiary, the holders of those securities may institute legal proceedings directly against the parent company (or, in the case of a partnership or joint venture, against the partners or participants in the joint venture) to enforce the guarantee without first proceeding against the finance subsidiary;

(4) Any securities issued by the finance subsidiary which are convertible or exchangeable are convertible or exchangeable only for securities issued by the parent company (and, in the case of a partnership or joint venture, for securities issued by the partners or participants in the joint venture) or for debt securities or non-voting preferred stock issued by the finance subsidiary meeting the applicable requirements of paragraphs (a)(1) through (a)(3);

(5) The finance subsidiary invests in or loans to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the finance

subsidiary's receipt of such cash or cash equivalents;

(6) The finance subsidiary does not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company (or in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture) or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act; and

(7) Where the parent company is a foreign bank as the term is used in rule 3a–6 (17 CFR 270.3a–6 of this chapter), the parent company may, in lieu of the guaranty required by paragraph (a)(1) or (a)(2) of this section, issue, in favor of the holders of the finance subsidiary's debt securities or non-voting preferred stock, as the case may be, an irrevocable letter of credit in an amount sufficient to fund all of the amounts required to be guaranteed by paragraphs (a)(1) and (a)(2) of this section, *provided*, that:

(i) Payment on such letter of credit shall be conditional only upon the presentation of customary documentation, and

(ii) The beneficiary of such letter of credit is not required by either the letter of credit or applicable law to institute proceedings against the finance subsidiary before enforcing its remedies under the letter of credit.

(b) For purposes of this rule,

(1) A *finance subsidiary* shall mean any corporation—

(i) All of whose securities other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (3) or directors' qualifying shares are owned by its parent company or a company controlled by its parent company; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company;

(2) A *parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a–6 (17 CFR 270.3a–6 of this chapter); and

(iii) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(2)(i) and (ii).

(3) A *company controlled by the parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is either organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a–6; and

(iii) In the case of a corporation, more than 25 percent of whose outstanding voting securities are beneficially owned directly or indirectly by the parent company; or

(iv) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(3) (i) and (ii), and the parent company has the power to exercise a controlling influence over the management or policies of the partnership or joint venture.

(4) A *foreign private issuer* shall mean any issuer which is incorporated or organized under the laws of a foreign country, but not a foreign government or political subdivision of a foreign government.

[49 FR 49446, Dec. 20, 1984, as amended at 56 FR 56299, Nov. 4, 1991]

§ 270.3a–6 Foreign banks and foreign insurance companies.

(a) Notwithstanding section 3(a)(1) or section 3(a)(3) of the Act, a foreign bank or foreign insurance company

shall not be considered an investment company for purposes of the Act.

(b) For purposes of this section:

(1)(i) *Foreign bank* means a banking institution incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(A) Regulated as such by that country's or subdivision's government or any agency thereof;

(B) Engaged substantially in commercial banking activity; and

(C) Not operated for the purpose of evading the provisions of the Act;

(ii) The term *foreign bank* shall also include:

(A) A trust company or loan company that is:

(*1*) Organized or incorporated under the laws of Canada or a political subdivision thereof;

(*2*) Regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(*3*) Not operated for the purpose of evading the provisions of the Act; and

(B) A building society that is:

(*1*) Organized under the laws of the United Kingdom or a political subdivision thereof;

(*2*) Regulated as a building society by the country's or subdivision's government or any agency thereof; and

(*3*) Not operated for the purpose of evading the provisions of the Act.

(iii) Nothing in this section shall be construed to include within the definition of *foreign bank* a common or collective trust or other separate pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

(2) *Engaged substantially in commercial banking activity* means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located.

(3) *Foreign insurance company* means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(i) Regulated as such by that country's or subdivision's government or any agency thereof;

(ii) Engaged primarily and predominantly in:

(A) The writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or

(B) The reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act. Nothing in this section shall be construed to include within the definition of ''foreign insurance company'' a separate account or other pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

NOTE: Foreign banks and foreign insurance companies (and certain of their finance subsidiaries and holding companies) relying on rule 3a–6 for exemption from the Act may be required by rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) to file Form F–N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

[56 FR 56299, Nov. 4, 1991]

§ 270.3a–7 Issuers of Asset-Backed Securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets (and in activities related or incidental thereto), and who does not issue redeemable securities will not be deemed to be an investment company; *Provided That:*

(1) The issuer issues fixed-income securities or other securities which entitle their holders to receive payments that depend primarily on the cash flow from eligible assets;

(2) Securities sold by the issuer or any underwriter thereof are fixed-income securities rated, at the time of initial sale, in one of the four highest categories assigned long-term debt or

in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer, except that:

(i) Any fixed-income securities may be sold to accredited investors as defined in paragraphs (1), (2), (3), and (7) of rule 501(a) under the Securities Act of 1933 (17 CFR 230.501(a)) and any entity in which all of the equity owners come within such paragraphs; and

(ii) Any securities may be sold to qualified institutional buyers as defined in rule 144A under the Securities Act (17 CFR 230.144A) and to persons (other than any rating organization rating the issuer's securities) involved in the organization or operation of the issuer or an affiliate, as defined in rule 405 under the Securities Act (17 CFR 230.405), of such a person;

Provided, That the issuer or any underwriter thereof effecting such sale exercises reasonable care to ensure that such securities are sold and will be resold to persons specified in paragraphs (a)(2) (i) and (ii) of this section;

(3) The issuer acquires additional eligible assets, or disposes of eligible assets, only if:

(i) The assets are acquired or disposed of in accordance with the terms and conditions set forth in the agreements, indentures, or other instruments pursuant to which the issuer's securities are issued;

(ii) The acquisition or disposition of the assets does not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iii) The assets are not acquired or disposed of for the primary purpose of recognizing gains or decreasing losses resulting from market value changes; and

(4) If the issuer issues any securities other than securities exempted from the Securities Act by section 3(a)(3) thereof (15 U.S.C. 77c(a)(3)), the issuer:

(i) Appoints a trustee that meets the requirements of section 26(a)(1) of the Act and that is not affiliated, as that term is defined in rule 405 under the Securities Act (17 CFR 230.405), with the issuer or with any person involved in the organization or operation of the issuer, which does not offer or provide credit or credit enhancement to the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in section 26(a)(3) of the Act;

(ii) Takes reasonable steps to cause the trustee to have a perfected security interest or ownership interest valid against third parties in those eligible assets that principally generate the cash flow needed to pay the fixed-income security holders, provided that such assets otherwise required to be held by the trustee may be released to the extent needed at the time for the operation of the issuer; and

(iii) Takes actions necessary for the cash flows derived from eligible assets for the benefit of the holders of fixed-income securities to be deposited periodically in a segregated account that is maintained or controlled by the trustee consistent with the rating of the outstanding fixed-income securities.

(b) For purposes of this section:

(1) *Eligible assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

(i) A stated principal amount; or

(ii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to a fixed rate or to a standard or formula which does not reference any change in the market value or fair value of eligible assets; or

(iii) Interest on a principal amount (which may be a notional principal amount) calculated by reference to auctions among holders and prospective holders, or through remarketing of the security; or

(iv) An amount equal to specified fixed or variable portions of the interest received on the assets held by the issuer; or

(v) Any combination of amounts described in paragraphs (b)(2) (i), (ii), (iii), and (iv) of this section;

Provided, That substantially all of the payments to which the holders of such securities are entitled consist of the foregoing amounts.

[57 FR 56256, Nov. 27, 1992]

§ 270.3c–1 Definition of beneficial ownership for certain 3(c)(1) funds.

(a) As used in this section:

(1) The term *Covered Company* means a company that is an investment company, a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) For purposes of section 3(c)(1)(A) of the Act [15 U.S.C. 80a–3(c)(1)(A)], beneficial ownership by a Covered Company owning 10 percent or more of the outstanding voting securities of a Section 3(c)(1) Company shall be deemed to be beneficial ownership by one person, *provided that:*

(1) On April 1, 1997, the Covered Company owned 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company or non-voting securities that, on such date and in accordance with the terms of such securities, were convertible into or exchangeable for voting securities that, if converted or exchanged on or after such date, would have constituted 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company; and

(2) On the date of any acquisition of securities of the Section 3(c)(1) Company by the Covered Company, the value of all securities owned by the Covered Company of all issuers that are Section 3(c)(1) or Section 3(c)(7) Companies does not exceed 10 percent of the Covered Company's total assets.

[62 FR 17529, Apr. 9, 1997]

§ 270.3c–2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: *Provided*, That such State development corporation is not, or as a result of its investment in the small business investment company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 6, 74 Stat. 412; 15 U.S.C. 80a–6)

[33 FR 11451, Aug. 13, 1968]

§ 270.3c–3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term *public offering* as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or accompanied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this

section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

[37 FR 7590, Apr. 18, 1972]

§ 270.3c–4 Definition of common trust fund as used in section 3(c)(3) of the Act.

The term *common trust fund* as used in section 3(c)(3) of the Act (15 U.S.C. 80a–3(c)(3)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided,* That:

(a) The common trust fund is operated in compliance with the same State and Federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 80a–6(c), 80a–37(a))

[43 FR 2393, Jan 17, 1978]

§ 270.3c–5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this section:

(1) The term *Affiliated Management Person* means an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 U.S.C. 80a–2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this definition, the term ''investment company'' as used in section 2(a)(3) of the Act includes a Covered Company.

(2) The term *Covered Company* means a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(3) The term *Executive Officer* means the president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for a Covered Company or for an Affiliated Management Person of the Covered Company.

(4) The term *Knowledgeable Employee* with respect to any Covered Company means any natural person who is:

(i) An Executive Officer, director, trustee, general partner, advisory board member, or person serving in a similar capacity, of the Covered Company or an Affiliated Management Person of the Covered Company; or

(ii) An employee of the Covered Company or an Affiliated Management Person of the Covered Company (other than an employee performing solely clerical, secretarial or administrative functions with regard to such company or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of such Covered Company, other Covered Companies, or investment companies the investment activities of which are managed by such Affiliated Management Person of the Covered Company, *provided that* such employee has been performing such functions and duties for or on behalf of the Covered Company or the Affiliated Management Person of the Covered Company, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

(5) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(6) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(b) For purposes of determining the number of beneficial owners of a Section 3(c)(1) Company, and whether the outstanding securities of a Section 3(c)(7) Company are owned exclusively by qualified purchasers, there shall be excluded securities beneficially owned by:

(1) A person who at the time such securities were acquired was a Knowledgeable Employee of such Company;

(2) A company owned exclusively by Knowledgeable Employees;

(3) Any person who acquires securities originally acquired by a Knowledgeable Employee in accordance with this section, provided that such securities were acquired by such person in accordance with § 270.3c–6

[62 FR 17529, Apr. 9, 1997]

§ 270.3c–6 Certain transfers of interests in section 3(c)(1) and section 3(c)(7) funds.

(a) As used in this section:

(1) The term *Donee* means a person who acquires a security of a Covered Company (or a security or other interest in a company referred to in paragraph (b)(3) of this section) as a gift or bequest or pursuant to an agreement relating to a legal separation or divorce.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a–3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a–3(c)(7)].

(4) The term *Transferee* means a Section 3(c)(1) Transferee or a Qualified Purchaser Transferee, in each case as defined in paragraph (b) of this section.

(5) The term *Transferor* means a Section 3(c)(1) Transferor or a Qualified Purchaser Transferor, in each case as defined in paragraph (b) of this section.

(b) Beneficial ownership by any person (''Section 3(c)(1) Transferee'') who acquires securities or interests in securities of a Section 3(c)(1) Company from a person other than the Section 3(c)(1) Company shall be deemed to be beneficial ownership by the person from whom such transfer was made (''Section 3(c)(1) Transferor''), and securities of a Section 3(c)(7) Company that are owned by persons who received the securities from a qualified purchaser other than the Section 3(c)(7) Company (''Qualified Purchaser Transferor'') or a person deemed to be a qualified purchaser by this section shall be deemed to be acquired by a qualified purchaser (''Qualified Purchaser Transferee''), provided that the Transferee is:

(1) The estate of the Transferor;

(2) A Donee; or

(3) A company established by the Transferor exclusively for the benefit of (or owned exclusively by) the Transferor and the persons specified in paragraphs (b)(1) and (b)(2) of this section.

[62 FR 17529, Apr. 9, 1997]

§ 270.5b–1 Definition of "total assets."

The term *total assets*, when used in computing values for the purposes of sections 5 and 12 of the Act, shall mean the gross assets of the company with respect to which the computation is made, taken as of the end of the fiscal quarter of the company last preceding the date of computation. This section shall not apply to any company which has adopted either of the alternative methods of valuation permitted by § 270.2a–1.

[Rule N–5B–1, 6 FR 5920, Nov. 22, 1941]

§ 270.5b–2 Exclusion of certain guarantees as securities of the guarantor.

(a) For the purposes of section 5 of the act, a guarantee of a security shall not be deemed to be a security issued by the guarantor: *Provided*, That the value of all securities issued or guaranteed by the guarantor, and owned by the management company, does not exceed 10 percent of the value of the total assets of such management company.

(b) Notwithstanding paragraph (a) of this section, for the purposes of section 5 of the Act, a guarantee by a railroad company of a security issued by a terminal company, warehouse company, switching company, or bridge company, shall not be deemed to be a security issued by such railroad company: *Provided:*

(1) The security is guaranteed jointly or severally by more than one railroad company; and

(2) No one of such guaranteeing railroad companies directly or indirectly controls all of its co-guarantors.

(c) For the purposes of section 5 of the Act, a lease or other arrangement

whereby a railroad company is or becomes obligated to pay a stipulated annual sum of rental either to another railroad company or to the security holders of such other railroad company shall not be deemed in itself a guarantee.

[Rule N–5B–2, 10 FR 581, Jan. 16, 1945]

§ 270.6b–1 Exemption of employees' securities company pending determination of application.

Any employees' securities company which files an application for an order of exemption under section 6(b) of the Act (54 Stat. 801; 15 U.S.C. 80a–6) shall be exempt, pending final determination of such application by the Commission, from all provisions of the Act applicable to investment companies as such.

[Rule N–6B–1, 6 FR 6126, Dec. 2, 1941]

§ 270.6c–3 Exemptions for certain registered variable life insurance separate accounts.

A separate account which meets the requirements of paragraph (a) of Rule 6e–2 (17 CFR 270.6e–2) or paragraph (a) of Rule 6e–3(T) (17 CFR 270.6e–3(T)) and registers as an investment company under section 8(a) of the Act (15 U.S.C. 80a–8(a)), and the investment adviser, principal underwriter and depositor of such separate account, shall be exempt from the provisions of the Act specified in paragraph (b) of Rule 6e–2 or paragraph (b) of Rule 6e–3(T), except for sections 7 (15 U.S.C. 80a–7) and 8(a) of the Act, under the same terms and conditions as a separate account claiming exemption under Rule 6e–2 or Rule 6e–3(T).

(Secs. 6(c); 15 U.S.C. 80a–6(C) and 38(a))
[49 FR 49228, Dec. 3, 1984]

§ 270.6c–6 Exemption for certain registered separate accounts and other persons.

(a) As used in this section,

(1) *Revenue Ruling* shall mean Revenue Ruling 81–225, 1981–41 I.R.B. (October 13, 1981), issued by the Internal Revenue Service on September 25, 1981.

(2) *Existing separate account* shall mean a separate account which is, or is a part of, a unit investment trust registered under the Act, engaged in a continuous offering of its securities on September 25, 1981.

(3) *Existing portfolio company* shall mean a registered open-end management investment company, engaged in a continuous offering of its securities on September 25, 1981, all or part of whose securities were owned by an existing separate account on September 25, 1981.

(4) *New portfolio company* shall mean any registered open-end management investment company the shares of which will be sold to one or more registered separate accounts for the purpose of minimizing the impact of the Revenue Ruling on the contractowners of an existing separate account, which new portfolio company has the same:

(i) Investment objectives,

(ii) Fundamental policies, and

(iii) Voting rights as the existing portfolio company and has an advisory fee schedule, including expenses assumed by the adviser, that is at least as advantageous to the new portfolio company as was the fee schedule of the existing portfolio company.

(5) *New separate account* shall mean a separate account which

(i) Is, or is a part of, a unit investment trust registered under the Act;

(ii) Is intended to minimize the impact of the Revenue Ruling on the contractowners of an existing separate account;

(iii) Invests solely in one or more new portfolio companies;

(iv) Has the same

(A) Sales loads,

(B) Depositor, and

(C) Custodial arrangements

As the existing separate account; and

(v) Has

(A) Asset charges,

(B) Administrative fees, and

(C) Any other fees and charges (not including taxes) that correspond only to fees of the existing separate account and are no greater than those corresponding fees.

(b) Any order of the Commission under the Act, granted to an existing separate account on or before September 25, 1981, shall remain in full force and effect notwithstanding that the existing separate account invests in one or more new portfolio companies in lieu of, or in addition to, investing in

one or more existing portfolio companies; *Provided,* That:

(1) No material changes in the facts upon which the order was based have occurred;

(2) All representations, undertakings, and conditions made or agreed to by the existing separate account, and any other person or persons, other than any existing portfolio company, in connection with the issuance of the order are, and continue to be, applicable to the existing separate account and any such other person or persons, unless modified in accordance with this section;

(3) All representations, undertakings, and conditions made or agreed to by the existing portfolio company in connection with the issuance of the order are made or agreed to by the new portfolio company, unless modified in accordance with this section; and

(4) Part II of the Registration Statement under the Securities Act of 1933 of the existing separate account

(i) Indicates that the existing separate account is relying upon paragraph (b) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the existing separate account intends to rely, and

(iii) Contains a representation that the provisions of this paragraph (b) have been complied with.

(c) Any order of the Commission under the Act, granted to an existing separate account on or before September 25, 1981, shall apply with full force and effect to a new separate account and the depositor of and principal underwriter for the new separate account notwithstanding that the new separate account invests in one or more new portfolio companies; *Provided,* That:

(1) No material changes in the facts upon which the order was based have occurred;

(2) All representations, undertakings, and conditions made or agreed to by the depositor, principal underwriter, and any other person or persons other than the existing separate account or any existing portfolio companies, in connection with the issuance of the order are, and continue to be, applicable to such depositor, principal underwriter, and other person or persons, unless modified in accordance with this section;

(3) All representations, undertakings, and conditions made or agreed to by the existing separate account in connection with the issuance of the order are made or agreed to by the new separate account, unless modified in accordance with this section;

(4) All representations, undertakings, and conditions made or agreed to by an existing portfolio company in connection with the issuance of the order are made or agreed to by the new portfolio company, unless modified in accordance with this section; and

(5) Part II of the Registration Statement under the Securities Act of 1933 of the new separate account

(i) Indicates that the new separate account is relying upon paragraph (c) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the new separate account intends to rely, and

(iii) Contains a representation that the provisions of this paragraph (c) have been complied with.

(d) Any affiliated person or depositor of or principal underwriter for a new or existing separate account or any affiliated person of or principal underwriter for a new or existing portfolio company, and any affiliated person of such persons, principal underwriters, or depositor shall be exempt from section 17(d) of the Act (15 U.S.C 80a–17(d)) and rule 17d–1 thereunder (17 CFR 270.17d–1) to the extent necessary to permit the organization of one or more new portfolio companies; *Provided,* That, any expenses borne by the existing portfolio company or the new portfolio company in connection with such organization are necessary and appropriate and are allocated in a manner that is fair and reasonable to all of the shareholders of these companies.

(e) Any affiliated person or depositor of or principal underwriter for a new or existing separate account and any affiliated persons of such a person, principal underwriter, or depositor shall be exempt from section 17(d) of the Act and Rule 17d–1 thereunder to the extent necessary to permit such person to bear any reasonable expenses arising out of the organization of one or more

new portfolio companies or the new separate account.

(f) Any affiliated persons or depositor of or principal underwriter for a new or existing separate account or any affiliated person of or principal underwriter for a new or existing portfolio company, and any affiliated person of such persons, principal underwriters, or depositor shall be exempt from section 17(a) (15 U.S.C. 80a–17(a)), and any existing portfolio company which has made an election pursuant to Rule 18f–1 (17 CFR 270.18f–1) shall be permitted to revoke that election to the extent necessary to permit transactions involving the transfer of assets from the existing portfolio company to a new portfolio company; *Provided*, That:

(1) Such assets are transferred without the imposition of any fees or charges;

(2) The board of directors of the existing portfolio company, including a majority of the directors of the company who are not interested persons of such company, determines that the transfer of assets is fair and reasonable to all shareholders of the company and such determination, and the basis upon which it was made, is recorded in the minute book of the existing portfolio company;

(3) Any securities involved are valued by the existing portfolio company for purposes of the transfer in accordance with its valuation practices for determining net asset value per share; and

(4) With respect to Rule 18f–1, the existing separate account requests that the existing portfolio company redeem in kind the shares of the portfolio company held by the separate account.

(g) The new portfolio company shall be exempt from section 2(a)(41) (15 U.S.C. 80a–2(a)(41)) of the Act and rules 2a–4 (17 CFR 270.2a–4) and 22c–1 (17 CFR 270.22c–1) under the Act to the extent necessary to permit it to use the same method of valuation for the purpose of pricing its shares for sale, redemption, and repurchase, as the existing portfolio company; *Provided*, That:

(1) The existing portfolio company had on September 25, 1981, an order of the Commission exempting it, for the purposes of pricing its shares for sale, redemption, and repurchase, from:

(i) Section 2(a)(41) of the Act and rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to use the amortized cost valuation method or

(ii) Rules 2a–4 and 22c–1 under the Act to the extent necessary to permit it to calculate its net asset value per share to the nearest one cent on share values of $1.00;

(2) All representations, undertakings, and conditions made or agreed to by the existing portfolio company in connection with the order are made or agreed to by the new portfolio company unless modified in accordance with this section; and

(3) Part II of the Registration Statement under the Securities Act of 1933 of the new portfolio company

(i) Indicates that the new portfolio company is relying upon paragraph (g) of this section,

(ii) Lists the Investment Company Act release numbers of any orders upon which the new portfolio company intends to rely, and

(iii) Contains a representation that the provisions of paragraph (g) have been complied with.

(h) The depositor or trustee of an existing separate account shall be exempt from section 26(b) of the Act (15 U.S.C. 80a–26(b)) to the extent necessary to permit the substitution of securities of the new portfolio company for securities of the existing portfolio company; *Provided;* That, within thirty days of such substitution:

(1) The existing separate account notifies all contractowners of the substitution of securities and any determinations of the board of directors of the new portfolio company required by paragraph (d) of this section;

(2) The existing separate account delivers a copy of the prospectus of the new portfolio company to all contractowners; and

(3) The existing separate account, concurrently with the notification referred to in paragraph (h)(1) of this section or the delivery of the prospectus of the new portfolio company referred to in paragraph (h)(2) of this section, whichever is later, offers to those contractowners who would otherwise have surrender rights under their contracts the right, for a period of at least

thirty days from the receipt of this offer, to surrender their contracts without the imposition of any withdrawal charge or contingent deferred sales load, and any surrendering contractowner receives the price next determined after the request for surrender is received by the insurance company.

(i) The existing separate account shall be exempt from section 22(d) of the Act (15 U.S.C. 80a–22(d)) to the extent necessary to permit it to comply with paragraph (h) of this section and the principal underwriter for or depositor of the existing separate account shall be exempt from section 26(a)(4)(B) of the Act (15 U.S.C. 80a–26(a)(4)(B)) to the extent necessary to permit them to rely on paragraph (h) of this section.

(j) Notwithstanding section 11 of the Act (15 U.S.C. 80a–11), the existing separate account or any principal underwriter for the existing separate account may make or cause to be made to the contractowners of the existing separate account an offer to exchange a security funded by an existing portfolio company for a security funded by a new portfolio company without the terms of that offer having first been submitted to and approved by the Commission; *Provided,* That the exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges.

(k) Notwithstanding section 11 of the Act, the new separate account or any principal underwriter for the new separate account may make or cause to be made an offer to the contractowners of the existing separate account to exchange their securities for securities of the new separate account without the terms of that offer having first been submitted to and approved by the Commission;

Provided, That:

(1) The exchange is to be made on the basis of the relative net asset values of the securities to be exchanged without the imposition of any fees or charges; and

(2) If the new separate account imposes a contingent deferred sales load (''sales load'') on the securities to be acquired in the exchange

(i) At the time this sales load is imposed, it is calculated as if

(A) The contractowner had been a contractowner of the new separate account from the date on which he became a contractowner of the existing separate account, in the case of a sales load based on the amount of time the contractowner has been invested in the new separate account, and

(B) Amounts attributable to purchase payments made to the existing separate account had been made to the new separate account on the date on which they were made to the existing separate account, in the case of a sales load based on the amount of time purchase payments have been invested in the new separate account, and

(ii) The total sales load imposed does not exceed 9 percent of the sum of the purchase payments made to the new separate account and that portion of purchase payments made to the existing separate account attributable to the securities exchanged.

(l) Notwithstanding the foregoing, the provisions of this section will be available to a new separate account or new portfolio company, or to any affiliated person or depositor of or principal underwriter for such a new separate account, to any affiliated person of or principal underwriter for such a new portfolio company, to any affiliated person of such persons, depositor, or principal underwriters, or to any substitution of securities effected in reliance on this section, only if such new separate account or new portfolio company is registered under the Act or such substitution is effected prior to September 21, 1983.

[47 FR 42559, Sept. 28, 1982]

§ 270.6c–7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.

A registered separate account, and any depositor of or underwriter for such account, shall be exempt from the provisions of sections 22(e), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a–22(e), 80a–27(c)(1), and 80a–27(d), respectively) with respect to any variable annuity contract participating in such account

to the extent necessary to permit compliance with the Texas Optional Retirement Program (''Program''), *Provided*, That the separate, account, depositor, or underwriter for such account:

(a) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in each registration statement, including the prospectus, used in connection with the Program;

(b) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in any sales literature used in connection with the offer of annuity contracts to potential Program participants;

(c) Instructs salespeople who solicit Program participants to purchase annuity contracts specifically to bring the restrictions on redemption imposed by the Program to the attention of potential Program participants;

(d) Obtains from each Program participant who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and

(e) Includes in Part II of the separate account's registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a) through (d) of this section have been complied with.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c) and 80a–37(a), respectively))
[49 FR 1479, Jan. 12, 1984]

§ 270.6c–8 Exemptions for registered separate accounts to impose a deferred sales load and to deduct certain administrative charges.

(a) As used in this section *Deferred sales load* shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a registered separate account.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), and 27(d) of the Act (15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), 80a–22(c), 80a–26(a)(2)(C), 80a–27(c)(1), 80a–27(c)(2), and 80a–27(d), respectively) and rule 22c–1 under the Act (17 CFR 270.22c–1) to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account, *Provided*, That:

(1) The amount of any such sales load imposed, when added to any sales load previously paid on such contract, shall not exceed 9 percent of purchase payments made to date for such contract; and

(2) The terms of any offer to exchange another contract for the contract are in compliance with the requirements of paragraph (d) or (e) of rule 11a–2 under the Act (17 CFR 270.11a–2).

(c) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from sections 2(a)(32), 22(c), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a–2(a)(32), 80a–22(c), 80a–27(c)(1), and 80a–27(d), respectively) and rule 22c–1 under the Act (17 CFR 270.22c–1) to the extent necessary to permit them to deduct from the value of any variable annuity contract participating in such account, upon total redemption of the contract prior to the last day of the year, the full annual fee for administrative services that otherwise would have been deducted on that date.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c) and 80a–37(a)))
[48 FR 36098, Aug. 9, 1983]

2. Section 270.6c–10 is revised to read as follows:

§ 270.6c–10 Exemption for certain open-end management investment companies to impose deferred sales loads.

(a) A company and any exempted person shall be exempt from the provisions of sections 2(a)(32), 2(a)(35), and 22(d) of the Act [15 U.S.C. 80a–2(a)(32), 80a–2(a)(35), and 80a–22(d), respectively] and § 270.22c–1 to the extent necessary to permit a deferred sales load to be imposed on shares issued by the company, *Provided*, that:

(1) The amount of the deferred sales load does not exceed a specified percentage of the net asset value or the offering price at the time of purchase;

(2) The terms of the deferred sales load are covered by the provisions of Rule 2830 of the Conduct Rules of the National Association of Securities Dealers, Inc.; and

(3) The same deferred sales load is imposed on all shareholders, except that scheduled variations in or elimination of a deferred sales load may be offered to a particular class of shareholders or transactions, *Provided*, that the conditions in § 270.22d–1 are satisfied. Nothing in this paragraph (a) shall prevent a company from offering to existing shareholders a new scheduled variation that would waive or reduce the amount of a deferred sales load not yet paid.

(b) For purposes of this section:

(1) *Company* means a registered open-end management investment company, other than a registered separate account, and includes a separate series of the company;

(2) *Exempted person* means any principal underwriter of, dealer in, and any other person authorized to consummate transactions in, securities issued by a company; and

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption.

[61 FR 49016, Sept. 17, 1996]

§ 270.6d–1 Exemption for certain closed-end investment companies.

(a) An application under section 6(d) of the Act shall contain the following information:

(1) A brief description of the character of the business and investment policy of the applicant.

(2) The information relied upon by the applicant to satisfy the conditions of paragraphs (1) and (2) of section 6(d) of the Act.

(3) The number of holders of each class of the applicant's outstanding securities.

(4) An unconsolidated balance sheet as of a date not earlier than the end of the applicant's first fiscal year, together with a schedule specifying the title, the amount, the book value and, if determinable, the market value of each security in the applicant's portfolio.

(5) An unconsolidated profit and loss statement for the applicant's last fiscal year.

(6) A statement of each provision of the act from which the applicant seeks exemption, together with a statement of the facts by reason of which, in the applicant's opinion, such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(b) There shall be attached to each copy of the application a copy of Form N–8A. The form need not be executed, but it shall be clearly marked on its facing page as an exhibit to the application. The filing of Form N–8A in this manner shall not be construed as the filing of a notification of registration under section 8(a) of the Act.

(c) The application may contain any additional information which the applicant desires to submit.

[Rule N–6D–1, 5 FR 4346, Nov. 2, 1940]

§ 270.6e–2 Exemptions for certain variable life insurance separate accounts.

(a) A separate account, and the investment adviser, principal underwriter and depositor of such separate account, shall, except for the exemptions provided in paragraph (b) of this Rule 6e–2, be subject to all provisions of the Act and rules and regulations promulgated thereunder as though such separate account were a registered investment company issuing periodic payment plan certificates if:

(1) Such separate account is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies to the extent necessary with Rule 7d–1 (17 CFR 270.7d–1) under the Act;

(2) The assets of the separate account are derived solely from the sale of variable life insurance contracts as defined in paragraph (c)(1) of this Rule 6e–2, and advances made by the life insurance company which established and maintains the separate account (''life

insurer'') in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or for funds corresponding to dividend accumulations or other contract liabilities not involving life contingencies;

(4) The income, gains and losses, whether or not realized, from assets allocated to such separate account, are, in accordance with the applicable variable life insurance contract, credited to or charged against such account without regard to other income, gains or losses of the life insurer;

(5) The separate account is legally segregated, and that portion of its assets having a value equal to, or approximately equal to, the reserves and other contract liabilities with respect to such separate account are not chargeable with liabilities arising out of any other business that the life insurer may conduct;

(6) The assets of the separate account have, at each time during the year that adjustments in the reserves are made, a value at least equal to the reserves and other contract liabilities with respect to such separate account, and at all other times, except pursuant to an order of the Commission, have a value approximately equal to or in excess of such reserves and liabilities; and

(7) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940.

(b) If a separate account meets the requirements of paragraph (a) of this section, then such separate account and the other persons described in paragraph (a) of this section shall be exempt from the provisions of the Act as follows:

(1) Section 2(a)(35): *Provided, however,* That the term ''sales load,'' as used in the Act and rules and regulations thereunder, shall have the meaning set forth in paragraph (c)(4) of this Rule.

(2) Section 7.

(3) Section 8 to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account shall file with the Commission a notification on Form N–6EI–1 which identifies such separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission a form to be designated by the Commission within ninety days after filing the notification on Form N–6EI–1: *Provided, however,* That if the fiscal year of the separate account ends within this ninety day period the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 to the extent that:

(i) The eligibility restrictions of section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account; and

(ii) A life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) of the Act to serve as investment adviser, depositor of or principal underwriter for a variable life insurance separate account only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of variable life insurance contracts funded by such separate account.

(5) Section 13(a) to the extent that:

(i) An insurance regulatory authority may required pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, provided that such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(A) Such change would be contrary to state law; or

(B) Such change would be inconsistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques utilized by

other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(iii) Any action taken in accordance with paragraph (b)(5) (i) or (ii) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(6) Section 14(a): *Provided*, That until the separate account has total assets of at least $100,000 the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement, or any amendment thereto, relating to variable life insurance contracts funded by such separate account filed pursuant to the Securities Act of 1933, as amended.

(7)(i) Section 15(a) to the extent this section requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of the registered company: *Provided*, That:

(A) Such investment adviser is selected and a written contract is entered into before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and that the terms of the contract are fully disclosed in such registration statement, and

(B) A written contract is submitted to a vote of variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) Sections 15 (a), (b) and (c) to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer: *Provided*, That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer: *Provided*, That such disapproval is reasonable and is based upon a determination by the life insurer in good faith that:

(*1*) The rate of the proposed investment advisory fee will exceed the maximum rate that is permitted to be charged against the assets of the separate account for such services as specified by any variable life insurance contract funded by such separate account; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques utilized by the current investment adviser to the separate account, or advise the purchase or sale of securities which would be inconsistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts of the life insurer or of an affiliated life insurance company, which separate accounts have investment objectives similar to the separate account;

(D) Any action taken in accordance with paragraph (b)(7)(ii) (A), (B) or (C) of this section and the reasons therefor shall be disclosed in the proxy statement for the next meeting of variable life insurance contractholders of the separate account.

(8) Section 16(a) to the extent that:

(i) Persons serving as directors of the separate account prior to the first meeting of such account's variable life insurance contractholders are exempt from the requirement of section 16(a) of the Act that such persons be elected by

the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, *Provided*, That:

(A) Such persons have been appointed directors of such account by the life insurer before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account and are identified in such registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for such account shall be held at the first meeting of variable life insurance contractholders after the effective date of the registration statement under the Securities Act of 1933, as amended, relating to contracts funded by such account, which meeting shall take place within one year after such effective date, unless the time for holding such meeting shall be extended by the Commission upon written request for good cause shown;

(ii) A member of the board of directors of such separate account may be disapproved or removed by the appropriate insurance regulatory authority if such person is ineligible to serve as a director of the separate account pursuant to insurance law or regulation of the jurisdiction in which the life insurer is domiciled.

(9) Section 17(f) to the extent that the securities and similar investments of the separate account may be maintained in the custody of the life insurer or an insurance company which is an affiliated person of such life insurer: *Provided*, That:

(i) The securities and similar investments allocated to such separate account are clearly identified as to ownership by such account, and such securities and similar investments are maintained in the vault of an insurance company which meets the qualifications set forth in paragraph (b)(9)(ii) of this section, and whose procedures and activities with respect to such safekeeping function are supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a State or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of or agents authorized by the Commission, representatives of insurance regulatory authorities, independent public accountants for the separate account, accountants for the life insurer and to no more than 20 persons authorized pursuant to a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated insurance company in whose vault such investments are maintained (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this section that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in a system for the central handling of securities established by a

national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934, as amended, or such person as may be permitted by the Commission, or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated insurance company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person the name of such person. Such notation shall be transmitted promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who shall not be a person designated for the purpose of paragraph (b)(9)(iii) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year;

(vi) Such securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such separate account. A certificate of such accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be transmitted to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by Federal or state authorities pursuant to any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Variable life insurance contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders pursuant to paragraph (b)(10)(i)(A) of this section, with fractional votes allocated for amounts less than $100: *Provided*, That after the commencement of sales of variable life insurance contracts funded by the separate account, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days prior to any

meeting at which such vote is held: *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(b)) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provision of this Rule.

(11) Section 19 to the extent that the provisions of this section shall not be applicable to any dividend or similar distribution paid or payable pursuant to provisions of participating variable life insurance contracts.

(12) Sections 22(d), 22(e), and 27(c)(1) and Rule 22c–1 promulgated under section 22(c) to the extent:

(i) That the amount payable on death and the cash surrender value of each variable life insurance contract shall be determined on each day during which the New York Stock Exchange is open for trading, not less frequently than once daily as of the time of the close of trading on such exchange: *Provided*, That the amount payable on death need not be determined more than once each contract month if such determination does not reduce the participation of the contract in the investment experience of the separate account: *Provided further, however*, That if the net valuation premium for such contract is transferred at least annually, then the amount payable on death need be determined only when such net premium is transferred;

(ii) Necessary for compliance with this Rule 6e–2 or with insurance laws and regulations and established administrative procedures of the life insurer with respect to issuance, transfer and redemption procedures for variable life insurance contracts funded by the separate account including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract: *Provided, however*, That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholder and to all other holders of contracts of the same class or series funded by the separate account: *And, further provided*, That any such action shall be disclosed in the form required to be filed by the separate account with the Commission pursuant to paragraph (b)(3)(ii) of this Rule 6e–2.

(13) Section 27 to the following extent:

(i) Sections 27(a)(1) and 27(h)(1) to the extent that the sales load, as defined in paragraph (c)(4) of this section, on any variable life insurance contract which is funded by the separate account shall not exceed 9 per centum of the payments to be made thereon during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1958 Commissioners Standard Ordinary Mortality Table;

(ii) Sections 27(a)(3) and 27(h)(3): *Provided*, That the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period except that such amount may exceed the amount deducted from a prior payment if the increase is caused by the grading of cash values into reserves or reductions in the annual cost of insurance;

(iii) Sections 27(c)(2), 26(a)(1) and 26(a)(2): *Provided*, That the life insurer complies, to the extent applicable, with all other provisions of section 26 as if it were a trustee, depositor or custodian for the separate account, and:

(A) Files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000;

(B) Is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and

other affairs and is subject to supervision and inspection with respect to its separate account operations; and

(C) Limits the fees for administrative services to amounts that are reasonable in relation to services rendered and expenses incurred. The Commission shall retain jurisdiction regarding the determination of such fees;

(iv) Sections 27(c)(1) and 27(d), to the extent that such sections require that the variable life insurance contract be redeemable or provide for a refund in cash: *Provided*, That such contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered: *And further provided*, That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, such contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge;

(v) Section 27(d): *Provided*, That the variable life insurance contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, depending upon the period over which such contract has been retained by the contractholder, an amount which is a refund of any excess paid for sales loading prior to surrender: *Provided*, *however*, That if payments for the contract have not been duly paid on the date the request for surrender is received by the life insurer, and if the sum of the cash surrender value and the amount of any excess sales loading which would otherwise be refundable in cash were applied to provide (without sales loading) a nonforfeiture benefit in accordance with the contract, then the contractholder shall be entitled to receive in cash the present value, next computed after receipt by the life insurer of the request for surrender in proper form, of any non-forfeiture benefit then in force. The amount of sales loading to be refunded shall be equal to that part of the excess paid for sales loading which is over the sum of 30 per centum of payments made for the first contract year plus 10 per centum of the payments made for the second contract year; and

(B) Convert the contract at any time during the first 24 months after issuance so long as payments are duly made to a life insurance policy on the life of the insured which provides for fixed death benefits and cash surrender values pursuant to a plan of insurance specified in the contract issued by the life insurer, or by a life insurance company affiliated with such insurer, which provides for the same initial amount of insurance as the variable life insurance contract and premiums which are based on the same issue age and risk classification of the insured as the variable life insurance contract, which conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments and cash values under the original contract and the new policy: *Provided*, That the method of computing such adjustment shall be filed with the Commission as an exhibit to the form required pursuant to paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a variable life insurance contract sold subject to section 27(d) or section 27(f) of the Act, or both, shall be exempt from the requirements of Rule 27d–1 if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) of the Act to refund charges and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2;

(vii) Section 27(e) and Rule 27e–1 thereunder to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v) of this Rule, are required to provide a notice of right of withdrawal and refund to holders of variable life

insurance contracts, if the life insurer or a duly authorized agent provides a notice of withdrawal and refund rights on Form N–27I–1, to the holder of any variable life insurance contract under which a refund may be available, provided that such notice shall be sent by first class mail to the contractholder:

(A) At issuance of the variable life insurance contract, which notice may be sent together with the issued variable life insurance contract and an illustration, in a form appropriate for inclusion in the prospectus for the variable life insurance contract, of gross annual payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) If the contractholder has failed to make a payment prior to the expiration of the refund right provided by paragraph (b)(13)(v) of this Rule and the contract has not been reinstated within 30 days following the expiration of the grace period provided in the variable life insurance contract for making of any payment due: *Provided, however*, In any event, if a payment is not made when due such notice shall be sent not less than 15 days prior to the expiration of the refund right, which notice may be sent together with a notification that the payment is overdue or an offer to reinstate the contract;

(viii) Section 27(f) and Rule 27f–1: *Provided*, That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing of the notice of the right of withdrawal, whichever is later, and receive a refund of all payments made for such contract;

(B) A refund of all payments to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other variable life insurance contractholders;

(C) Notice of such withdrawal right and a statement of charges on Form N–27I–2 is sent by first class mail to the contractholder, which notice and statement may be accompanied by the variable life insurance contract and an illustration, in a form appropriate for inclusion in the prospectus for the variable life insurance contract, of payments, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(13)(viii)(C) of this rule, is provided with a form of request for refund of payments made, which form shall set forth;

(*1*) Instructions as to the manner in which a refund may be obtained including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the entire amount of payments made on the contract;

(ix) Solely for purposes of paragraphs (b)(13)(v) and (viii) of this Rule, the postmark date on the envelope containing the variable life insurance contract shall determine whether such contract has been submitted for surrender or conversion within the designated period.

(14) Section 32(a)(2): *Provided*, That:

(i) The independent public accountant is selected before the effective date of the registration statement under the Securities Act of 1933, as amended, for variable life insurance contracts which are funded by the separate account, and the identity of such accountant is disclosed in such registration statement, and

(ii) The selection of such accountant is submitted for ratification or rejection to variable life insurance contractholders at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended, on condition that such meeting shall take place within one year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request for good cause shown.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company:

(i) The eligibility restrictions of section 9(a) of the Act shall not be applicable to those persons who are officers, directors and employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described above;

(ii) The life insurer shall be ineligible pursuant to paragraph (3) of section 9(a) of the Act to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraph (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(A) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (7)(ii)(A) of this section; or

(B) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (7)(ii) (B) and (C) of this section;

(iv) Any action taken in accordance with paragraph (b)(15)(iii) (A) or (B) of this section and the reasons therefor shall be disclosed in the next report to contractholders made pursuant to section 30(d) and Rule 30d–2 thereunder.

(v) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from section 14(a) provided that until such company has total assets of at least $100,000 the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this section; and

(vi) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act, to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14), provided that such company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this rule:

(1) *Variable life insurance contract* means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract, so long as payments are duly paid in accordance with its terms, provides for:

(i) A death benefit and cash surrender value which vary to reflect the investment experience of the separate account;

(ii) An initial stated dollar amount of death benefit, and payment of a death benefit guaranteed by the life insurer to be at least equal to such stated amount; and

(iii) Assumption of the mortality and expense risks thereunder by the life insurer for which a charge against the assets of the separate account may be assessed. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract.

(2) *Incidental insurance benefits* means insurance benefits provided pursuant to the variable life insurance contract, other than the minimum and variable death benefit, which do not vary in amount or duration in accordance with the investment performance of the separate account, and include, but are not

limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) *Minimum death benefit* is the amount guaranteed by the life insurer to be paid pursuant to a variable life insurance contract in the event of the death of the insured without regard to the investment performance of the separate account funding the variable life insurance contract, if payments are duly made and if there are no outstanding loans, partial withdrawals or partial surrenders, but does not include any incidental insurance benefits.

(4) *Sales load* charged on any payment is the excess of the payment over the sum of the following:

(i) The amount of the cash value for the first contract year, if any, and the amount of the increase in the cash value for each subsequent contract year, that is attributable to payments made and not attributable to investment earnings;

(ii) The cost of insurance for the period for which the payment is made based on the 1958 Commissioners Standard Ordinary Mortality Table and the assumed investment rate specified in the contract;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than the guaranteed minimum death benefit;

(iv) Any administrative expenses or fees which are reasonable and in amounts not exceeding anticipated administrative expenses and fees not properly chargeable to sales or promotional activities;

(v) A deduction approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements;

(vii) Any additional charge assessed specifically for any incidental insurance benefits which do not vary in relation to the performance of the separate account;

(viii) Any additional charge, in the nature of an interest or service charge or administrative fee, assessed when payments are made more frequently than annually;

(ix) For a participating variable life insurance contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a gross annual investment return for the separate account which funds such contract of 4 percent after deduction for any Federal income taxes, which deduction may be determined pursuant to either of the following methods, provided that the same method must be applied with respect to each payment under the contract:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the period described in paragraph (b)(13)(i) of this section, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for such contract multiplied by the fraction of the contract year for which the payment is made; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of additional payments.

(5) *Assumed investment rate* is the rate of investment return specified in the contract which would be required to be credited to a variable life insurance contract, after deduction of charges for Federal income taxes, investment management fees, portfolio transaction expenses and mortality and expense guarantees, to maintain the variable death benefit equal at all times to the amount of death benefit, other than incidental insurance benefits, which would be payable pursuant to the variable life insurance contract if the death benefit did not vary according to the investment experience of the separate account.

(6) *Variable death benefit* is the amount of death benefit, other than incidental insurance benefits, payable under a variable life insurance contract which varies to reflect the investment performance of the separate account, and which would be payable in the absence of the minimum death benefit.

(7) *Payment*, as used in paragraphs (b)(13)(i), (b)(13)(ii) and (b)(13)(v)(A) of this section and in sections 27(a)(2) and 27(h)(2) solely with respect to variable life insurance contracts, means the gross premium payment made less any portion of such gross premium charged

for or attributable to the items specified in paragraphs (c)(4)(vi), (vii) and (viii) of this section. ''Payment,'' as used in any other section of the Rule, means the gross premiums paid or payable for the variable life insurance contract.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c) and 80a–37(a), respectively))
[41 FR 47027, Oct. 27, 1976; 41 FR 52668, Dec. 1, 1976, as amended at 49 FR 1477, Jan. 12, 1984]

§ 270.6e–3(T) Temporary exemptions for flexible premium variable life insurance separate accounts.

(a) A separate account, and its investment adviser, principal underwriter and depositor, shall, except as provided in paragraph (b) of this Rule, comply with all provisions of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) and the rules under it that apply to a registered investment company issuing periodic payment play certificates if:

(1) It is a separate account within the meaning of section 2(a)(37) of the Act (15 U.S.C. 80a–2(a)(37)) and is established and maintained by a life insurance company pursuant to the insurance laws or code of (i) any state or territory of the United States or the District of Columbia, or (ii) Canada or any province thereof, if it complies with Rule 7d–1 (17 CFR 270.7d–1) under the Act (the ''life insurer'');

(2) The assets of the separate account are derived solely from (i) the sale of flexible premium variable life insurance contracts (''flexible contracts'') as defined in paragraph (c)(1) of this Rule, (ii) the sale of scheduled premium variable life insurance contracts (''scheduled contracts'') as defined in paragraph (c)(1) of Rule 6e–2 (17 CFR 270.6e–2) under the Act, (iii) funds corresponding to dividend accumulations with respect to such contracts, and (iv) advances made by the life insurer in connection with the operation of such separate account;

(3) The separate account is not used for variable annuity contracts or other contract liabilities not involving life contingencies;

(4) The separate account is legally segregated, and that part of its assets with a value approximately equal to the reserves and other contract liabilities for such separate account are not chargeable with liabilities arising from any other business of the life insurer;

(5) The value of the assets of the separate account, each time adjustments in the reserves are made, is at least equal to the reserves and other contract liabilities of the separate account, and at all other times approximately equals or exceeds the reserves and liabilities; and

(6) The investment adviser of the separate account is registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.).

(b) A separate account that meets the requirements of paragraph (a) of this Rule, and its investment adviser, principal underwriter and depositor shall be exempt with respect to flexible contracts funded by the separate account from the following provisions of the Act:

(1) Section 2(a)(35) (15 U.S.C. 80a–2(a)(35)), *Provided, however,* That the term ''sales load,'' as used in the Act and rules under it, shall have the meaning set forth in paragraph (c)(4) of this Rule. *And provided further,* That in connection with any sales load deducted pursuant to paragraph (d)(1) of this Rule, the separate account and other persons shall be exempt from sections 2(a)(32) (15 U.S.C. 80a–2(a)(32)), 12(b) (15 U.S.C. 80a–12(b)), 22(c) (15 U.S.C. 80a–22(c)), 26(a) (15 U.S.C. 80a–26(a)), 27(c)(1) (15 U.S.C. 80a–27(c)(1)), 27(c)(2) (15 U.S.C. 80a–27(c)(2)), and 27(d) (15 U.S.C. 80a–27(d)), and Rules 12b–1 (17 CFR 270.12b–1) and 22c–1 (17 CFR 270.22c–1).

(2) Section 7 (15 U.S.C. 80a–7).

(3) Section 8 (15 U.S.C. 80a–8), to the extent that:

(i) For purposes of paragraph (a) of section 8, the separate account filed with the Commission a notification on Form N–6EI–1 (17 CFR 274.301) which identifies the separate account; and

(ii) For purposes of paragraph (b) of section 8, the separate account shall file with the Commission the form designated by the Commission within ninety days after filing the notification on Form N–6EI–1, *Provided, however,* That if the fiscal year of the separate

account end within this ninety day period, the form may be filed within ninety days after the end of such fiscal year.

(4) Section 9 (15 U.S.C. 80a–9), to the extent that:

(i) The eligibility restrictions of section 9(a) shall not apply to persons who are officers, directors or employees of the life insurer or its affiliates and who do not participate directly in the management or administration of the separate account or in the sale of flexible contracts; and

(ii) A life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser, depositor of or principal underwriter for the separate account only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates directly in the management or administration of the separate account or in the sale of flexible contracts.

(5) Section 13(a) (15 U.S.C. 80a–13(a)), to the extent that:

(i) An insurance regulatory authority may require pursuant to insurance law or regulation that the separate account make (or refrain from making) certain investments which would result in changes in the sub-classification or investment policies of the separate account;

(ii) Changes in the investment policy of the separate account initiated by its contractholders or board of directors may be disapproved by the life insurer, if the disapproval is reasonable and is based on a good faith determination by the life insurer that:

(A) The change would violate state law; or

(B) The change would not be consistent with the investment objectives of the separate account or would result in the purchase of securities for the separate account which vary from the general quality and nature of investments and investment techniques used by other separate accounts of the life insurer or of an affiliated life insurance company with similar investment objectives;

(iii) Any action described in paragraph (b)(5)(i) or (ii) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(6) Section 14(a) (15 U.S.C. 80a–14(a)), *Provided*, That until the separate account has total assets of at least $100,000, the life insurer shall have (i) a combined capital and surplus, if a stock company, or (ii) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such life insurer contained in the registration statement for flexible contracts filed under the Securities Act of 1933 (15 U.S.C. 77a et seq.) (the ''1933 Act'').

(7)(i) Section 15(a) (15 U.S.C. 80a–15(a)), to the extent it requires that the initial written contract with the investment adviser shall have been approved by the vote of a majority of the outstanding voting securities of the registered investment company, *Provided*, That:

(A) The investment adviser is selected and a written contract is entered into before the effective date of the 1933 Act registration statement for flexible contracts, and that the terms of the contract are fully disclosed in the registration statement, and

(B) A written contract is submitted to a vote of contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement, unless the Commission upon written request and for good cause shown extends the time for the holding of such meeting;

(ii) Sections 15 (a), (b) and (c), to the extent that:

(A) An insurance regulatory authority may disapprove pursuant to insurance law or regulation any contract between the separate account and an investment adviser or principal underwriter;

(B) Changes in the principal underwriter for the separate account initiated by contractholders or the board of directors of the separate account may be disapproved by the life insurer, *Provided*, That such disapproval is reasonable;

(C) Changes in the investment adviser of the separate account initiated by contractholders or the board of directors of the separate account may be

disapproved by the life insurer, *Provided,* That such disapproval is reasonable and is based on a good faith determination by the life insurer that:

(*1*) The proposed investment advisory fee will exceed the maximum rate specified in any flexible contract that may be charged against the assets of the separate account for such services; or

(*2*) The proposed investment adviser may be expected to employ investment techniques which vary from the general techniques used by the current investment adviser to the separate account, or advise the purchase or sale of securities which would not be consistent with the investment objectives of the separate account, or which would vary from the quality and nature of investments made by other separate accounts with similar investment objectives of the life insurer or an affiliated life insurance company;

(D) Any action described in paragraph (b)(7)(ii) (A), (B) or (C) of this Rule and the reasons for it shall be disclosed in the next communication to contractholders, but in no case, later than twelve months from the date of such action.

(8) Section 16(a) (15 U.S.C. 80a–16(a)), to the extent that:

(i) Directors of the separate account serving before the first meeting of the account's contractholders are exempt from the requirement of section 16(a) that they be elected by the holders of outstanding voting securities of the account at an annual or special meeting called for that purpose, *Provided,* That:

(A) Such persons were appointed directors of the account by the life insurer before the effective date of the 1933 Act registration statement for flexible contracts and are identified in the registration statement (or are replacements appointed by the life insurer for any such persons who have become unable to serve as directors), and

(B) An election of directors for the account is held at the first meeting of contractholders and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the meeting is extended by the Commission upon written request and for good cause shown;

(ii) A member of the board of directors of the separate account may be disapproved or removed by an insurance regulatory authority if the person is not eligible to be a director of the separate account under the law of the life insurer's domicile.

(9) Section 17(f) (15 U.S.C. 80a–17(f)), to the extent that the securities and similar investments of a separate account organized as a management investment company may be maintained in the custody of the life insurer or of an affiliated life insurance company, *Provided,* That:

(i) The securities and similar investments allocated to the separate account are clearly identified as owned by the account, and the securities and similar investments are kept in the vault of an insurance company which meets the qualifications in paragraph (b)(9)(ii) of this Rule, and whose safekeeping function is supervised by the insurance regulatory authorities of the jurisdiction in which the securities and similar investments will be held;

(ii) The insurance company maintaining such investments must file with an insurance regulatory authority of a state or territory of the United States or the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, must be subject to supervision and inspection by such authority and must be examined periodically as to its financial condition and other affairs by such authority, must hold the securities and similar investments of the separate account in its vault, which vault must be equivalent to that of a bank which is a member of the Federal Reserve System, and must have a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in its most recent annual statement filed with such authority;

(iii) Access to such securities and similar investments shall be limited to employees of the Commission, representatives of insurance regulatory authorities, independent public accountants retained by the separate account (or on its behalf by the life insurer), accountants for the life insurer,

and to no more than 20 persons authorized by a resolution of the board of directors of the separate account, which persons shall be directors of the separate account, officers and responsible employees of the life insurer or officers and responsible employees of the affiliated life insurance company in whose vault the investments are kept (if applicable), and access to such securities and similar investments shall be had only by two or more such persons jointly, at least one of whom shall be a director of the separate account or officer of the life insurer;

(iv) The requirement in paragraph (b)(9)(i) of this Rule that the securities and similar investments of the separate account be maintained in the vault of a qualified insurance company shall not apply to securities deposited with insurance regulatory authorities or deposited in accordance with any rule under section 17(f), or to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such separate account in connection with a loan or other transaction authorized by specific resolution of the board of directors of the separate account, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or to other transactions necessary or appropriate in the ordinary course of business relating to the management of securities;

(v) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the custody of the life insurer or affiliated life insurance company, shall sign a notation showing (A) the date and time of the deposit, withdrawal or order, (B) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (C) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (D) if withdrawn and delivered to another person, the name of such person. The notation shall be sent promptly to an officer or director of the separate account or the life insurer designated by the board of directors of the separate account who is not himself permitted to have access to the securities or investments under paragraph (b)(9)(iii) of this Rule. The notation shall be on serially numbered forms and shall be kept for at least one year;

(vi) The securities and similar investments shall be verified by complete examination by an independent public accountant retained by the separate account (or on its behalf by the life insurer) at least three times each fiscal year, at least two of which shall be chosen by the accountant without prior notice to the separate account. A certificate of the accountant stating that he has made an examination of such securities and investments and describing the nature and extent of the examination shall be sent to the Commission by the accountant promptly after each examination;

(vii) Securities and similar investments of a separate account maintained with a bank or other company whose functions and physical facilities are supervised by federal or state authorities under any arrangement whereby the directors, officers, employees or agents of the separate account or the life insurer are authorized or permitted to withdraw such investments upon their mere receipt are deemed to be in the custody of the life insurer and shall be exempt from the requirements of section 17(f) so long as the arrangement complies with all provisions of this paragraph (b)(9), except that such securities will be maintained in the vault of a bank or other company rather than the vault of an insurance company.

(10) Section 18(i) (15 U.S.C. 80a–18(i)), to the extent that:

(i) For the purposes of any section of the Act which provides for the vote of securityholders on matters relating to the investment company:

(A) Flexible contractholders shall have one vote for each $100 of cash value funded by the separate account, with fractional votes allocated for amounts less than $100;

(B) The life insurer shall have one vote for each $100 of assets of the separate account not otherwise attributable to contractholders under paragraph (b)(10)(i)(A) of this Rule, with fractional votes allocated for amounts less than $100, *Provided*, That after the commencement of sales of flexible contracts, the life insurer shall cast its votes for and against each matter which may be voted upon by contractholders in the same proportion as the votes cast by contractholders; and

(C) The number of votes to be allocated shall be determined as of a record date not more than 90 days before any meeting at which such vote is held, *Provided*, That if a quorum is not present at the meeting, the meeting may be adjourned for up to 60 days without fixing a new record date;

(ii) The requirement of this section that every share of stock issued by a registered management investment company (except a common-law trust of the character described in section 16(c) (15 U.S.C. 80a–16(c))) shall be a voting stock and have equal voting rights with every other outstanding voting stock shall not be deemed to be violated by actions specifically permitted by any provisions of this Rule.

(11) Section 19 (15 U.S.C. 80a–19), to the extent that the provisions of this section shall not apply to any dividend or similar distribution paid or payable under provisions of participating flexible contracts.

(12) Sections 22(c), 22(d) (15 U.S.C. 80a–22(d)), 22(e) (15 U.S.C. 80a–22(e)), and 27(c)(1) and Rule 22c–1 to the extent:

(i) The cash value of each flexible contract shall be computed in accordance with Rule 22c–1(b) under the Act; *Provided*, *however*, That where actual computation is not necessary for the operation of a particular contract, then the cash value of that contract must only be capable of computation; *And provided further*, That to the extent the calculation of the cash value reflects deductions for the cost of insurance and other insurance benefits or administrative expenses and fees or sales loads, such deductions need only be made at such times as specified in the contract or as necessary for compliance with insurance laws and regulations; and

(ii) The death benefit, unless required by insurance laws and regulations, shall be computed on any day that the investment experience of the separate account would affect the death benefit under the terms of the contract provided that such terms are reasonable, fair, and nondiscriminatory;

(iii) Necessary to comply with this Rule or with insurance laws and regulations and established administrative procedures of the life insurer for issuance, increases in or additions of insurance benefits, transfer and redemption of flexible contracts, including, but not limited to, premium rate structure and premium processing, insurance underwriting standards, and the particular benefit afforded by the contract, *Provided*, *however*, That any procedure or action shall be reasonable, fair and not discriminatory to the interests of the affected contractholders and to all other holders of contracts of the same class or series funded by the separate account, *And provided further*, That any such action shall be disclosed in the form filed by the separate account with the Commission under paragraph (b)(3)(ii) of this Rule.

(13) Section 27 (15 U.S.C. 80a–27), to the following extent:

(i) Section 27(a)(1) (15 U.S.C. 80a–27(a)(1)), 27(h)(1) (15 U.S.C. 80a–27(h)(1)), and 27(h)(4) (15 U.S.C. 80a–27(h)(4)), to the extent that sales load, as defined in paragraph (c)(4) of this Rule, deducted does not exceed that permitted by either paragraph (b)(13)(i)((A) or (b)(13)(i)(B) of this section:

(A) 9 per centum of the sum of the guideline annual premiums that would be paid during the period equal to the lesser of 20 years or the anticipated life expectancy of the insured named in the contract based on the 1980 Commissioners Standard Ordinary Mortality Table, *Provided*, That this paragraph (b)(13)(i)(A) shall not prohibit deduction of sales load, in any manner permitted by this Rule, from payments made in excess of the sum of the guideline annual premiums that would be paid during the lesser of 20 years or the

anticipated life expectancy of the insured based on the 1980 Commissioners Standard Ordinary Mortality Table; or

(B) 9 per centum of payments made thereon; *Provided,* That the separate account elects by written notice to the Commission to be governed (with respect to each class of flexible contract offered) by either paragraph (b)(13)(i)(A) or (B); *Provided, however,* That for each class of flexible contract that requires more than four guideline annual premiums within the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2) of this section), the separate account must elect to be governed by paragraph (b)(13)(i)(B) of this section.

(ii) Sections 27(a)(3) (15 U.S.C. 80a–27(a)(3)) and 27(h)(3) (15 U.S.C. 80a–27(h)(3)), *Provided,* That the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment unless an increase is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance;

(iii) Sections 27(c)(2), 26(a)(1) (15 U.S.C. 80a–26(a)(1)), and 26(a)(2) (15 U.S.C. 80a–26(a)(2)), to the extent necessary to permit the actions described in paragraphs (A) through (F) of this section, *Provided,* That the life insurer complies with all other applicable provisions of section 26 as if it were a trustee, depositor or custodian for the separate account; files with the insurance regulatory authority of a state or territory of the United States or of the District of Columbia an annual statement of its financial condition in the form prescribed by the National Association of Insurance Commissioners, which most recent statement indicates that it has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000; and is examined from time to time by the insurance regulatory authority of such state, territory or District of Columbia as to its financial condition and other affairs and is subject to supervision and inspection with respect to its separate account operations.

(A) Payment of a fee to the life insurer, or to any affiliated person or agent of the insurer, for bookkeeping or other administrative services provided to the separate account, or for administrative services or expenses incurred in underwriting, issuing, and maintaining flexible contracts, *Provided,* That the fee is not greater than the expenses, without profit:

(*1*) Actually paid by the life insurer for the services provided; and

(*2*) Increased by the value of any services provided directly by the life insurer, as determined in accordance with generally accepted accounting principles consistently applied.

The standard set forth in this paragraph shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not exceed the cost of the services to be provided for one year; or if the fee is guaranteed not to increase for a specified period of time, the fee shall not exceed the average expected cost of the services to be provided during the period of the guarantee;

(B) The holding of the assets of the separate account by the life insurer without a trust indenture or other such instrument;

(C) When the separate account is organized as a unit investment trust, the holding of the securities of any registered management investment company which offers its shares to the separate account in uncertificated form;

(D) When the separate account is organized as a management investment company, the holding of its assets in any manner permitted by paragraph (b)(9) of this Rule or by section 17(f) or the rules under it;

(E) The deduction of premium or other taxes imposed by any state or other governmental entity, the cost of insurance, charges assessed for incidental insurance benefits or if the insured does not meet standard underwriting requirements, and, if the separate account is organized as a management investment company, an investment advisory fee;

(F) The deduction of a charge for mortality, expense, and any guaranteed death benefit risks assumed by the

life insurer under the flexible contracts (collectively, a ''risk charge''), *Provided*, That the registration statement under the 1933 Act for flexible contracts includes:

(*1*) A representation that this paragraph is being relied upon;

(*2*) A representation that the level of the risk charge either is:

(*i*) Within the range of industry practice for comparable flexible or scheduled contracts, or

(*ii*) Reasonable in relation to the risks assumed by the life insurer under the contracts;

(*3*) A brief description of the methodology used to support the representation made in response to paragraph (b)(13)(iii)(F)(*2*) of this Rule and an undertaking to keep and make available to the Commission upon request the documents used to support that representation;

(*4*) A representation that either:

(*i*) The proceeds from explicit sales loads will be sufficient to cover the expected costs of distributing the flexible contracts; or

(*ii*)(*A*) The life insurer has concluded that there is a reasonable likelihood that the distribution financing arrangement of the separate account will benefit the separate account and contractholders and will keep and make available to the Commission on request a memorandum setting forth the basis for this representation; and

(*B*) If the separate account is organized as a management investment company, a representation that the account will have a board of directors, a majority of whom are not interested persons of the separate account, formulate and approve any plan under Rule 12b–1 to finance distribution expenses. If the separate account is organized as a unit investment trust, a representation that the account will invest only in management investment companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the company, formulate and approve any plan under Rule 12b–1 to finance distribution expenses.

Notwithstanding the provisions of this paragraph (b)(13)(iii)(F), no risk charge may be deducted in reliance thereupon if the registration statement or amendment thereto which initially sets forth the deduction of such charge or its increase becomes effective by lapse of time pursuant to section 8(a) of the 1933 Act or Rule 485 (17 CFR 230.485) thereunder. Such charge shall be disclosed in the prospectus and shall not be less than fifty per centum of the maximum charge for risk assumption as disclosed in the prospectus and as provided for in the contract. Any separate account organized under the Act as a management investment company and deducting a risk charge pursuant to this section shall be exempt from section 12(b) and Rule 12b–1 thereunder to the extent that monies derived from the risk charge may be used to finance distribution of the flexible contracts;

(iv) Sections 27(c)(1) and 27(d), and sections 2(a)(32) and 22(c) and Rule 22c–1 thereunder, to the extent that:

(A) Such sections require that the flexible contract be redeemable or provide for a refund in cash, *Provided,* That the contract provides for election by the contractholder of a cash surrender value or certain non-forfeiture and settlement options which are required or permitted by the insurance law or regulation of the jurisdiction in which the contract is offered, *And provided further*, That unless required by the insurance law or regulation of the jurisdiction in which the contract is offered or unless elected by the contractholder, the contract shall not provide for the automatic imposition of any option, including, but not limited to, an automatic premium loan, which would involve the accrual or payment of an interest or similar charge.

(B) Notwithstanding the provisions of paragraph (b)(13)(iv)(A) of this Rule, if the amounts available under the contract to pay the charges due under the contract on any contract processing day are less than such charges due, the contract may provide that the cash surrender value (and any excess paid for sales loading not used to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule) shall be applied to purchase a non-forfeiture option specified by the life insurer in such contract, *Provided,* That the contract also provides that:

(*1*) Contract processing days occur not less frequently than monthly, and

(*2*) the amount of any excess paid for sales loading (as provided in paragraph (b)(13)(v)(A) of this Rule) shall first be applied to keep the contract in force, *Provided, however,* That if the contractholder subsequently makes a payment, the life insurer may recover such excess loading;

(C) Subject to other provisions of this Rule, sales loads and administrative expenses or fees may be deducted upon redemption.

(v) Section 27(d), *Provided,* That the flexible contract gives the holder thereof the right to:

(A) Surrender the contract at any time during the first 24 months after issuance and receive in cash an amount not less than the sum of the present value of his contract which is the cash surrender value next computed after receipt by the life insurer of the request for surrender in proper form, plus, an amount which is a refund of any excess paid for sales loading prior to or in connection with the surrender. The amount of sales loading to be refunded shall be equal to that part of the sales loading in excess of *(1)* the sum of 30 per centum of payments in aggregate amount less than or equal to one guideline annual premium, plus 10 per centum of payments in aggregate amount greater than one guideline annual premium but not more than two guideline annual premiums, and *(2)* 9 per centum of each payment made in excess of two guideline annual premiums;

(B) Convert the contract at any time during the first 24 months after issuance, so long as the contract is in force, to a life insurance policy on the life of the insured under a plan of insurance (other than a plan involving a flexible contract as defined in paragraph (c)(1) of this Rule or a scheduled contract as defined in paragraph (c)(1) of Rule 6e–2) specified in the contract, issued by the life insurer or by an affiliated life insurance company, which provides for (*1*) at the election of the contractholder, either the same death benefit or the same net amount at risk as the flexible contract at the time of conversion and (*2*) premiums (or cost of insurance or other charges, (''charges'') if such plan of insurance provides for flexible premiums) which are based on the same issue age and risk classification of the insured as the flexible contract. The conversion shall be subject to an equitable adjustment in payments and cash values to reflect variances, if any, in the payments (or charges), dividends, and cash values under the flexible contract and the new policy. The method of computing such adjustment shall be filed with the Commission as an exhibit to the form required under paragraph (b)(3)(ii) of this Rule;

(vi) A depositor or principal underwriter for a flexible contract sold subject to section 27(d) or section 27(f), or both, shall be exempt from the requirements of Rule 27d–1 (17 CFR 270.27d–1) if an insurance company undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter under sections 27(d) and 27(f) to refund charges, and such insurance company, depositor and principal underwriter comply with all provisions of Rule 27d–2 (17 CFR 270.27d–2);

(vii) Section 27(e) [15 U.S.C. 80a–27(e)] and Rule 27e–1 (17 CFR 270.27e–1) thereunder, to the extent that the separate account and the depositor and principal underwriter therefor, when such persons are subject to paragraph (b)(13)(v)(A) of this Rule, are required to provide a notice of right of surrender and refund to holders of flexible contracts, if the life insurer or a duly authorized agent provides a notice of surrender and refund rights on a written document containing information comparable to that required by Form N–27I–1 (17 CFR 274.301) to the holder of any flexible contract under which a refund may be available, *Provided,* That such notice shall be sent by first class mail or personal delivery to the contractholder:

(A) Upon issuance of the flexible contract, which notice may be sent together with the issued contract and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums, death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured; and

(B) On any contract processing day, prior to the expiration of the surrender

and refund right provided in paragraph (b)(13)(v)(A) of this Rule, on which the amounts available under the contract on such day to pay the charges authorized by the contract are less than the amount necessary to keep the contract in force until the next following contract processing day. This notice may be sent together with any notice required by applicable state authority to be sent in these circumstances; *Provided, however,* That the right of surrender and refund provided by paragraph (b)(13)(v)(A) of this Rule shall not expire until not less than 15 days after the mailing or receipt, if personally delivered, of the last notice referred to in this paragraph (b)(13)(vii)(B) of this section;

(viii) Section 27(f) and Rule 27f–1 thereunder (17 CFR 270.27f–1), *Provided,* That:

(A) The contractholder may elect to return the contract within 45 days of the date of the execution of the application for insurance, or within 10 days after receipt of the issued contract by the contractholder, or within 10 days after mailing or personal delivery of the notice of the right of withdrawal referred to in paragraph (b)(13)(viii)(C) of this Rule, whichever is later, and receive a refund equal to the sum of (*1*) the difference between the payments made, including any contract fees or other charges, and the amounts allocated to the separate account under the contract, (*2*) the value of the amounts allocated to the separate account under the contract on the date the returned contract is received by the insurer or its agent, and (*3*) any contract fees and other changes imposed on the amounts allocated to such separate account, *Provided, however,* That if state law or the contract so require, the redeeming contractholder shall receive a refund of all payments made for such contract;

(B) A refund in accordance with paragraph (b)(13)(viii)(A) of this Rule to redeeming contractholders will not in any way affect the interests in the separate account or the benefits of other flexible or scheduled contractholders;

(C) Notice of such withdrawal right and a statement of contract fees and other charges on a written document containing information comparable to that required by Form N–27I–2 (17 CFR 274.303) is sent by first class mail or personal delivery to the contractholder, which notice and statement may be accompanied by the flexible contract, and an illustration, in a form appropriate for inclusion in the prospectus for the flexible contract, of guideline annual premiums (or, if the contract is subject to paragraph (b)(13)(i)(B), payments), death benefits and cash surrender values applicable to the age, sex and underwriting classification of the insured;

(D) The contractholder, in conjunction with the notice of withdrawal right referred to in paragraph (b)(13)(viii)(C) of this section, is provided with a form of request for refund of the amount computed in accordance with paragraph (b)(13)(viii)(A), which form shall set forth:

(*1*) Instructions as to the manner in which a refund may be obtained, including the address to which the request form should be mailed; and

(*2*) Spaces necessary to indicate the date of such request, the contract number and the signature of the contractholder; and

(E) Within 7 days from the receipt of such duly executed timely request for refund, the life insurer will refund in cash to the contractholder the amount computed in accordance with paragraph (b)(13)(viii)(A) of this Rule; and

(ix) Solely for purposes of paragraphs (b)(13)(v) and (b)(13)(viii) of this Rule, the postmark date on the envelope containing the flexible contract shall determine whether such contract has been submitted for surrender, conversion, or withdrawal within the designated period.

(14) Section 32(a)(2) (15 U.S.C. 80a–31(a)(2)), *Provided,* That:

(i) The independent public accountant is selected before the effective date of the 1933 Act registration statement for flexible contracts, and the identity of the accountant is disclosed in the registration statement, and

(ii) The selection of the accountant is submitted for ratification or rejection to flexible contractholders at their first meeting and within one year after the effective date of the 1933 Act registration statement for flexible contracts, unless the time for holding the

meeting is extended by order of the Commission.

(15) If the separate account is organized as a unit investment trust, all the assets of which consist of the shares of one or more registered management investment companies which offer their shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account; *Provided*, That: the board of directors of each investment company, constituted with a majority of disinterested directors, will monitor such company for the existence of any material irreconcilable conflict between the interests of variable annuity contractholders and scheduled or flexible contractholders investing in such company; the life insurer agrees that it will be responsible for reporting any potential or existing conflicts to the directors; and if a conflict arises, the life insurer will, at its own cost, remedy such conflict up to and including establishing a new registered management investment company and segregating the assets underlying the variable annuity contracts and the scheduled or flexible contracts; Then:

(i) The eligibility restrictions of section 9(a) shall not apply to those persons who are officers, directors or employees of the life insurer or its affiliates who do not participate directly in the management or administration of any registered management investment company described in this paragraph (b)(15);

(ii) The life insurer shall be ineligible under paragraph (3) of section 9(a) to serve as investment adviser of or principal underwriter for any registered management investment company described in this paragraph (b)(15) only if an affiliated person of such life insurer, ineligible by reason of paragraphs (1) or (2) of section 9(a), participates in the management or administration of such company;

(iii) For purposes of any section of the Act which provides for the vote of securityholders on matters relating to the separate account or the underlying registered investment company, the voting provisions of paragraph (b)(10)(i) and (ii) of this Rule apply, *Provided*, That:

(A) The life insurer may vote shares of the registered management investment companies held by the separate account without regard to instructions from contractholders of the separate account if such instructions would require such shares to be voted:

(*1*) To cause such companies to make (or refrain from making) certain investments which would result in changes in the sub-classification or investment objectives of such companies or to approve or disapprove any contract between such companies and an investment adviser when required to do so by an insurance regulatory authority subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of this Rule; or

(*2*) In favor of changes in investment objectives, investment adviser of or principal underwriter for such companies subject to the provisions of paragraphs (b)(5)(ii) and (b)(7)(ii) (B) and (C) of this Rule;

(B) Any action taken in accordance with paragraph (b)(15)(iii)(A) (*1*) or (*2*) of this Rule and the reasons therefor shall be disclosed in the next report contractholders made under section 30(d) (15 U.S.C. 80a–29(d)) and Rule 30d–2 (17 CFR 270.30d–2);

(iv) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from section 14(a), *Provided*, That until the company has total assets of at least $100,000, the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) of this Rule; and

(v) Any registered management investment company established by the life insurer and described in this paragraph (b)(15) shall be exempt from sections 15(a), 16(a), and 32(a)(2), to the extent prescribed by paragraphs (b)(7)(i),

(b)(8)(i), and (b)(14) of this Rule, *Provided*, That the company complies with the conditions set forth in those paragraphs as if it were a separate account.

(c) When used in this Rule:

(1) *Flexible premium variable life insurance contract* means a contract of life insurance, subject to regulation under the insurance laws or code of every jurisdiction in which it is offered, funded by a separate account of a life insurer, which contract provides for:

(i) Payments which are not fixed by the life insurer as to both timing and amount: *Provided, however*, That the life insurer may fix the timing and minimum amount of payments for the first two contract periods following issuance of the contract or of an increase in or addition of insurance benefits (within the meaning of paragraph (d)(2) of this section), and may prescribe a reasonable minimum amount for any additional payment;

(ii) A death benefit the amount or duration of which may vary to reflect the investment experience of the separate account;

(iii) A cash value which varies to reflect the investment experience of the separate account; and

(iv) There is a reasonable expectation that subsequent payments will be made.

(2) *Incidental insurance benefits* means insurance benefits provided pursuant to the flexible contract, other than any guaranteed and variable death benefit, which do not have discrete cash values that may vary in amount in accordance with the investment experience of the separate account, and include, but are not limited to, accidental death and dismemberment benefits, disability income benefits, guaranteed insurability options, and family income or fixed benefit term riders.

(3) *Guaranteed death benefit* is any amount guaranteed by the life insurer to be paid pursuant to a flexible contract in the event of the death of the insured without regard to the investment experience of the separate account, if there are no outstanding loans or partial surrenders, but does not include any incidental insurance benefits.

(4) *Sales load* charged during a contract period is the excess of any payments made during the period over the sum of the following:

(i) The amount of the change (whether it is an increase or decrease) in the cash value for the period that is not attributable to net investment earnings or to dividends for a participating flexible contract for the period;

(ii) The cost of insurance for the period based on:

(A) For a flexible contract subject to paragraph (b)(13)(i)(A) of this section, the 1980 Commissioners Standard Ordinary Mortality Table and net interest at the annual effective rate specified for purposes of paragraph (c)(8)(i)(B) of this Rule; or

(B) For a flexible contract subject to paragraph (b)(13)(i)(B) of this section, either the 1980 Commissioners Standard Ordinary Mortality Table or the 1958 Commissioners Ordinary Mortality Table (whichever relates to rates guaranteed by the contract) and the assumed investment rate specified in the contract, *Provided, however*, That the 1958 Commissioners Ordinary Mortality Table may only be used for those contracts issued before 1990, or such earlier mandatory date for implementation of the 1980 Commissioners Standard Ordinary Mortality Table under the applicable Standard Nonforfeiture Law for life insurance;

(iii) A reasonable charge necessary to cover the risk assumed by the life insurer that the variable death benefit will be less than any guaranteed death benefit;

(iv) Any administrative expenses or fees which are deducted pursuant to paragraph (b)(13)(iii)(A) of this Rule;

(v) A deduction for and approximately equal to state premium taxes;

(vi) Any additional charge assessed if the insured does not meet standard underwriting requirements, including, but not limited to, any additional cost of insurance charge for a contract purchased on a simplified underwriting or guaranteed issue basis;

(vii) Any additional charge assessed specifically for any incidental insurance benefits;

(viii) Any additional charge, the nature of an interest charge, assessed when payments are made more frequently than annually, but only to the extent that such payments are made to

fulfill a minimum payment requirement imposed pursuant to paragraph (c)(1)(i) of this Rule;

(ix) Any amounts redeemed by the contractholder or paid out to the beneficiary upon the death of the insured which are not attributable to net investment earnings for the period; and

(x) For a participating flexible contract, a deduction for dividends to be paid or credited in accordance with the dividend scale in effect on the issue date of the contract assuming a net annual investment return for the separate account which funds the contract of 5 per centum. The deduction may be determined by either of the following methods, but the same method must be used for each contract period:

(A) The actuarial level annual equivalent of dividends to be paid or credited over the contract periods described in paragraph (b)(13)(i) of this Rule, based upon the mortality, interest and lapse assumptions used in computing the dividend scale for the contract (and, if the contract is subject to paragraph (b)(13)(i)(A) of this section, the assumption that the guideline annual premium will be paid in each contract period) multiplied by the fraction of the contract year represented by the contract period; or

(B) That portion of the dividend to be paid for the contract year which does not depend on the making of payments in addition to those made during the period.

(5) *Contract period* means the period from a contract issue or anniversary date to the earlier of the next following anniversary date (or, if later, the last day of any grace period commencing before such next following anniversary date) or the termination date of the contract.

(6) *Variable death benefit* is the amount of death benefit, other than incidental insurance benefits, payable under a flexible contract which varies to reflect the investment experience of the separate account and which would be payable in the absence of any guaranteed death benefit.

(7) *Payment*, as used in paragraphs (b)(13)(i), (b)(13)(ii), and (b)(13)(v)(A) of this Rule and in sections 27(a)(2) and 27(h)(2) solely with respect to flexible contracts, means for a contract period the gross permiums paid less any portion of such gross premiums charged for the items specified in paragraphs (c)(4)(vi), (c)(4)(vii), and (c)(4)(viii) of this Rule. ''Payment,'' as used in any other section of this Rule, means the gross premiums paid or payable for the flexible contract, *Except*, That ''Payment'' shall not include any amount deducted by the life insurer to recover excess sales loading previously applied to keep the contract in force pursuant to paragraph (b)(13)(iv)(B)(*2*) of this Rule.

(8)(i) *Guideline annual premium* means the level annual amount that would be payable through the maturity date specified in paragraph (c)(8)(ii)(B) of this Rule for the future benefits under the contract if, subject to the provisions of paragraph (c)(8)(ii) of this Rule:

(A) The payments were fixed by the life insurer as to both timing and amount, and

(B) The payments were based on the 1980 Commissioners Standard Ordinary Mortality Table, net investment earnings at the greater of an annual effective rate of 5 per centum or rate or rates guaranteed at issuance of the flexible contract, the sales load under the contract, and the fees and charges associated with the contract specified in parapraphs (c)(4)(iii), (c)(4)(iv), (c)(4)(v), (c)(4)(vi), (c)(4)(vii), (c)(4)(viii) (for the first two contract periods as permitted by paragraphs (c)(1)(i)), and (c)(4)(x) of this Rule.

(ii) In computing the future benefits under the flexible contract for determining the guideline annual premium:

(A) The excess of the amount payable by reason of the death of the insured (determined without regard to any incidental insurance benefits) over the cash value of the contract shall be deemed to be not greater than such excess at the time the contract was issued,

(B) The maturity date shall be the latest maturity date permitted under the contract but not less than 20 years after the date of issue or (if earlier) age 95, and

(C) The amount of any endowment benefit (or sum of endowment benefits) shall be deemed not to exceed the least amount payable by reason of the death

of the insured (determined without regard to any incidental insurance benefits) at any time under the contract.

(9) *Cash value* means the amount that would be available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, without regard to any charges that may be assessed upon such termination and before deduction of any outstanding contract loan.

(10) *Cash surrender value* means the amount available in cash upon voluntary termination of a contract by its owner before it becomes payable by death or maturity, after any charges assessed in connection with the termination have been deducted and before deduction of any outstanding contract loan.

(11) *Net investment earnings* means investment earnings in the separate account after deduction of any asset charges, including but not limited to, such charges for income tax; brokerage and other investment expenses; mortality, expense, and guaranteed death benefit risks; and an investment advisory fee, but not including deductions for sales load. However, ''net investment earnings'' as used in paragraph (c)(4)(i) of this Rule shall not include any amount deducted pursuant to paragraphs (ii) through (viii) of paragraph (c)(4).

(12) *Contract processing day* means any day on which charges under the contract are deducted from the separate account.

(d) The following computational rules shall be used in applying this Rule:

(1) Paragraphs (b)(13)(i) and (b)(13)(ii) of this Rule shall be deemed to be satisfied with respect to any flexible contract under which sales load is deducted other than from payments prior to the allocation of net payments to the separate account if:

(i) From issuance of the contract through each contract period, the aggregate amount of sales load deducted is not more than the aggregate amount of sales load that could be deducted under an otherwise identical flexible contract that deducted sales load only from payments prior to their allocation to the separate account; and

(ii)(A) The amount of sales load deducted pursuant to any method permitted under this paragraph (other than asset-based sales loads) does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method, unless an increase in such proportionate amount is caused by reductions in the annual cost of insurance, or a reduction in the sales load deducted from amounts transferred to a flexible contract from another plan of insurance; or

(B) For asset-based sales load structures, the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method, unless an increase in such percentage is caused by a reduction in the percentage taken on amounts transferred to a flexible contract from another plan of insurance.

(2)(i) Solely with respect to increases in or additions of insurance benefits requested by a contractholder after issuance of a flexible contract, the contract shall be deemed to satisfy paragraphs (b)(13)(i)(A), (b)(13)(ii), (b)(13)(v), (b)(13)(viii), and (d)(1)(ii) of this Rule, *Provided*, That from issuance of the contract through each contract period the aggregate amount of sales load imposed is not more than the aggregate amount of sales load that would be permissible under the base test contract, as defined in paragraph (d)(2)(iii)(B) of this Rule, and the incremental test contract, as defined in paragraph (d)(2)(iii)(C) of this Rule.

(ii) The following procedures shall be used in applying paragraph (d)(2)(i) of this section:

(A) Payments for the actual contract, as defined in paragraph (d)(2)(iii)(A) of this Rule, and the base and incremental test contracts shall, for purposes of demonstrating compliance with the sales load provisions of this Rule, be deemed paid in the following proportionate amounts: level annual payments for the base test contract equal to the guideline annual premium for the contract, commencing upon issuance; level annual payments for the incremental test contract equal to the difference between the guideline annual premium for the actual contract after the increase in or addition of insurance benefits and before such

increase or addition, commencing upon such increase or addition; and level annual payments for the actual contract equal to the guideline annual premium for such contract, commencing upon issuance and adjusted for such increase or addition as of the date of such increase or addition, *Provided* that the guideline annual premium used is that defined in paragraph (c)(8) of this section;

(B) To the extent that the increases in, or additions of, insurance benefits are funded out of cash value, such cash value shall be proportionately allocated between the base test contract and incremental test contract according to the ratio of their respective guideline annual payments, as described in (d)(2)(ii)(A); and

(C) It is assumed that no redemptions are made under the actual and test contracts.

(D) An incremental test contract may deduct, in any manner permitted by this Rule, not more than 50 per centum of the sales load which would otherwise be permitted under the base test contract, and not be subject to the surrender, conversion, and withdrawal provisions set forth in paragraphs (b)(13)(v) (A) and (B) and (b)(13)(viii) of this Rule, *Provided, however,* That the increased or added benefit will be subject to the surrender, conversion, and withdrawal provisions referenced above if more than such 50 per centum of sales load is assessed.

(iii) For purposes of this paragraph (d)(2):

(A) *Actual contract* shall mean the flexible contract issued to the contractholder, and adjusted for the increase in or addition of insurance benefits, as of the date of the increase or addition;

(B) *Base test contract* shall mean the actual contract had the increase or addition not occurred;

(C) *Incremental test contract* shall mean a flexible contract that, (*1*) is issued on the date of the increase or addition, and (*2*) provides insurance benefits identical to the incremental change in insurance benefits under the actual contract upon such increase or addition; and

(D) Any change in insurance benefits which would occur automatically under a contract, with or without the opportunity for contractholder disapproval, or any change in death benefit operation shall not be considered an ''increase in or addition of insurance benefits requested by a contractholder'' for purposes of imposing additional sales load.

[52 FR 11208, Apr. 8, 1987, as amended at 59 FR 43467, Aug. 24, 1994]

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

(a) A management investment company organized under the laws of Canada or any province thereof may obtain an order pursuant to section 7(d) permitting its registration under the act and the public offering of its securities, if otherwise appropriate, upon the filing of an application complying with paragraph (b) of this section. All such applications will be considered by the Commission pursuant to the procedure set forth in § 270.0–5 and other applicable rules. Conditions and arrangements proposed by investment companies organized under the laws of other countries will be considered by the Commission in the light of the special circumstances and local laws involved in each case.

(b) An application filed pursuant to this section shall contain, inter alia, the following undertakings and agreements of the applicant:

(1) Applicant will cause each present and future officer, director, investment adviser, principal underwriter and custodian of the applicant to enter into an agreement, to be filed by applicant with the Commission upon the filing of its registration statement or upon the assumption of such office by such person which will provide, among other things, that each such person agrees (i) to comply with the applicant's Letters Patent (Charter) and By Laws, the act and the rules thereunder, and the undertakings and agreements contained in said application insofar as applicable to such person; (ii) to do nothing inconsistent with the applicant's undertakings and agreements required by this section; (iii) that the undertakings enumerated as paragraphs (b)(1)(i) and

(ii) of this section constitute representations and inducements to the Commission to issue its order in the premises and continue the same in effect, as the case may be; (iv) that each such agreement constitutes a contract between such person and the applicant and its shareholders with the intent that applicant's shareholders shall be beneficiaries of and shall have the status of parties to such agreement so as to enable them to maintain actions at law or in equity within the United States and Canada for any violation thereof. In addition the agreement of each officer and director will contain provisions similar to those contained in paragraph (b)(6) of this section.

(2) That every agreement and undertaking of the applicant, its officers, directors, investment adviser, principal underwriter and custodian required by this section (i) constitute inducements to the Commission for the issuance and continuance in effect of, and conditions to, the Commission's order to be entered under this section; (ii) constitute a contract among applicant and applicant's shareholders with the same intent as set forth in paragraph (b)(1)(iv) of this section; and (iii) failure by the applicant or any of the above enumerated persons to comply with any such agreement and undertaking, unless permitted by the Commission, shall constitute a violation of the order entered under this section.

(3) That the Commission, in its discretion, may revoke its order permitting registration of the applicant and the public offering of its securities if it shall find after notice and opportunity for hearing that there shall have been a violation of such order or the act and may determine whether distribution of applicant's assets is necessary or appropriate in the interests of investors and may so direct.

(4) That applicant will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds thereof, if the Commission or a court of competent jurisdiction, shall have so directed by a final order.

(5) That any shareholder of the applicant or the Commission on its own motion or on request of shareholders shall have the right to initiate a proceeding (i) before the Commission for the revocation of the order permitting registration of the applicant or (ii) before a court of competent jurisdiction for the liquidation of applicant and a distribution of its assets to its shareholders and creditors. Such court may enter such order in the event that it shall find, after notice and opportunity for hearing that applicant, its officers, directors, investment adviser, principal underwriter or custodian shall have violated any provision of the act or the Commission's order of registration of the applicant.

A court of competent jurisdiction for the purpose of paragraphs (b)(4) and (5) of this paragraph means the District Court of the United States of the district in which the assets of the applicant are maintained.

(6) That any shareholder of the applicant shall have the right to bring suit at law or in equity, in any court of the United States or Canada having jurisdiction over applicant, its assets or any of its officers or directors to enforce compliance by applicant, its officers and directors with any provision of applicant's Charter or By Laws, the act and the rules thereunder, or undertakings and agreements required by this section, insofar as applicable to such persons. That such court may appoint a trustee or receiver of the applicant with all powers necessary to implement the purposes of such suit, including the administration of the estate, the collection of corporate property including choses-in-action, and distribution of applicant's assets to its creditors and shareholders. That applicant and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of the applicant to bring such suit, reserving, however, their right to maintain that they have complied with the aforesaid provisions, undertakings and agreements, and otherwise to dispute such suit on its merits. Applicant, its officers and directors also agree that any final judgment or decree of any United States court as aforesaid, may be granted full faith and credit by a court of competent jurisdiction of

Canada and consent that such Canadian court may enter judgment or decree thereon at the instance of any shareholder, receiver or trustee of the applicant.

(7) Applicant will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the United States to file with the Commission irrevocable designation of the applicant's custodian as an agent in the United States to accept service of process in any suit, action or proceeding before the Commission or any appropriate court to enforce the provisions of the acts administered by the Commission, or to enforce any right or liability based upon applicant's Charter, By Laws, contracts, or the respective undertakings and agreements of any such person required by this section, or which alleges a liability on the part of any such persons arising out of their service, acts of transactions relating to the applicant.

(8) Applicant's Charter and By Laws, taken together, will contain, so long as applicant is registered under the act in substance the following:

(i) The provisions of the Act as follows: Section 2(a): *Provided*, That the term ''government securities'' defined in section 2(a)(16) may include securities issued or guaranteed by Canada or any instrumentality of the government of Canada; the term ''value'' defined in section 2(a)(41) may be defined solely for the purposes of sections 5 and 12 in accordance with the provisions of § 270.2a–1 (Rule 2a–1) if the same shall be necessary or desirable to comply with Canadian regulatory or revenue laws or rules or regulations thereunder; the term ''bank'' defined in section 2(a)(5) shall be defined solely for the purposes of section 9 and 10, as any banking institution; section 4; section 5; section 6(c); section 9; section 10 (a), (b), (c), (e), (f) and (g): *Provided*, That the provisions of section 10(d) may be substituted for the provisions of section 10(a) and 10(b)(2) if applicable; section 11; section 12 (a), (b), (c), and (d); section 13(a); section 15 (a), (b), and (c); section 16(a); sections 17, 18, 19, 20 and 21; section 22(d); section 22(e): *Provided*, That the Toronto Stock Exchange or the Montreal Stock Exchange or both may be included in addition to the New York Stock Exchange; section 22(f); section 22(g); section 23; section 25 (a) and (b); section 30 (a), (b), (d), (e), and (f); section 31; section 32(a): *Provided*, That provision may be made for the selection and termination of employment of the accountant in compliance with The Companies Act of Canada; section 32(b). Where a provision of the act prohibits or directs action by an investment company, or its directors, officers or employees, the Charter or By Laws shall state that the applicant of its directors, officers or employees shall or shall not act, as the case may be, in conformity with the intent of the statute; where the provision applies to others, such as principal underwriters, investment advisers, controlled companies and affiliated persons, the Charter or By Laws shall also state that the applicant will not permit the prohibited conduct or will obtain the required action. Any of the provisions of sections 11, 12, 15, 18, 22, 23, 30, and 31 may be omitted if not applicable to a company of applicant's classification or subclassification as defined in section 4 or 5 of the act or if not applicable because the subject matter of such provisions is prohibited by the Charter or By Laws. Other provisions of the act not specified above may be incorporated in the applicant's Charter or By Laws at its option.

(ii) Any question of interpretation of any term or provision of the Charter or By Laws having a counterpart in or otherwise derived from a term or provision of the act shall be resolved by reference to interpretations, if any, of the corresponding term or provision of the act by the courts of the United States of America or, in the absence of any controlling decision of any such court, by rules, regulations, orders or interpretations of the Commission.

(iii) Applicant will maintain the original or duplicate copies of its books and records at the office of its custodian or other office located within the United States.

(iv) At least a majority of the directors and of the officers of the applicant will be United States citizens of whom a majority will be resident in the United States.

(v) Except as provided in rule 17f–5 (17 CFR 270.17f–5), applicant will appoint,

by contract, a bank, as defined in section 2(a)(5) and having the qualification described in section 26(a)(1), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash necessary to meet applicant's current administrative expenses. Said contract will provide, *inter alia*, that said custodian will:

(A) Consummate all purchases and sales of securities by applicant, other than purchases and sales on an established securities exchange, through the delivery of securities and receipt of cash, or *vice versa* as the case may be, within the United States, and (B) redeem in the United States such of applicant's shares as shall be surrendered therefor, and (C) distribute applicant's assets, or the proceeds thereof, to applicant's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in paragraphs (b) (3) and (5) of this section.

(vi) Applicant's principal underwriter for the sale of its shares will be a citizen and resident of the United States or a corporation organized under the laws of a state of the United States, and having its principal place of business therein, and if redeemable shares are offered, also a member in good standing of a securities association registered under section 15A of the Securities Exchange Act of 1934.

(vii) Applicant will appoint an accountant, qualified to act as an independent public accountant for the applicant under the act and the rules thereunder, who maintains a permanent office and place of business in the United States.

(viii) Any contract entered into between the applicant and its investment adviser and principal underwriter will contain provisions in compliance with the requirements of sections 15, 17(i) and 31 and the rules thereunder, and require that the investment adviser maintain in the United States its books and records or duplicate copies thereof relating to applicant.

(ix) Applicant's Charter and By Laws will not be changed in any manner inconsistent with this paragraph or the Act and the rules thereunder unless authorized by the Commission.

(9) Contracts of the applicant, other than those executed on an established securities exchange which do not involve affiliated persons, will provide that:

(i) Such contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, if the subject matter of such contracts is within the purview of such acts; and

(ii) In effecting the purchase or sale of assets the parties thereto will utilize the United States mails or means of interstate commerce.

(10) Applicant will furnish to the Commission with its registration statement filed under the Act a list of persons affiliated with it and with its investment adviser and principal underwriter and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act.

(Sec. 7, 54 Stat. 802; 15 U.S.C. 80a–7; secs. 6(c); 15 U.S.C. 80a–6(c); and 38(a); 15 U.S.C. 80a–37(a) of the Act)

[19 FR 2585, May 5, 1954, as amended at 38 FR 8593, Apr. 4, 1973; 49 FR 36084, Sept. 14, 1984]

§ 270.8b–1 Scope of §§ 270.8b–1 to 270.8b–32.

The rules contained in §§ 270.8b–1 to 270.8b–32 shall govern all registration statements pursuant to section 8 of the Act, including notifications of registration pursuant to section 8(a), and all reports pursuant to section 30 (a) or (b) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

[18 FR 8575, Dec. 19, 1953]

§ 270.8b–2 Definitions.

Unless the context otherwise requires, the terms in paragraphs (a) through (m) of this section, when used in the rules contained in §§ 270.8b–1 through 270.8b–32, in the rules under section 30(a) or (b) of the Act or in the forms for registration statements and reports pursuant to section 8 or 30(a) or

(b) of the Act, shall have the respective meanings indicated in this section. The terms ''EDGAR,'' ''EDGAR Filer Manual,'' ''electronic filer,'' ''electronic filing,'' ''electronic format,'' ''electronic submission,'' ''paper format,'' and ''signature'' shall have the meanings assigned to such terms in Regulation S–T—General Rules for Electronic Filings (Part 232 of this chapter). The term ''Financial Data Schedule'' shall mean a Financial Data Schedule meeting the requirements of rule 483 under the Securities Act of 1933 (§ 230.483 of this chapter).

(a) *Amount*. The term ''amount'', when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

(b) *Certified*. The term ''certified'', when used in regard to financial statements, means certified by an independent public or independent certified public accountant or accountants.

(c) *Charter*. The term ''charter'' includes articles of incorporation, declaration of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

(d) *Employee*. The term ''employee'' does not include a director, trustee, officer or member of the advisory board.

(e) *Fiscal year*. The term ''fiscal year'' means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

(f) *Investment income*. The term ''investment income'' means the aggregate of net operating income or loss from real estate and gross income from interest, dividends and all other sources, exclusive of profit or loss on sales of securities or other properties.

(g) *Material*. The term ''material'', when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters as to which an average prudent investor ought reasonably to be informed before buying or selling any security of the particular company.

(h) *Parent*. A ''parent'' of a specified person is an affiliated person who controls the specified person directly or indirectly through one or more intermediaries.

(i) *Previously filed or reported*. The terms ''previously filed'' and ''previously reported'' means previously filed with, or reported in, a registration statement filed under section 8 of the Act or under the Securities Act of 1933, a report filed under section 30 of the Act or section 13 or 15(d) of the Securities Exchange Act of 1934, a definitive proxy statement filed under section 20 of the Act or section 14 of the Securities Exchange Act of 1934, or a prospectus filed under the Securities Act of 1933: *Provided,* That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

(j) *Share*. The term ''share'' means a share of stock in a corporation or unit of interest in an unincorporated person.

(k) *Significant subsidiary*. The term ''significant subsidiary'' means a subsidiary meeting any one of the following conditions:

(1) The value of the investments in and advances to the subsidiary by its parent and the parent's other subsidiaries, if any exceed 10 percent of the value of the assets of the parent or, if a consolidated balance sheet is filed, the value of the assets of the parent and its consolidated subsidiaries.

(2) The total investment income of the subsidiary or, in the case of a non-investment company subsidiary, the net income exceeds 10 percent of the total investment income of the parent or, if consolidated statements are filed, 10 percent of the total investment income of the parent and its consolidated subsidiaries.

(3) The subsidiary is the parent of one or more subsidiaries and, together with such subsidiaries would, if considered in the aggregate, constitute a significant subsidiary.

(l) *Subsidiary*. A ''subsidiary'' of a specified person is an affiliated person who is controlled by the specified person, directly or indirectly, through one or more intermediaries.

(m) *Totally-held subsidiary*. The term ''totally-held subsidiary'' means a subsidiary (1) substantially all of whose outstanding securities are owned by its parent and/or the parent's other totally-held subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other totally-held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

[18 FR 8575, Dec. 19, 1953, as amended at 19 FR 2779, May 14, 1954; 58 FR 14860, Mar. 18, 1993]

§ 270.8b–3 Title of securities.

Wherever the title of securities is required to be stated, there shall be given such information as will indicate the type and general character of the securities, including the following:

(a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or noncumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.

(b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as ''maturing serially from 1950 to 1960''; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.

(c) In the case of any other kind of security, appropriate information of comparable character.

[18 FR 8575, Dec. 19, 1953]

§ 270.8b–4 Interpretation of requirements.

Unless the context clearly shows otherwise:

(a) The forms require information only as to the company filing the registration statement or report.

(b) Whenever any fixed period of time in the past is indicated, such period shall be computed from the date of filing.

(c) Whenever words relate to the future, they have reference solely to present intention.

(d) Any words indicating the holder of a position or office include persons, by whatever titles designated, whose duties are those ordinarily performed by holders of such positions or officers.

[18 FR 8575, Dec. 18, 1953]

§ 270.8b–5 Time of filing original registration statement.

An investment company shall file a registration statement with the Commission on the appropriate form within three months after the filing of notification of registration under section 8(a) of the Act, provided that if the fiscal year of the company ends within the three months period, its registration statement may be filed within three months after the end of such fiscal year.

[19 FR 2779, May 14, 1954]

§ 270.8b–6 [Reserved]

§ 270.8b–10 Requirements as to proper form.

Every registration statement or report shall be prepared in accordance with the form prescribed therefor by the Commission, as in effect on the date of filing. Any such statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–11 Number of copies; signatures; binding.

(a) Three complete copies of each registration statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission.

(b) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, three complete copies of each part of the registration statement (including, if applicable, exhibits and all other papers and documents filed as part of Part C of the registration statement) shall be filed with the Commission.

(c) At least one copy of the registration statement or report shall be signed in the manner prescribed by the appropriate form. Unsigned copies shall be conformed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the registration statement or report.

(d) Each copy of a registration statement or report filed with the Commission shall be bound in one or more parts without stiff covers. The binding shall be made on the left-hand side and in such manner as to leave the reading matter legible.

(e) *Signatures.* Where the Act or the rules thereunder, including paragraph (c) of this section, require a document filed with or furnished to the Commission to be signed, the document should be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. When typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging, or otherwise adopting his or her signature that appears in the filing. Execute each such document before or at the time the filing is made and retain for a period of five years. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

(Sec. 19 of the Securities Act of 1933 (15 U.S.C. 77s) and secs. 8 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8 and 80a–37))

[49 FR 32059, Aug. 10, 1984, as amended at 50 FR 26160, June 25, 1985; 57 FR 56835, Dec. 1, 1992; 60 FR 26622, May 17, 1995; 63 FR 13944, Mar. 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 13944, Mar. 23, 1998, § 270.8b–11 was amended by removing the word ''manually'' from first sentence of the paragraph (c) before the word ''Signed'', and revising paragraph (e), effective June 1, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 270.8b–11 Number of copies; signatures; binding.

* * * * *

(e) Duplicated or facsimile versions of manual signatures of persons required to sign any registration statement or report, including all amendments and exhibits to such statements or reports, that are filed or submitted to the Commission under the Act, shall be considered manual signatures for the purposes of the Act and the rules and regulations thereunder; provided that, the original signed document is retained by the filer for a period of five years and, upon request, the filer furnishes to the Commission or the staff the original manually signed document.

§ 270.8b–12 Requirements as to paper, printing and language.

(a) Registration statements and reports shall be filed on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size, insofar as practicable. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size.

(b) In the case of a registration statement filed on Form N–1A, Form N–2, Form N–3, or Form N–4, Part C of the registration statement shall be filed on good quality, unglazed, white paper, no larger than 8½ x 11 inches in size, insofar as practicable. The prospectus and, if applicable, the Statement of Additional Information, however, may be filed on smaller-sized paper provided that the size of paper used in each document is uniform.

(c) The registration statement or report and, insofar as practicable all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed or typewritten. However, the registration statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for permanent record. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.

(d) The body of all printed registration statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large as 10-

point modern type. However, to the extent necessary for convenient presentation, financial statements and other statistical or tabular data, including tabular data in notes, may be set in type at least as large and as legible as 8-point modern type. All type shall be leaded at least 2-points.

(e) Registration statements and reports shall be in the English language. If any exhibit or other paper or document filed with a registration statement or report is in a foreign language, it shall be accompanied by a translation into the English language.

(f) Where a registration statement or report is distributed through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents, such as paper size, type size and font, bold–face type, italics and red ink, by presenting all required information in a format readily communicated to investors, and where indicated, in a manner reasonably calculated to draw investor attention to specific information.

[49 FR 32060, Aug. 10, 1984, as amended at 50 FR 26160, June 25, 1985; 57 FR 56836, Dec. 1, 1992; 61 FR 24657, May 15, 1996]

§ 270.8b–13 Preparation of registration statement or report.

The registration statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted from the registration statement or report. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–14 Riders; inserts.

Riders shall not be used. If the registration statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–15 Amendments.

All amendments shall be filed under cover of the facing sheet of the appropriate form, shall be clearly identified as amendments, and shall comply with all pertinent requirements applicable to registration statements and reports. Amendments shall be filed separately for each separate registration or report amended. Except as permitted under rule 102(b) of Regulation S–T (§ 232.102(b) of this chapter), any amendment filed under this section shall state the complete text of each item amended.

[18 FR 8576, Dec. 19, 1953, as amended at 58 FR 14860, Mar. 18, 1993]

§ 270.8b–16 Amendments to registration statement.

(a) Every registered management investment company which is required to file a semi-annual report on Form N–SAR, as prescribed by rule 30b1–1 (17 CFR 270.30b1–1), shall amend the registration statement required pursuant to Section 8(b) by filing, not more than 120 days after the close of each fiscal year ending on or after the date upon which such registration statement was filed, the appropriate form prescribed for such amendments.

(b) Paragraph (a) of this section shall not apply to a registered closed-end management investment company whose registration statement was filed on Form N–2; provided that the following information is transmitted to shareholders in its annual report to shareholders:

(1) If the company offers a dividend reinvestment plan to shareholders, information about the plan required to be disclosed in the company's prospectus by Item 10.1.e of Form N–2 (17 CFR 274.11a–1);

(2) Any material changes in the company's investment objectives or policies (described in Item 8.2 of Form N–2) that have not been approved by shareholders;

(3) Any changes in the company's charter or by-laws that would delay or prevent a change of control of the company (described in Item 10.1.f of Form N–2) that have not been approved by shareholders;

(4) Any material changes in the principal risk factors associated with investment in the company (described in Item 8.3 of Form N–2); and

(5) Any changes in the persons who are primarily responsible for the day-to-day management of the company's portfolio (described in Item 9.1.c of Form N–2), including any new person's business experience during the past five years and the length of time he or she has been responsible for the management of the portfolio.

(c) In lieu of including a description of the dividend reinvestment plan in its annual report, a company may comply with the disclosure requirement of paragraph (b)(1) of this section concerning a company's dividend reinvestment plan by delivering to each shareholder annually a separate document containing the information about the plan required to be disclosed in the company's prospectus by Item 10.1.e of Form N–2. Any such document shall be deemed to be a record or document subject to the record-keeping requirements of section 31 (15 U.S.C. 80a–30) and the rules adopted thereunder (17 CFR 270.31a–1 *et seq.*).

(d) The changes required to be disclosed by paragraphs (b)(2) through (b)(5) of this section are those that occurred since the later of either the effective date of the company's registration statement relating to its initial offering of securities under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (or the most recent post-effective amendment thereto) or the close of the period covered by the previously transmitted annual shareholder report.

[54 FR 10321, Mar. 13, 1989, as amended at 57 FR 56836, Dec. 1, 1992]

§ 270.8b–20 Additional information.

In addition to the information expressly required to be included in a registration statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–21 Information unknown or not available.

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted subject to the following conditions:

(a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.

(b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–22 Disclaimer of control.

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–23 Incorporation by reference.

(a) Any registrant may incorporate by reference, in answer or partial answer to any item of a registration statement or report, any information contained elsewhere in the statement or report or any information contained

in any other statement, report or prospectus filed with the Commission under any Act administered by it, *provided that* a copy of such other statement, report or prospectus is filed with each copy of the registration statement or report in which it is incorporated by reference or, in the case of a registration statement, report or prospectus filed in electronic format, the registration statement, report or prospectus that is incorporated by reference is also filed in electronic format, except as otherwise permitted under rules 102(b), (c), and (e) of Regulation S–T (§§ 232.102(b), (c) and (e) of this chapter). Matter contained in an exhibit, however, may be incorporated only to the extent permitted by §§ 270.8b–24 and 270.8b–32. A Financial Data Schedule may not be incorporated by reference.

(b) Any financial statement filed with the Commission pursuant to any act administered by the Commission may be incorporated by reference in a registration statement or report, filed with the Commission by the same or any other person, if it substantially conforms to the requirements of the form on which the statement or report is filed.

(c) Material incorporated by reference shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the registration statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement incomplete, unclear or confusing.

[18 FR 8576, Dec. 19, 1953, as amended at 19 FR 2779, May 14, 1954; 58 FR 14860, Mar. 18, 1993]

§ 270.8b–24 Summaries or outlines of documents.

Where an item requires a summary or outline of the provisions of any document, only a brief statement shall be made, in succinct and condensed form, as to the most important provisions of the document. In addition to such statement, the summary or outline may incorporate by reference particular items, sections, or paragraphs of any exhibit and may be qualified in its entirety by such reference. Matter contained in an exhibit may be incorporated by reference in answer to an item only to the extent permitted by this section.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–25 Extension of time for furnishing information.

(a) Subject to paragraph (b) of this section, if it is impractical to furnish any required information, document or report at the time it is required to be filed, there may be filed with the Commission as a separate document an application (a) identifying the information, document or report in question, (b) stating why the filing thereof at the time required is impracticable, and (c) requesting an extension of time for filing the information, document or report to a specified date not more than 60 days after the date it would otherwise have to be filed. The application shall be deemed granted unless the Commission, within 10 days after receipt thereof, shall enter an order denying the application. Section 270.0–5 (Rule N–5) shall not apply to such applications.

(b) If it is impracticable to furnish any document or report required to be filed in electronic format at the time it is required to be filed, the electronic filer may file under the temporary hardship provision of rule 201 of Regulation S–T (§ 232.201 of this chapter) or may submit a written application for a continuing hardship exemption, in accordance with rule 202 of Regulation S–T (§ 232.202 of this chapter). Applications for such exemptions shall be considered in accordance with the provisions of those sections and paragraphs (h) and (i) of § 200.30–5 of this chapter.

[18 FR 8576, Dec. 19, 1953, as amended at 58 FR 14860, Mar. 18, 1993; 60 FR 14630, Mar. 20, 1995]

§ 270.8b–30 Additional exhibits.

A company may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–31 Omission of substantially identical documents.

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, copies of only one of such documents need be filed, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the documents filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

[18 FR 8576, Dec. 19, 1953]

§ 270.8b–32 Incorporation of exhibits by reference.

(a) Except as provided in paragraph (c) of this section, any document or part thereof filed with the Commission pursuant to any Act administered by the Commission may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, be incorporated by reference as an exhibit to any registration statement or report filed with the Commission by the same or any other person.

(b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof, a statement containing the text of such modification and the date thereof shall be filed with the reference.

(c) *Electronic Filings.* (1) A registrant subject to the mandatory electronic filing rules (Part 232 of this chapter) shall file any exhibit previously filed in paper that is incorporated by reference into a registration statement or report in electronic format unless a hardship exemption (§§ 232.101 and 232.102 of this chapter) has been granted, or except as otherwise permitted under rules 102(b), (c), and (e) of Regulation S–T (§§ 232.102(b), (c) and (e) of this chapter).

(2) Notwithstanding the foregoing, a Financial Data Schedule may not be incorporated by reference as an exhibit to a registration statement, report, or other filing in which it is required to be included.

(Sec. 19, 48 Stat. 85, as amended, secs. 13, 15, 23, 48 Stat. 894, 895, 901, as amended, sec. 20, 49 Stat. 833, secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173, as amended, sec. 39, 54 Stat. 841; 15 U.S.C. 77s, 78m, 78*o*, 78w, 79t, 77eee, 77ggg, 77nnn, 77sss, 80a–38)

[18 FR 8576, Dec. 19, 1953, as amended at 29 FR 2421, Feb. 13, 1964; 58 FR 14860, Mar. 18, 1993; 60 FR 32825, June 23, 1995]

§ 270.8f–1 Form for application by certain registered investment companies for orders declaring that such companies have ceased to be investment companies as defined by the Act.

Form N–8F is hereby prescribed as the form for application for an order pursuant to section 8(f) of the Act where a registered investment company (a) has distributed substantially all of its assets to its shareholders and has effected, or is in the process of effecting, a winding-up of its affairs, or (b) has never made a public offering of its securities, has not more than 100 securityholders for the purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind, or (c) has (1) sold substantially all of its assets to another registered investment company, or (2) merged into or consolidated with another registered investment company.

(Secs. 17(f) and 38(a) of the Act (15 U.S.C. 80a–17(f) and 80a–37(a))

[43 FR 21664, Apr. 28, 1978]

§ 270.10b–1 Definition of regular broker or dealer.

The term *regular broker or dealer* of an investment company shall mean:

(a) One of the ten brokers or dealers that received the greatest dollar amount of brokerage commissions by virtue of direct or indirect participation in the company's portfolio transactions during the company's most recent fiscal year;

(b) One of the ten brokers or dealers that engaged as principal in the largest dollar amount of portfolio transactions of the investment company during the company's most recent fiscal year; or

(c) One of the ten brokers or dealers that sold the largest dollar amount of securities of the investment company

during the company's most recent fiscal year.

[49 FR 40572, Oct. 17, 1984]

§ 270.10f–1 Conditional exemption of certain underwriting transactions.

Any purchase or other acquisition by a registered management company acting, pursuant to a written agreement, as an underwriter of securities of an issuer which is not an investment company shall be exempt from the provisions of section 10(f) (54 Stat. 806; 15 U.S.C. 80a–10) upon the following conditions:

(a) The party to such agreement other than such registered company is a principal underwriter of such securities, which principal underwriter (1) is a person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, or related activities, whose gross income normally is derived principally from such business or related activities, and (2) does not control or is not under common control with such registered company.

(b) No public offering of the securities underwritten by such agreement has been made prior to the execution thereof.

(c) Such securities have been effectively registered pursuant to the Securities Act of 1933 (48 Stat. 74; 15 U.S.C. 77a–aa) prior to the execution of such agreement.

(d) In regard to any securities underwritten, whether or not purchased, by the registered company pursuant to such agreement, such company shall be allowed a rate of gross commission, spread, concession or other profit not less than the amount allowed to such principal underwriter, exclusive of any amounts received by such principal underwriter as a management fee from other principal underwriters.

(e) Such agreement is authorized by resolution adopted by a vote of not less than a majority of the board of directors of such registered company, none of which majority is an affiliated person of such principal underwriter, of the issuer of the securities underwritten pursuant to such agreement or of any person engaged in a business described in paragraph (a)(1) of this section.

(f) The resolution required in paragraph (e) of this section shall state that it has been adopted pursuant to this section, and shall incorporate the terms of the proposed agreement by attaching a copy thereof as an exhibit or otherwise.

(g) A copy of the resolution required in paragraph (e) of this section, signed by each member of the board of directors of the registered company who voted in favor of its adoption, shall be transmitted to the Commission not later than the fifth day succeeding the date on which such agreement is executed.

[Rule N–10F–1, 6 FR 1191, Feb. 28, 1941]

§ 270.10f–2 Exercise of warrants or rights received on portfolio securities.

Any purchase or other acquisition of securities by a registered investment company pursuant to the exercise of warrants or rights to subscribe to or to purchase securities shall be exempt from the provisions of section 10(f) (section 10(f), 54 Stat. 807; 15 U.S.C. 80a–10) of the Act, *Provided*, That the warrants or rights so exercised (a) were offered or issued to such company as a security holder on the same basis as all other holders of the class or classes of securities to whom such warrants or rights were offered or issued, and (b) do not exceed 5 percent of the total amount of such warrants or rights so issued.

[Rule N–10F–2, 9 FR 339, Jan. 8, 1944]

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) *Definitions*—(1) *Domestic Issuer* means any issuer other than a foreign government, a national of any foreign country, or a corporation or other organization incorporated or organized under the laws of any foreign country.

(2) *Eligible Foreign Offering* means a public offering of securities, conducted under the laws of a country other than the United States, that meets the following conditions:

(i) The offering is subject to regulation by a ''foreign financial regulatory

authority,'' as defined in section 2(a)(50) of the Act [15 U.S.C. 80a–2(a)(50)], in such country;

(ii) The securities are offered at a fixed price to all purchasers in the offering (except for any rights to purchase securities that are required by law to be granted to existing security holders of the issuer);

(iii) Financial statements, prepared and audited in accordance with standards required or permitted by the appropriate foreign financial regulatory authority in such country, for the two years prior to the offering, are made available to the public and prospective purchasers in connection with the offering; and

(iv) If the issuer is a Domestic Issuer, it meets the following conditions:

(A) It has a class of securities registered pursuant to section 12(b) or 12(g) of the Securities Exchange Act of 1934 [15 U.S.C. 78*l*(b) or 78*l*(g)] or is required to file reports pursuant to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)]; and

(B) It has filed all the material required to be filed pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a) or 78o(d)] for a period of at least twelve months immediately preceding the sale of securities made in reliance upon this (or for such shorter period that the issuer was required to file such material).

(3) *Eligible Municipal Securities* means ''municipal securities,'' as defined in section 3(a)(29) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(29)], that have received an investment grade rating from at least one NRSRO; *provided*, that if the issuer of the municipal securities, or the entity supplying the revenues or other payments from which the issue is to be paid, has been in continuous operation for less than three years, including the operation of any predecessors, the securities shall have received one of the three highest ratings from an NRSRO.

(4) *Eligible Rule 144A Offering* means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 [15 U.S.C. 77d(2)], rule 144A thereunder [§230.144A of this chapter], or rules 501–508 thereunder [§§230.501–230.508 of this chapter];

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include qualified institutional buyers, as defined in §230.144A(a)(1) of this chapter; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other qualified institutional buyers pursuant to §230.144A of this chapter.

(5) *NRSRO* has the same meaning as that set forth in §270.2a–7(a)(14).

(b) *Conditions*. Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act [15 U.S.C. 80a–10(f)] shall be exempt from the provisions of such section if the following conditions are met:

(1) *Type of Security*. The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 [15 U.S.C. 77a–aa] that is being offered to the public;

(ii) Eligible Municipal Securities;

(iii) Securities sold in an Eligible Foreign Offering; or

(iv) Securities sold in an Eligible Rule 144A Offering.

(2) *Timing and Price*. (i) The securities are purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities (except, in the case of an Eligible Foreign Offering, for any rights to purchase that are required by law to be granted to existing security holders of the issuer); and

(ii) If the securities are offered for subscription upon exercise of rights, the securities shall be purchased on or before the fourth day preceding the day on which the rights offering terminates.

(3) *Reasonable Reliance*. For purposes of determining compliance with paragraphs (b)(1)(iv) and (b)(2)(i) of this section, an investment company may reasonably rely upon written statements made by the issuer or a syndicate manager, or by an underwriter or seller of

the securities through which such investment company purchases the securities.

(4) *Continuous Operation*. If the securities to be purchased are part of an issue registered under the Securities Act of 1933 [15 U.S.C. 77a—aa] that is being offered to the public or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities shall have been in continuous operation for not less than three years, including the operations of any predecessors.

(5) *Firm Commitment Underwriting*. The securities are offered pursuant to an underwriting or similar agreement under which the underwriters are committed to purchase all of the securities being offered, except those purchased by others pursuant to a rights offering, if the underwriters purchase any of the securities.

(6) *Reasonable Commission*. The commission, spread or profit received or to be received by the principal underwriters is reasonable and fair compared to the commission, spread or profit received by other such persons in connection with the underwriting of similar securities being sold during a comparable period of time.

(7) *Percentage Limit*. The amount of securities of any class of such issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, shall not exceed:

(i) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(ii) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(A) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, plus

(B) The principal amount of the offering of such class in any concurrent public offering.

(8) *Prohibition of Certain Affiliate Transactions*. Such investment company does not purchase the securities being offered directly or indirectly from an officer, director, member of an advisory board, investment adviser or employee of such investment company or from a person of which any such officer, director, member of an advisory board, investment adviser or employee is an affiliated person; *provided*, that a purchase from a syndicate manager shall not be deemed to be a purchase from a specific underwriter if:

(i) Such underwriter does not benefit directly or indirectly from the transaction; or

(ii) In respect to the purchase of Eligible Municipal Securities, such purchase is not designated as a group sale or otherwise allocated to the account of any person from whom this paragraph prohibits the purchase.

(9) *Periodic Reporting*. The existence of any transactions effected pursuant to this section shall be reported on the Form N–SAR [§ 274.101 of this chapter] of the investment company and a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of this section was made shall be attached thereto.

(10) *Board Review*. The board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company:

(i) Has approved procedures, pursuant to which such purchases may be effected for the company, that are reasonably designed to provide that the purchases comply with all the conditions of this section;

(ii) Approves such changes to the procedures as the board deems necessary; and

(iii) Determines no less frequently than quarterly that all purchases made during the preceding quarter were effected in compliance with such procedures.

(11) *Maintenance of Records*. The investment company:

(i) Shall maintain and preserve permanently in an easily accessible place a written copy of the procedures, and any modification thereto, described in paragraphs (b)(10)(i) and (b)(10)(ii) of this section; and

(ii) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of this section was made.

[62 FR 42408, Aug. 7, 1997]

§ 270.11a–1 Definition of exchange for purposes of section 11 of the Act.

(a) For the purposes of section 11 of the Act, the term *exchange* as used therein shall include the issuance of any security by a registered investment company in an amount equal to the proceeds, or any portion of the proceeds, paid or payable—

(1) Upon the repurchase, by or at the instance of such issuer, of an outstanding security the terms of which provide for its termination, retirement or cancellation, or

(2) Upon the termination, retirement or cancellation of an outstanding security of such issuer in accordance with the terms thereof.

(b) A security shall not be deemed to have been repurchased by or at the instance of the issuer, or terminated, retired or canceled in accordance with the terms of the security if—

(1) The security was redeemed or repurchased at the instance of the holder; or

(2) A security holder's account was closed for failure to make payments as prescribed in the security or instruments pursuant to which the security was issued, and notice of intention to close the account was mailed to the security holder, and he had a reasonable time in which to meet the deficiency; or

(3) Sale of the security was restricted to a specified, limited group of persons and, in accordance with the terms of the security or the instruments pursuant to which the security was issued, upon its being transferred by the holder to a person not a member of the group eligible to purchase the security, the issuer required the surrender of the security and paid the redemption price thereof.

(c) The provisions of paragraph (a) of this section shall not apply if, following the repurchase of an outstanding security by or at the instance of the issuer or the termination, retirement or cancellation of an outstanding security in accordance with the terms thereof—

(1) The proceeds are actually paid to the security holder by or on behalf of the issuer within 7 days, and

(2) No sale and no offer (other than by way of exchange) of any security of the issuer is made by or on behalf of the issuer to the person to whom such proceeds were paid, within 60 days after such payment.

(d) The provisions of paragraph (a) of this section shall not apply to the repurchase, termination, retirement, or cancellation of a security outstanding on the effective date of this section or issued pursuant to a subscription agreement or other plan of acquisition in effect on such date.

(Sec. 11, 54 Stat. 808; 15 U.S.C. 80a–11)
[32 FR 10728, July 21, 1967]

§ 270.11a–2 Offers of exchange by certain registered separate accounts or others the terms of which do not require prior Commission approval.

(a) As used in this section:

(1) *Deferred sales load* shall mean any sales load, including a contingent deferred sales load, that is deducted upon redemption or annuitization of amounts representing all or a portion of a securityholder's interest in a separate account;

(2) *Exchanged security* shall include not only the security or securities (or portion[s] thereof) of a securityholder actually exchanged pursuant to an exchange offer but also any security or securities (or portion[s] thereof) of the securityholder previously exchanged for the exchanged security or its predecessors;

(3) *Front-end sales load* shall mean any sales load that is deducted from one or more purchase payments made by a securityholder before they are invested in a separate account; and

(4) *Purchase payments made for the acquired security*, as used in paragraphs

(c)(2) and (d)(2) of this section, shall not include any purchase payments made for the exchanged security or any appreciation attributable to those purchase payments that are transferred to the offering account in connection with an exchange.

(b) Notwithstanding section 11 of the Act [15 U.S.C. 80a–11], any registered separate account or any principal underwriter for such an account (collectively, the ''offering account'') may make or cause to be made an offer to the holder of a security of the offering account, or of any other registered separate account having the same insurance company depositor or sponsor as the offering account or having an insurance company depositor or sponsor that is an affiliate of the offering account's depositor or sponsor, to exchange his security (or portion thereof) (the ''exchanged security'') for a security (or portion thereof) of the offering account (the ''acquired security'') without the terms of such exchange offer first having been submitted to and approved by the Commission, as provided below:

(1) If the securities (or portions thereof) involved are variable annuity contracts, then

(i) The exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange

(A) An administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus, and

(B) Any front-end sales load permitted by paragraph (c) of this section, and

(ii) Any deferred sales load imposed on the acquired security by the offering account shall be calculated in the manner prescribed by paragraph (d) or (e) of this section; or

(2) If the securities (or portions thereof) involved are variable life insurance contracts offered by a separate account registered under the Act as a unit investment trust, then the exchange must be made on the basis of the relative net asset values of the securities to be exchanged, except that the offering account may deduct at the time of the exchange an administrative fee which is disclosed in the part of the offering account's registration statement under the Securities Act of 1933 relating to the prospectus.

(c) If the offering account imposes a front-end sales load on the acquired security, then such sales load

(1) Shall be a percentage that is no greater than the excess of the rate of the front-end sales load otherwise applicable to that security over the rate of any front-end sales load previously paid on the exchanged security, and

(2) Shall not exceed 9 percent of the sum of the purchase payments made for the acquired security and the exchanged security.

(d) If the offering account imposes a deferred sales load on the acquired security and the exchanged security was also subject to a deferred sales load, then any deferred sales load imposed on the acquired security:

(1) Shall be calulated as if

(i) The holder of the acquired security had been the holder of that security from the date on which he became the holder of the exchanged security and

(ii) Purchase payments made for the exchanged security had been made for the acquired security on the date on which they were made for the exchanged security; and

(2) Shall not exceed 9 percent of the sum of the purchase payments made for the acquired security and the exchanged security.

(e) If the offering account imposes a deferred sales load on the acquired security and a front-end sales load was paid on the exchanged security, then any deferred sales load imposed on the acquired security may not be imposed on purchase payments made for the exchanged security or any appreciation attributable to purchase payments made for the exchanged security that are transferred in connection with the exchange.

(f) Notwithstanding the foregoing, no offer of exchange shall be made in reliance on this section if both a front-end sales load and a deferred sales load are to be imposed on the acquired security or if both such sales loads are imposed on the exchanged security.

(Sec. 11(a) (15 U.S.C. 80a–11(a)) and sec. 38(a) (15 U.S.C. 80a–37(a)) of the Act)
[48 FR 36245, Aug. 10, 1983]

§ 270.11a–3 Offers of exchange by open-end investment companies other than separate accounts.

(a) For purposes of this rule:

(1) *Acquired security* means the security held by a securityholder after completing an exchange pursuant to an exchange offer;

(2) *Administrative fee* means any fee, other than a sales load, deferred sales load or redemption fee, that is

(i) Reasonably intended to cover the costs incurred in processing exchanges of the type for which the fee is charged, *Provided that:* the offering company will maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. The records preserved under this provision shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such records were records required to be maintained under rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30a)); or

(ii) A nominal fee as defined in paragraph (a)(8) of this section;

(3) *Deferred sales load* means any amount properly chargeable to sales or promotional expenses that is paid by a shareholder after purchase but before or upon redemption;

(4) *Exchanged security* means

(i) The security actually exchanged pursuant to an exchange offer, and

(ii) Any security previously exchanged for such security or for any of its predecessors;

(5) *Group of investment companies* means any two or more registered open-end investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(i) That have a common investment adviser or principal underwriter, or

(ii) The investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3) of the Act (15 U.S.C. 80a–2(a)(3)) of the investment adviser or principal underwriter of each of the other companies;

(6) *Offering company* means a registered open-end investment company (other than a registered separate account) or any principal underwriter thereof that makes an offer (an ''exchange offer'') to the holder of a security of that company, or of another open-end investment company within the same group of investment companies as the offering company, to exchange that security for a security of the offering company;

(7) *Redemption fee* means any fee (other than a sales load, deferred sales load or administrative fee) that is paid to the fund and is reasonably intended to compensate the fund for expenses directly related to the redemption of fund shares; and

(8) *Nominal fee* means a slight or *de minimis* fee.

(b) Nothwithstanding section 11(a) of the Act (15 U.S.C. 80a–11(a)), and except as provided in paragraphs (d) and (e) of this section, in connection with an exchange offer an offering company may cause a securityholder to be charged a sales load on the acquired security, a redemption fee, an administrative fee, or any combination of the foregoing, *Provided that:*

(1) Any administrative fee or scheduled variation thereof is applied uniformly to all securityholders of the class specified;

(2) Any redemption fee charged with respect to the exchanged security or any scheduled variation thereof

(i) Is applied uniformly to all securityholders of the class specified, and

(ii) Does not exceed the redemption fee applicable to a redemption of the exchanged security in the absence of an exchange.

Any scheduled variation of a redemption fee must be reasonably related to the costs to the fund of processing the type of redemptions for which the fee is charged;

(3) No deferred sales load is imposed on the exchanged security at the time of an exchange;

(4) Any sales load charged with respect to the acquired security is a percentage that is no greater than the excess, if any, of the rate of the sales load

applicable to that security in the absence of an exchange over the sum of the rates of all sales loads previously paid on the exchanged security, *Provided that:*

(i) The percentage rate of any sales load charged when the acquired security is redeemed, that is solely the result of a deferred sales load imposed on the exchanged security, may be no greater than the excess, if any, of the applicable rate of such sales load, calculated in accordance with paragraph (b)(5) of this section, over the sum of the rates of all sales loads previously paid on the acquired security, and

(ii) In no event may the sum of the rates of all sales loads imposed prior to and at the time the acquired security is redeemed, including any sales load paid or to be paid with respect to the exchanged security, exceed the maximum sales load rate, calculated in accordance with paragraph (b)(5) of this section, that would be applicable in the absence of an exchange to the security (exchanged or acquired) with the highest such rate;

(5) Any deferred sales load charged at the time the acquired security is redeemed is calculated as if the holder of the acquired security had held that security from the date on which he became the holder of the exchanged security, *Provided that:*

(i) The time period during which the acquired security is held need not be included when the amount of the deferred sales load is calculated, if the deferred sales load is

(A) reduced by the amount of any fees collected on the acquired security under the terms of any plan of distribution adopted in accordance with rule 12b–1 under the Act (17 CFR 270.12b–1) (a ''12b–1 plan''), and

(B) Solely the result of a sales load imposed on the exchanged security, and no other sales loads, including deferred sales loads, are imposed with respect to the acquired security,

(ii) The time period during which the exchanged security is held need not be included when the amount of the deferred sales load on the acquired security is calculated, if

(A) The deferred sales load is reduced by the amount of any fees previously collected on the exchanged security under the terms of any 12b–1 plan, and

(B) The exchanged security was not subject to any sales load, and

(iii) The holding periods in this subsection may be computed as of the end of the calendar month in which a security was purchased or redeemed;

(6) The prospectus of the offering company discloses

(i) The amount of any administrative or redemption fee imposed on an exchange transaction for its securities, as well as the amount of any administrative or redemption fee imposed on its securityholders to acquire the securities of other investment companies in an exchange transaction, and

(ii) If the offering company reserves the right to change the terms of or terminate an exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(7) Any sales literature or advertising that mentions the existence of the exchange offer also discloses

(i) The existence of any administrative fee or redemption fee that would be imposed at the time of an exchange; and

(ii) If the offering company reserves the right to change the terms of or terminate the exchange offer, that the exchange offer is subject to termination and its terms are subject to change;

(8) Whenever an exchange offer is to be terminated or its terms are to be amended materially, any holder of a security subject to that offer shall be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, *Provided that:*

(i) No such notice need be given if the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange, and

(ii) No notice need be given if, under extraordinary circumstances, either

(A) There is a suspension of the redemption of the exchanged security under section 22(e) of the Act [15 U.S.C. 80a–22(e)] and the rules and regulations thereunder, or

(B) The offering company temporarily delays or ceases the sale of the

acquired security because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions; and

(9) In calculating any sales load charged with respect to the acquired security:

(i) If a securityholder exchanges less than all of his securities, the security upon which the highest sales load rate was previously paid is deemed exchanged first; and

(ii) If the exchanged security was acquired through reinvestment of dividends or capital gains distributions, that security is deemed to have been sold with a sales load rate equal to the sales load rate previously paid on the security on which the dividend was paid or distribution made.

(c) If either no sales load is imposed on the acquired security or the sales load imposed is less than the maximum allowed by paragraph (b)(4) of this section, the offering company may require the exchanging securityholder to have held the exchanged security for a minimum period of time previously established by the offering company and applied uniformly to all securityholders of the class specified.

(d) Any offering company that has previously made an offer of exchange may continue to impose fees or sales loads permitted by an order under section 11(a) of the Act upon shares purchased before the earlier of (1) One year after the effective date of this section, or (2) When the offer has been brought into compliance with the terms of this section, and upon shares acquired through reinvestment of dividends or capital gains distributions based on such shares, until such shares are redeemed.

(e) Any offering company that has previously made an offer of exchange cannot rely on this section to amend such prior offer unless

(1) The offering company's prospectus disclosed, during at least the two year period prior to the amendment of the offer (or, if the fund is less than two years old, at all times the offer has been outstanding) that the terms of the offer were subject to change, or

(2) The only effect of such change is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange.

[54 FR 35185, Aug. 24, 1989, as amended at 61 FR 49016, Sept. 17, 1996]

§ 270.12b–1 Distribution of shares by registered open-end management investment company.

(a)(1) Except as provided in this section, it shall be unlawful for any registered open-end management investment company (other than a company complying with the provisions of section 10(d) of the Act (15 U.S.C. 80a–10(d))) to act as a distributor of securities of which it is the issuer, except through an underwriter.

(2) For purposes of this section, such a company will be deemed to be acting as a distributor of securities of which it is the issuer, other than through an underwriter, if it engages directly or indirectly in financing any activity which is primarily intended to result in the sale of shares issued by such company, including, but not necessarily limited to, advertising, compensation of underwriters, dealers, and sales personnel, the printing and mailing of prospectuses to other than current shareholders, and the printing and mailing of sales literature.

(b) A registered, open-end management investment company (''Company'') may act as a distributor of securities of which it is the issuer: *Provided*, That any payments made by such company in connection with such distribution are made pursuant to a written plan describing all material aspects of the proposed financing of distribution and that all agreements with any person relating to implementation of the plan are in writing: *And further provided*, That:

(1) Such plan has been approved by a vote of at least a majority of the outstanding voting securities of such company, if adopted after any public offering of the company's voting securities or the sale of such securities to persons who are not affiliated persons of the company, affiliated persons of such persons, promoters of the company, or affiliated persons of such promoters;

(2) Such plan, together with any related agreements, has been approved by a vote of the board of directors of such company, and of the directors who are

not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan, cast in person at a meeting called for the purpose of voting on such plan or agreements; and

(3) Such plan or agreement provides, in substance:

(i) That it shall continue in effect for a period of more than one year from the date of its execution or adoption only so long as such continuance is specifically approved at least annually in the manner described in paragraph (b)(2) of this section;

(ii) That any person authorized to direct the disposition of monies paid or payable by such company pursuant to the plan or any related agreement shall provide to the company's board of directors, and the directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made; and

(iii) In the case of a plan, that it may be terminated at any time by vote of a majority of the members of the board of directors of the company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company; and

(iv) In the case of an agreement related to a plan,

(A) That it may be terminated at any time, without the payment of any penalty, by vote of a majority of the members of the board of directors of such company who are not interested persons of the company and have no direct or indirect financial interest in the operation of the plan or in any agreements related to the plan or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to any other party to the agreement, and

(B) For its automatic termination in the event of its assignment; and

(4) Such plan provides that it may not be amended to increase materially the amount to be spent for distribution without shareholder approval and that all material amendments of the plan must be approved in the manner described in paragraph (b)(2) of this section;

(5) Such plan is implemented and continued in a manner consistent with the provisions of paragraphs (c), (d), and (e) of this section;

(c) A registered open-end management investment company may rely on the provisions of paragraph (b) of this section only if selection and nomination of those directors who are not interested persons of such company are committed to the discretion of such disinterested directors;

(d) In considering whether a registered open-end management investment company should implement or continue a plan in reliance on paragraph (b) of this section, the directors of such company shall have a duty to request and evaluate, and any person who is a party to any agreement with such company relating to such plan shall have a duty to furnish, such information as may reasonably be necessary to an informed determination of whether such plan should be implemented or continued; in fulfilling their duties under this paragraph the directors should consider and give appropriate weight to all pertinent factors, and minutes describing the factors considered and the basis for the decision to use company assets for distribution must be made and preserved in accordance with paragraph (f) of this section;

NOTE: For a discussion of factors which may be relevant to a decision to use company assets for distribution, see Investment Company Act Releases Nos. 10862, September 7, 1979, and 11414, October 28, 1980.

(e) A registered open-end management investment company may implement or continue a plan pursuant to paragraph (b) of this section only if the directors who vote to approve such implementation or continuation conclude, in the exercise of reasonable business judgment and in light of their fiduciary duties under state law and under sections 36(a) and (b) (15 U.S.C. 80a–35 (a) and (b)) of the Act, that there is a reasonable likelihood that the plan will benefit the company and its shareholders; and

(f) A registered open-end management investment company must preserve copies of any plan, agreement or

report made pursuant to this section for a period of not less than six years from the date of such plan, agreement or report, the first two years in an easily accessible place.

(g) If a plan covers more than one series or class of shares, the provisions of the plan must be severable for each series or class, and whenever this section provides for any action to be taken with respect to a plan, that action must be taken separately for each series or class affected by the matter. Nothing in this paragraph (g) shall affect the rights of any purchase class under § 270.18f–3(e)(2)(iii).

[45 FR 73905, Nov. 7, 1980, as amended at 60 FR 11885, Mar. 2, 1995; 61 FR 49011, Sept. 17, 1996; 62 FR 51765, Oct. 3, 1997]

§ 270.12d2–1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.

For purposes of sections 12(d)(2) and 12(g) of the Act [15 U.S.C. 80a–12(d)(2) and 80a–12(g)], *insurance company* shall include a foreign insurance company as that term is used in rule 3a–6 under the Act (17 CFR 270.3a–6).

[56 FR 56300, Nov. 4, 1991]

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

(a) Notwithstanding section 12(d)(3) of the Act, a registered investment company, or any company or companies controlled by such registered investment company (''acquiring company'') may acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities related activities unless the acquiring company would control such person after the acquisition.

(b) Notwithstanding section 12(d)(3) of the Act, an acquiring company may acquire any security issued by a person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities related activities, *provided that:*

(1) Immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the issuer's equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal amount of the issuer's debt securities; and

(3) Immediately after any such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in the securities of the issuer.

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of a general partnership interest or a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter.

(d) For purposes of this section:

(1) *Securities related activities* are a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.

(2) An issuer's gross revenues from its own securities related activities and from its ratable share of the securities related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer's annual report to shareholders, the issuer's annual reports or registration statement filed with the Commission, or the issuer's chief financial officer.

(3) *Equity security* is as defined in § 240.3a–11 of this chapter.

(4) *Debt security* includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company's ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in the rules under § 240.16 of this chapter.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights, or convertible securities of a securities related

business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights, or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

(iii) Exercise of options, warrants, or rights acquired in compliance with this section;

(iv) Conversion of convertible securities acquired in compliance with this section; and

(v) Acquisition of Demand Features or Guarantees, as these terms are defined in §§ 270.2a–7(a)(8) and 270.2a–7(a)(15) respectively, provided that, immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution. For the purposes of this section, a Demand Feature or Guarantee will be considered to be from the party to whom the company will look for a payment of the exercise price.

(8) Any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company.

NOTE: It is not intended that this rule should supersede the requirements prescribed in Investment Company Act Release No. 13005 (Feb. 2, 1983) with respect to repurchase agreements with brokers or dealers.

[58 FR 49427, Sept. 23, 1993, as amended at 61 FR 13982, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.13a–1 Exemption for change of status by temporarily diversified company.

A change of its subclassification by a registered management company from that of a diversified company to that of a nondiversified company shall be exempt from the provisions of section 13(a)(1) of the Act (54 Stat. 811; 15 U.S.C. 80a–13), if such change occurs under the following circumstances:

(a) Such company was a nondiversified company at the time of its registration pursuant to section 8(a) (54 Stat. 803; 15 U.S.C. 80a–8), or thereafter legally became a nondiversified company.

(b) After its registration and within 3 years prior to such change, such company became a diversified company.

(c) At the time such company became a diversified company, its registration statement filed pursuant to section 8(b) (54 Stat. 803; 15 U.S.C. 80a–8), as supplemented and modified by any amendments and reports theretofore filed, did not stated that the registrant proposed to become a diversified company.

[Rule N–13A–1, 6 FR 3967, Aug. 8, 1941]

§ 270.14a–1 Use of notification pursuant to regulation E under the Securities Act of 1933.

For the purposes of section 14(a)(3) of the Act, registration of securities under the Securities Act of 1933 by a small business investment company operating under the Small Business Investment Act of 1958 shall be deemed to include the filing of a notification under Rule 604 of Regulation E promulgated under said Act if provision is made in connection with such notification which in the opinion of the Commission adequately insures (a) that after the effective date of such notification such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least $100,000; (b) that said aggregate net amount will be paid into

such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (c) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such notification becomes effective.

[25 FR 3512, Apr. 22, 1960]

§ 270.14a–2 Exemption from section 14(a) of the Act for certain registered separate accounts and their principal underwriters.

(a) A registered separate account, and any principal underwriter for such account, shall be exempt from section 14(a) of the Act (15 U.S.C. 80a–14(a)) with respect to a public offering of variable annuity contracts participating in such account if, at the commencement of such offering, the insurance company establishing and maintaining such separate account shall have (1) a combined capital and surplus, if a stock company, or (2) an unassigned surplus, if a mutual company, of not less than $1,000,000 as set forth in the balance sheet of such insurance company contained in the registration statement or any amendment thereto relating to such contracts filed pursuant to the Securities Act of 1933.

(b) Any registered management investment company which has as a promoter an insurance company meeting the requirements of paragraph (a) of this section and which offers its securities to separate accounts of such insurance company registered under the Act as unit investment trusts (''trust accounts''), and any principal underwriter for such investment company, shall be exempt from section 14(a) with respect to such offering and to the offering of such securities to trust accounts of other insurance companies meeting the requirements of paragraph (a) of this section.

(c) Any registered management investment company exempt from section 14(a) of the Act pursuant to paragraph (b) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act (15 U.S.C. 80a–15(a), 80a–16(a), and 80a–31(a)(2)), to the extent prescribed in rules 15a–3, 16a–1, and 32a–2 under the Act (17 CFR 270.15a–3, 270.16a–1, and 270.32a–2), provided that such investment company complies with the conditions set forth in those rules as if it were a separate account.

(Secs. 6(c) and 38(a) of the Act (15 U.S.C. 80a–6(c) and 80a–37(a), respectively))

[49 FR 1479, Jan. 12, 1984]

§ 270.14a–3 Exemption from section 14(a) of the Act for certain registered unit investment trusts and their principal underwriters.

(a) A registered unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities, and any principal underwriter for the Trust, shall be exempt from section 14(a) of the Act with respect to a public offering of Trust units: *Provided,* That:

(1) At the commencement of such offering the Trust holds at least $100,000 principal amount of eligible trust securities (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities);

(2) If, within ninety days from the time that the Trust's registration statement has become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.) the net worth of the Trust declines to less than $100,000 or the Trust is terminated, the sponsor for the Trust shall—

(i) Refund, on demand and without deduction, all sales charges to any unitholders who purchased Trust units from the sponsor (or from any underwriter or dealer participating in the distribution), and

(ii) Liquidate the eligible trust securities held by the Trust and distribute the proceeds thereof to the unitholders of the Trust;

(3) The sponsor instructs the trustee when the eligible trust securities are deposited in the Trust that, in the event that redemptions by the sponsor

or any underwriter of units constituting a part of the unsold units results in the Trust having a net worth of less than 40 percent of the principal amount of the eligible trust securities (or delivery statements relating to contracts for the purchase of any such securities which, together with cash or an irrevocable letter of credit issued by a bank in the amount required for their purchase, are held by the Trust for purchase of the securities) initially deposited in the Trust—

(i) The trustee shall terminate the Trust and distribute the assets thereof to the unitholders of the Trust, and

(ii) The sponsor for the Trust shall refund, on demand and without deduction, all sales charges to any unitholder who purchased Trust units from the sponsor or from any underwriter or dealer participating in the distribution.

(b) For the purposes of determining the availability of the exemption provided by the foregoing subsection, the term ''eligible trust securities'' shall mean:

(1) Securities (other than convertible securities) which are issued by a corporation and which have their interest or dividend rate fixed at the time they are issued;

(2) Interest bearing obligations issued by a state, or by any agency, instrumentality, authority or political subdivision thereof;

(3) Government securities; and

(4) Units of a previously issued series of the Trust: *Provided*, That:

(i) The aggregate principal amount of units of existing series so deposited shall not exceed 10% of the aggregate principal amount of the portfolio of the new series;

(ii) The aggregate principal amount of units of any particular existing series so deposited shall not exceed 5% of the aggregate principal amount of the portfolio of the new series;

(iii) No units shall be so deposited which do not substantially meet investment quality criteria at least as high as those applicable to the new series in which such units are deposited;

(iv) The value of the eligible trust securities underlying units of an existing series deposited in a new series shall not, by reason of maturity of such securities according to their terms within ten years following the date of deposit, be reduced sufficiently for such existing series to be voluntarily terminated;

(v) Units of existing series so deposited shall constitute units purchased by the sponsor as market maker and not remaining unsold units from the original distribution of such units; and

(vi) The sponsor shall deposit units of existing series in the new series without a sales charge.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 15 U.S.C. 80a–37(a)))

[44 FR 29646, May 22, 1979; 44 FR 40064, July 9, 1979]

§ 270.15a–1 Exemption from stockholders' approval of certain small investment advisory contracts.

An investment adviser of a registered investment company shall be exempt from the requirement of sections 15(a) and 15(e) of the Act (54 Stat. 812; 15 U.S.C. 80a–15) that the written contract pursuant to which he acts shall have been approved by the vote of a majority of the outstanding voting securities of such company, if the following conditions are met:

(a) Such investment adviser is not an affiliated person of such company (except as investment adviser) nor of any principal underwriter for such company.

(b) His compensation as investment adviser of such company in any fiscal year of the company during which any such contract is in effect either (1) is not more than $100 or (2) is not more than $2,500 and not more than 1/40 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

(c) The aggregate compensation of all investment advisers of such company exempted pursuant to this section in any fiscal year of the company either (1) is not more than $200 or (2) is not more than 1/20 of 1 percent of the value of the company's net assets averaged over the year or taken as of a definite date or dates within the year.

[Rule N–15A–1, 6 FR 2275, Jan. 8, 1944]

§ 270.15a–2 Annual continuance of contracts.

(a) For purposes of sections 15(a) and 15(b) of the Act, the continuance of a contract for a period more than two years after the date of its execution shall be deemed to have been specifically approved at least annually by the board of directors or by a vote of a majority of the outstanding voting securities of a registered investment company if such approval occurs:

(1) With respect to the first continuance of a contract, during the 90 days prior to and including the earlier of (i) the date specified in such contract for its termination in the absence of such approval, or (ii) the second anniversary of the date upon which such contract was executed; or

(2) With respect to any subsequent continuance of a contract, during the 90 days prior to and including the first anniversary of the date upon which the most recent previous annual continuance of such contract became effective.

(b) The provisions of paragraph (a) of this section shall not apply to any continuance of a contract which shall have been approved not later than 90 days after the date of adoption of this section, provided that such contract shall expire, by its terms, not later than 17 months from the date of adoption of this section.

NOTE: This section does not establish the exclusive method of complying with the Act. It provides one procedure by which a registered investment company may comply with the applicable provisions of sections 15(a) and 15(b) of the Act; it does not preclude any other appropriate procedure. Any annual continuance of a contract approved in accordance with the provisions of paragraph (a)(1) or (a)(2) of § 270.15a–2 will constitute a renewal of such contract for the purposes of section 15(c) of the Act, and therefore such renewal must be approved by the disinterested directors within the times specified in the section for a continuance.

[41 FR 41911, Sept. 24, 1976]

§ 270.15a–3 Exemption for initial period of investment adviser of certain registered separate accounts from requirement of security holder approval of investment advisory contract.

(a) An investment adviser of a registered separate account shall be exempt from the requirement under section 15(a) of the Act that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of such registered separate account, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–2, or is exempt therefrom by order of the Commission upon application; and

(2) Such written contract shall be submitted to a vote of variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C. 77a et seq.) relating to variable annuity contracts participating in such account: *Provided*, That such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)
[34 FR 12695, Aug. 5, 1969]

§ 270.15a–4 Temporary exemption for certain investment advisers.

Notwithstanding section 15(a) of the Act, a person may act as investment adviser for an investment company pursuant to a written contract which has not been approved by a majority of the outstanding voting securities of such company during the one hundred and twenty day period after the termination of an investment advisory contract by an event (other than an assignment by an investment adviser in connection with which such investment adviser, or a controlling person thereof, directly or indirectly receives money or other benefit) described in paragraphs (3) or (4) of section 15(a) of the Act or by the failure to renew such contract; *Provided*, That:

(a) Such contract has been approved by the investment company's board of directors, including a majority of the directors who are not interested persons thereof; and

(b) The compensation to be received under that contract does not exceed the compensation which would have been received under the most recent investment advisory contract that had been approved by the vote of a majority of the outstanding voting securities of the investment company.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 80a–37(a)))
[45 FR 1861, Jan. 9, 1980]

§ 270.16a–1 Exemption for initial period of directors of certain registered accounts from requirements of election by security holders.

(a) Persons serving as the directors of a registered separate account shall, prior to the first meeting of such account's variable annuity contract owners, be exempt from the requirement of section 16(a) of the Act that such persons be elected by the holders of outstanding voting securities of such account at an annual or special meeting called for that purpose, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–1 or is exempt therefrom by order of the Commission upon application; and

(2) Such persons have been appointed directors of such account by the establishing insurance company; and

(3) An election of directors for such account shall be held at the first meeting of variable annuity contract owners after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C. 77a et seq.), relating to contracts participating in such account: *Provided,* That such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)
[34 FR 12695, Aug. 5, 1969]

§ 270.17a–1 Exemption of certain underwriting transactions exempted by § 270.10f–1.

Any transaction exempted pursuant to § 270.10f–1 shall be exempt from the provisions of section 17(a)(1) of the Act (54 Stat. 815; 15 U.S.C. 80a–17).
[Rule N–17A–1, 6 FR 1191, Feb. 28, 1941]

§ 270.17a–2 Exemption of certain purchase, sale, or borrowing transactions.

Purchase, sale or borrowing transactions occurring in the usual course of business between affiliated persons of registered investment companies shall be exempt from section 17(a) of the Act provided (a) the transactions involve notes, drafts, time payment contracts, bills of exchange, acceptance or other property of a commercial character rather than of an investment character; (b) the buyer or lender is a bank; and (c) the seller or borrower is a bank or is engaged principally in the business of installment financing.
[Rule N–17A–2, 12 FR 5008, July 29, 1947]

§ 270.17a–3 Exemption of transactions with fully owned subsidiaries.

(a) The following transactions shall be exempt from section 17(a) of the Act:

(1) Transactions solely between a registered investment company and one or more of its fully owned subsidiaries or solely between two or more fully owned subsidiaries of such company.

(2) Transactions solely between any subsidiary of a registered investment company and one or more fully owned subsidiaries of such subsidiary or solely between two or more fully owned subsidiaries of such subsidiary.

(b) The term *fully owned subsidiary* as used in this section, means a subsidiary (1) all of whose outstanding securities, other than directors' qualifying shares, are owned by its parent and/or the parent's other fully owned subsidiaries, and (2) which is not indebted to any person other than its parent and/or the parent's other fully owned subsidiaries in an amount which is material in relation to the particular subsidiary, excepting (i) indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not, and (ii) any other indebtedness

to one or more banks or insurance companies.

[Rule N–17A–3, 12 FR 3442, May 28, 1947]

§ 270.17a–4 Exemption of transactions pursuant to certain contracts.

Transactions pursuant to a contract shall be exempt from section 17(a) of the Act if at the time of the making of the contract and for a period of at least six months prior thereto no affiliation or other relationship existed which would operate to make such contract or the subsequent performance thereof subject to the provisions of said section 17(a).

[Rule N–17A–4, 12 FR 5008, July 29, 1947]

§ 270.17a–5 Pro rata distribution neither "sale" nor "purchase."

When a company makes a pro rata distribution in cash or in kind among its common stockholders without giving any election to any stockholder as to the specific assets which such stockholders shall receive, such distribution shall not be deemed to involve a sale to or a purchase from such distributing company as those terms are used in section 17(a) of the Act.

[20 FR 7447, Oct. 6, 1955]

§ 270.17a–6 Exemption of transactions with certain affiliated persons.

(a) A transaction to which a registered investment company, or a company controlled by such a registered investment company, is a party, and to which a company affiliated with such a registered investment company or a person affiliated with such affiliated company is also a party, shall be exempt from the provisions of section 17(a) of the Act, if no person who is:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the registered investment company, or

(2) A person directly or indirectly controlling the registered investment company, or

(3) A person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of the registered investment company, or

(4) A person directly or indirectly under common control with the registered investment company, or

(5) An affiliated person of any of the foregoing,

(i) Is also a party to the transaction, or

(ii) Has, or within six months prior to the transaction had, or pursuant to an arrangement will acquire, a direct or indirect financial interest in a party (except the registered investment company) to the transactions.

(b) For the purpose of determining the availability of the exemption provided for by this section:

(1) The term ''financial interest'' as used in paragraph (a) of this section shall not include (i) any interest through ownership of securities issued by the registered investment company; (ii) any interest of a wholly-owned subsidiary of a registered investment company; (iii) usual and ordinary fees for services as a director; (iv) an interest of a non-executive employee; (v) an interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person; (vi) an interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of a company which is a party to the transaction; or (vii) an interest acquired in a transaction described in paragraph (d)(3) of § 270.17d–1 (Rule 17d–1 under the Act).

(2) Paragraph (a)(4) of this section shall not include a person who, if it were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company.

(3) Paragraph (a)(5) of this section shall not include (i) the registered investment company, or (ii) a person who (*a*) if it were not directly or indirectly

controlled by the registered investment company, or (*b*) if 5 per centum or more of its outstanding voting securities were not directly or indirectly owned, controlled, or held with power to vote by the registered investment company, would not be an affiliated person of a person described in paragraph (a)(2) or (3) of this section.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)
[29 FR 6154, May 9, 1964, as amended at 44 FR 48658, Aug. 20, 1979]

§ 270.17a–7 Exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof.

A purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers, is exempt from section 17(a) of the Act; *Provided*, That:

(a) The transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available;

(b) The transaction is effected at the independent current market price of the security. For purposes of this paragraph the ''current market price'' shall be:

(1) If the security is a ''reported security'' as that term is defined in rule 11Aa3–1 under the Securities Exchange Act of 1934 [17 CFR 240.11Aa3–1], the last sale price with respect to such security reported in the consolidated transaction reporting system (''consolidated system'') or the average of the highest current independent bid and lowest current independent offer for such security (reported pursuant to rule 11Ac1–1 under the Securities Exchange Act of 1934 [17 CFR 240.11Ac1–1]) if there are no reported transactions in the consolidated system that day; or

(2) If the security is not a reported security, and the principal market for such security is an exchange, then the last sale on such exchange or the average of the highest current independent bid and lowest current independent offer on such exchange if there are no reported transactions on such exchange that day; or

(3) If the security is not a reported security and is quoted in the NASDAQ System, then the average of the highest current independent bid and lowest current independent offer reported on Level 1 of NASDAQ; or

(4) For all other securities, the average of the highest current independent bid and lowest current independent offer determined on the basis of reasonable inquiry;

(c) The transaction is consistent with the policy of each registered investment company and separate series of a registered investment company participating in the transaction, as recited in its registration statement and reports filed under the Act;

(d) No brokerage commission, fee (except for customary transfer fees), or other remuneration is paid in connection with the transaction;

(e) The board of directors of the investment company, including a majority of the directors who are not interested persons of such investment company,

(1) Adopts procedures pursuant to which such purchase or sale transactions may be effected for the company, which are reasonably designed to provide that all of the conditions of this section in paragraphs (a) through (d) have been complied with,

(2) Makes and approves such changes as the board deems necessary, and

(3) Determines no less frequently than quarterly that all such purchases or sales made during the preceding quarter were effected in compliance with such procedures; and

(f) The investment company (1) maintains and preserves permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (e) of this section, and (2) maintains

and preserves for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth a description of the security purchased or sold, the identity of the person on the other side of the transaction, the terms of the purchase or sale transaction, and the information or materials upon which the determinations described in paragraph (e)(3) of this section were made.

[46 FR 17013, Mar. 17, 1981, as amended at 58 FR 49921, Sept. 24, 1993]

§ 270.17a–8 Mergers of certain affiliated investment companies.

A merger, consolidation, or purchase or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a) of the Act; *Provided,* That:

(a) The board of directors of each such affiliated registered investment company participating in the transaction, including a majority of the directors of each registered investment company who are not interested persons of any registered investment company participating in the transaction, determine:

(1) That participation in the transaction is in the best interests of that registered investment company; and

(2) That the interests of existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction, and

(b) Such findings, and the basis upon which the findings were made, are recorded fully in the minute books of each registered investment company.

(Secs. 6(c) and 38(a), 15 U.S.C. 80a–6(c) and 80a–37(a))

[45 FR 12409, Feb. 26, 1980]

§ 270.17a–9 Purchase of certain securities from a money market fund by an affiliate, or an affiliate of an affiliate.

The purchase of a security that is no longer an Eligible Security (as defined in paragraph (a)(10) of § 270.2a–7) from an open-end investment company holding itself out as a ''money market'' fund shall be exempt from section 17(a) of the Act [15 U.S.C. 80a–17(a)], provided that:

(a) The purchase price is paid in cash; and

(b) The purchase price is equal to the greater of the amortized cost of the security or its market price (in each case, including accrued interest).

[61 FR 13983, Mar. 28, 1996, as amended at 62 FR 64986, Dec. 9, 1997]

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

(a) No affiliated person of or principal underwriter for any registered investment company (other than a company of the character described in section 12(d)(3) (A) and (B) of the Act) and no affiliated person of such a person or principal underwriter, acting as principal, shall participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which any such registered company, or a company controlled by such registered company, is a participant, and which is entered into, adopted or modified subsequent to the effective date of this rule, unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted by an order entered prior to the submission of such plan or modification to security holders for approval, or prior to such adoption or modification if not so submitted, except that the provisions of this rule shall not preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.

(b) In passing upon such applications, the Commission will consider whether

the participation of such registered or controlled company in such joint enterprise, joint arrangement or profit-sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

(c) ''Joint enterprise or other joint arrangement or profit-sharing plan'' as used in this section shall mean any written or oral plan, contract, authorization or arrangement, or any practice or understanding concerning an enterprise or undertaking whereby a registered investment company or a controlled company thereof and any affiliated person of or a principal underwriter for such registered investment company, or any affiliated person of such a person or principal underwriter, have a joint or a joint and several participation, or share in the profits of such enterprise or undertaking, including, but not limited to, any stock option or stock purchase plan, but shall not include an investment advisory contract subject to section 15 of the Act.

(d) Notwithstanding the requirements of paragraph (a) of this section, no application need be filed pursuant to this section with respect to any of the following:

(1) Any profit-sharing, stock option or stock purchase plan provided by any controlled company which is not an investment company for its officers, directors or employees, or the purchase of stock or the granting, modification or exercise of options pursuant to such a plan, provided:

(i) No individual participates therein who is either: (*a*) An affiliated person of any investment company which is an affiliated person of such controlled company; or (*b*) an affiliated person of the investment adviser or principal underwriter of such investment company; and

(ii) No participant has been an affiliated person of such investment company, its investment adviser or principal underwriter during the life of the plan and for six months prior to, as the case may be: (*a*) Institution of the profit-sharing plan; (*b*) the purchase of stock pursuant to a stock purchase plan; or (*c*) the granting of any options pursuant to a stock option plan.

(2) Any plan provided by any registered investment company or any controlled company for its officers or employees if such plan has been qualified under section 401 of the Internal Revenue Code of 1954 and all contributions paid under said plan by the employer qualify as deductible under section 404 of said Code.

(3) Any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (''Investments''), made by a bank and a small business investment company (SBIC) licensed under the Small Business Investment Act of 1958, whether such transactions are contemporaneous or separated in time, where the bank is an affiliated person of either (i) the SBIC or (ii) an affiliated person of the SBIC; but reports containing pertinent details as to Investments and transactions relating thereto shall be made at such time, on such forms and by such persons as the Commission may from time to time prescribe.

(4) The issuance by a registered investment company which is licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 of stock options which qualify under section 422 of the Internal Revenue Code, as amended, and which conform to § 107.805(b) of Chapter I of Title 13 of the Code of Federal Regulations.

(5) Any joint enterprise or other joint arrangement or profit-sharing plan (hereinafter referred to as a ''joint enterprise'') in which a registered investment company or a company controlled by such a company, is a participant, and in which a company which is an affiliated person of such registered investment company or an affiliated person of such a person is also a participant: *Provided,* That

(i) No person who is included in items (*a*) through (*e*) of this paragraph (d)(5)(i) is, was or proposes to be, a participant in the joint enterprise through a financial interest, direct or indirect,

in any person (except the registered investment company) who is, was or will be a participant in the joint enterprise:

(*a*) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the registered investment company,

(*b*) A person directly or indirectly controlling the registered investment company,

(*c*) A person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of the registered investment company,

(*d*) A person directly or indirectly under common control with the registered investment company, except a person who, if it were not directly or indirectly controlled by the registered investment company, would not be directly or indirectly under the control of a person who controls the registered investment company, or

(*e*) An affiliated person of any of the foregoing, except (*1*) the registered investment company, or (*2*) a person who (*i*) if it were not directly or indirectly controlled by the registered investment company, or (*ii*) if 5 per centum or more of its outstanding voting securities were not directly or indirectly owned, controlled, or held with power to vote by the registered investment company, would not be an affiliated person of a person described in item (*b*) or (*c*) of this section;

(ii) In such joint enterprise, other than a merger of a controlled company of the registered investment company with another controlled company or affiliated company of the registered investment company, neither the investment company nor a company controlled by such company commits in excess of 5 per centum of its assets, except that a registered investment company which is licensed by the Small Business Administration pursuant to the Small Business Investment Act of 1958 may not commit in excess of 20 per centum of its paid-in capital and surplus; and

(iii) For the purpose of determining whether, pursuant to this paragraph (d)(5), an application need be filed pursuant to this rule, the term ''financial interest'' as used herein shall not include (*a*) any interest through ownership of securities issued by the registered investment company; (*b*) any interest of a wholly-owned subsidiary of the registered investment company; (*c*) usual and ordinary fees for services as a director; (*d*) an interest of a nonexecutive employee; (*e*) an interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person; (*f*) an interest of a bank arising from a loan to a person who is an officer, director or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, 5 per centum or more of the outstanding voting securities of a company which is a participant in the joint transaction; or (*g*) an interest acquired in a transaction described in paragraph (d)(3) of this section.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided*, That no person described in paragraph (d)(5)(i) of this section or any company in which such person has a direct or indirect financial interest (as defined in paragraph (d)(5)(iii) of this section): (i) Has a direct or indirect financial interest in the corporation under reorganization, except owning securities of each class or classes owned by such investment company or controlled company;

(ii) Receives pursuant to such plan any securities or other property, except securities of the same class and subject to the same terms as the securities received by such investment company or controlled company, and/or cash in the same proportion as is received by the investment company or controlled company based on securities of the company under reorganization owned by such persons; and

(iii) Is, or has a direct or indirect financial interest in any person (other than such investment company or controlled company) who is, (A) purchasing assets from the company under reorganization or (B) exchanging shares with such person in a transaction not

in compliance with the standards described in this paragraph (d)(6).

(7) Any arrangement regarding liability insurance policies (other than a bond required pursuant to rule 17g–1 (§ 270.17g–1) under the Act); *Provided*, That

(i) The investment company's participation in the joint liability insurance policy is in the best interests of the investment company;

(ii) The proposed premium for the joint liability insurance policy to be allocated to the investment company, based upon its proportionate share of the sum of the premiums that would have been paid if such insurance coverage were purchased separately by the insured parties, is fair and reasonable to the investment company; and

(iii) The board of directors of the investment company, including a majority of the directors who are not interested persons with respect thereto, determine no less frequently than annually that the standards described in paragraphs (d)(7)(i) and (ii) of this section have been satisfied.

(8) An investment adviser's bearing expenses in connection with a merger, consolidation or purchase or sale of substantially all of the assets of a company which involves a registered investment company of which it is an affiliated person.

(Secs. 6(c), 17(d), 38(a); 54 Stat. 800, 815, 841; 15 U.S.C. 80a–6(c), 80a–17(d), 80a–37(a))

[22 FR 426, Jan. 23, 1957, as amended at 26 FR 11240, Nov. 29, 1961; 35 FR 13123, Aug. 18, 1970; 39 FR 37973, Oct. 25, 1974; 44 FR 58503, Oct. 10, 1979; 44 FR 58908, Oct. 12, 1979; 45 FR 12409, Feb. 26, 1980]

§ 270.17d–2 Form for report by small business investment company and affiliated bank.

Form N–17D–1 is hereby prescribed as the form for reports required by paragraph (d)(3) of § 270.17d–1.

[26 FR 11240, Nov. 29, 1961]

§ 270.17d–3 Exemption relating to certain joint enterprises or arrangements concerning payment for distribution of shares of a registered open-end management investment company.

An affiliated person of, or principal underwriter for, a registered open-end management investment company and an affiliated person of such a person or principal underwriter shall be exempt from section 17(d) of the Act (15 U.S.C. 80a–17(d)) and rule 17d–1 thereunder (17 CFR 270.17d–1), to the extent necessary to permit any such person or principal underwriter to enter into a written agreement with such company whereby the company will make payments in connection with the distribution of its shares, *Provided*, That:

(a) Such agreement is made in compliance with the provisions of § 270.12b–1; and

(b) No other registered management investment company which is either an affiliated person of such company or an affiliated person of such a person is a party to such agreement.

[45 FR 73905, Nov. 7, 1980]

§ 270.17e–1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 80a–17(e)(2)(A)], a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if:

(a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time;

(b) The board of directors, including a majority of the directors of the investment company who are not interested persons thereof:

(1) Has adopted procedures which are reasonably designed to provide that such commission, fee, or other remuneration is consistent with the standard described in paragraph (a) of this section;

(2) Makes and approves such changes as the board deems necessary; and

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter were effected in compliance with such procedures; and

(c) The investment company (1) shall maintain and preserve permanently in an easily accessible place a written

copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section, and (2) shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

(Secs. 6(c), 31(a), and 38(a), 15 U.S.C. 80a–6(c), 80a–30(a), and 80a–37(a))
[44 FR 37203, June 26, 1979, as amended at 58 FR 49921, Sept. 24, 1993]

§ 270.17f–1 Custody of securities with members of national securities exchanges.

(a) No registered management investment company shall place or maintain any of its securities or similar investments in the custody of a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 (whether or not such company trades in securities for its own account) except pursuant to a written contract which shall have been approved, or if executed before January 1, 1941, shall have been ratified not later than that date, by a majority of the board of directors of such investment company.

(b) The contract shall require, and the securities and investments shall be maintained in accordance with the following:

(1) The securities and similar investments held in such custody shall at all times be individually segregated from the securities and investments of any other person and marked in such manner as to clearly identify them as the property of such registered management company, both upon physical inspection thereof and upon examination of the books of the custodian. The physical segregation and marking of such securities and investments may be accomplished by putting them in separate containers bearing the name of such registered management investment company or by attaching tags or labels to such securities and investments.

(2) The custodian shall have no power or authority to assign, hypothecate, pledge or otherwise to dispose of any such securities and investments, except pursuant to the direction of such registered management company and only for the account of such registered investment company.

(3) Such securities and investments shall be subject to no lien or charge of any kind in favor of the custodian or any persons claiming through the custodian.

(4) Such securities and investments shall be verified by actual examination at the end of each annual and semi-annual fiscal period by an independent public accountant retained by the investment company, and shall be examined by such accountant at least one other time, chosen by the accountant, during each fiscal year. A certificate of such accountant stating that an examination of such securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–1 (17 CFR 274.219) and transmitted to the Commission promptly after each examination.

(5) Such securities and investments shall, at all times, be subject to inspection by the Commission through its employees or agents.

(6) The provisions of paragraphs (b)(1), (2) and (3) of this section shall not apply to securities and similar investments bought for or sold to such investment company by the company which is custodian until the securities have been reduced to the physical possession of the custodian and have been paid for by such investment company: *Provided,* That the company which is custodian shall take possession of such securities at the earliest practicable time. Nothing in this subparagraph shall be construed to relieve any company which is a member of a national securities exchange of any obligation under existing law or under the rules of any national securities exchange.

(c) A copy of any contract executed or ratified pursuant to paragraph (a) of this section shall be transmitted to the Commission promptly after execution

or ratification unless it has been previously transmitted.

(d) Any contract executed or ratified pursuant to paragraph (a) of this section shall be ratified by the board of directors of the registered management investment company at least annually thereafter.

[Rule N–17F–1, 5 FR 4317, Oct. 31, 1940, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f–2 Custody of investments by registered management investment company.

(a) The securities and similar investments of a registered management investment company may be maintained in the custody of such company only in accordance with the provisions of this section. Investments maintained by such a company with a bank or other company whose functions and physical facilities are supervised by Federal or State authority under any arrangement whereunder the directors, officers, employees or agents of such company are authorized or permitted to withdraw such investments upon their mere receipt, are deemed to be in the custody of such company and may be so maintained only upon compliance with the provisions of this section.

(b) Except as provided in paragraph (c) of this section, all such securities and similar investments shall be deposited in the safekeeping of, or in a vault or other depository maintained by, a bank or other company whose functions and physical facilities are supervised by Federal or State authority. Investments so deposited shall be physically segregated at all times from those of any other person and shall be withdrawn only in connection with transactions of the character described in paragraph (c) of this section.

(c) The first sentence of paragraph (b) of this section shall not apply to securities on loan which are collateralized to the extent of their full market value, or to securities hypothecated, pledged, or placed in escrow for the account of such investment company in connection with a loan or other transaction authorized by specific resolution of its board of directors, or to securities in transit in connection with the sale, exchange, redemption, maturity or conversion, the exercise of warrants or rights, assents to changes in terms of the securities, or other transactions necessary or appropriate in the ordinary course of business relating to the management of securities.

(d) Except as otherwise provided by law, no person shall be authorized or permitted to have access to the securities and similar investments deposited in accordance with paragraph (b) of this section except pursuant to a resolution of the board of directors of such investment company. Each such resolution shall designate not more than five persons who shall be either officers or responsible employees of such company and shall provide that access to such investments shall be had only by two or more such persons jointly, at least one of whom shall be an officer; except that access to such investments shall be permitted (1) to properly authorized officers and employees of the bank or other company in whose safekeeping the investments are placed and (2) for the purpose of paragraph (f) of this section to the independent public accountant jointly with any two persons so designated or with such officer or employee of such bank or such other company. Such investments shall at all times be subject to inspection by the Commission through its authorized employees or agents accompanied, unless otherwise directed by order of the Commission, by one or more of the persons designated pursuant to this paragraph.

(e) Each person when depositing such securities or similar investments in or withdrawing them from the depository or when ordering their withdrawal and delivery from the safekeeping of the bank or other company, shall sign a notation in respect of such deposit, withdrawal or order which shall show (1) the date and time of the deposit, withdrawal or order, (2) the title and amount of the securities or other investments deposited, withdrawn or ordered to be withdrawn, and an identification thereof by certificate numbers or otherwise, (3) the manner of acquisition of the securities or similar investments deposited or the purpose for which they have been withdrawn, or ordered to be withdrawn, and (4) if withdrawn and delivered to another person the name of such person. Such notation

shall be transmitted promptly to an officer or director of the investment company designated by its board of directors who shall not be a person designated for the purpose of paragraph (d) of this section. Such notation shall be on serially numbered forms and shall be preserved for at least one year.

(f) Such securities and similar investments shall be verified by actual examination by an independent public accountant retained by the investment company at least three times during each fiscal year, at least two of which shall be chosen by such accountant without prior notice to such company. A certificate of such accountant stating that an examination of such securities and investments has been made, and describing the nature and extent of the examination, shall be attached to a completed Form N–17f–2 (17 CFR 274.220) and transmitted to the Commission promptly after each examination.

[Rule N–17F–2, 12 FR 6717, Oct. 11, 1947, as amended at 54 FR 32049, Aug. 4, 1989]

§ 270.17f–3 Free cash accounts for investment companies with bank custodians.

No registered investment company having a bank custodian shall hold free cash except, upon resolution of its board or directors, a petty cash account may be maintained in an amount not to exceed $500: *Provided*, That such account is operated under the imprest system and is maintained subject to adequate controls approved by the board of directors over disbursements and reimbursements including, but not limited to fidelity bond coverage of persons having access to such funds.

(Sec. 17(f), 54 Stat. 815, 15 U.S.C. 80a–17(f), sec. 9, Pub. L. 91–547, 84 Stat. 1420)
[37 FR 9989, May 18, 1972]

§ 270.17f–4 Deposits of securities in securities depositories.

(a) For the purpose of this rule, a ''securities depository'' is a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities.

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in a foreign securities depository or clearing agency in accordance with § 270.17f–5 (rule 17f–5) or in:

(1) A clearing agency registered with the Commission under section 17A of the Securities Exchange Act of 1934 (clearing agency), which acts as a securities depository, or

(2) The book-entry system as provided in subpart O of Treasury Circular No. 300, 31 CFR part 306, subpart B of 31 CFR part 350, and the book-entry regulations of Federal agencies substantially in the form of subpart O, in accordance with the following paragraphs of this section.

(c) An investment company may deposit the securities in a clearing agency which acts as a securities depository under an arrangement that contains the following elements:

(1) The investment company has a system that is reasonably designed to prevent unauthorized officer's instructions and which provides, at least, for the form, content, and means of giving, recording, and reviewing the instructions. An ''officer's instruction'' is a request or direction to a clearing agency in the name of the investment company by one or more persons authorized by its board of directors to give it.

(2) Upon ceasing to act for an investment company, and subject to its own rules on contributions to a participants fund, the clearing agency shall deliver all securities held for the investment company to a successor clearing agency, custodian, or safekeeper under Rule 17f–2 (17 CFR 270.17f–2), to be named by the investment company. Where the investment company has not named one, the clearing agency shall deliver the investment company securities to a bank having the qualifications prescribed in section 26(a)(1) of the Act for trustees of unit investment trusts, to be held by the bank as custodian for the investment company under terms customary to a custodian agreement between banks and investment companies.

(3) The investment company, by resolution of its board of directors, initially approved the arrangement, and any subsequent changes thereto.

(d) The custodian may deposit the securities in a clearing agency which acts as a securities depository or the book-entry system, or both, under an arrangement that contains the following elements:

(1) The custodian may deposit the securities directly or through one or more agents which are also qualified to act as custodians for investment companies.

(2) The custodian (or its agent) shall deposit the securities in an account that includes only assets held by it for customers.

(3) The custodian shall send the investment company a confirmation of any transfers to or from the account of the investment company. Where securities are transferred to that account, the custodian shall also, by book-entry or otherwise, identify as belonging to the investment company a quantity of securities in a fungible bulk of securities (i) registered in the name of the custodian (or its nominee) or (ii) shown on the custodian's account on the books of the clearing agency, the book-entry system, or the custodian's agent. for this purpose, the term ''confirmation'' means advice or notice of a transaction; it is not intended to require preparation by a custodian of the confirmation required of broker-dealers under the Securities Exchange Act of 1934.

(4) The custodian, or its agent which deposits the securities, shall promptly send to the investment company reports it receives from the appropriate Federal Reserve Bank or clearing agency on its respective system of internal accounting control. The custodian and all the agents through which the securities are deposited shall send to the investment company such reports on their own systems of internal accounting control as the investment company may reasonably request from time to time.

(5) The investment company, by resolution of its board of directors, initially approved the arrangement, and any subsequent changes thereto.

(Secs. 17(f) and 38(a) of the Act (15 U.S.C. 80a–17(f) and 80a–37(a))

[43 FR 50873, Nov. 1, 1978, as amended at 49 FR 36084, Sept. 14, 1984; 58 FR 49922, Sept. 24, 1993]

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is:

(i) A Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company;

(ii) A securities depository or clearing agency that acts as a system for the central handling of securities or equivalent book-entries in the country that is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50)); or

(iii) A securities depository or clearing agency that acts as a transnational system for the central handling of securities or equivalent book-entries.

(2) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(3) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(4) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(5) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d–1.

(6) *Securities Depository* means a system for the central handling of securities as defined in § 270.17f–4(a).

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section, or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board requires the delegate to provide written reports notifying the board of the placement of the Fund's assets with a particular custodian and of any material change in the Fund's arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's foreign custody arrangements; and

(3) The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of Fund assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Selecting an Eligible Foreign Custodian.* A Fund may place and maintain in the care of an Eligible Foreign Custodian any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, *provided that:*

(1) The Foreign Custody Manager determines that the Fund's assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the custodian, after considering all factors relevant to the safekeeping of such assets, including, without limitation:

(i) The custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the custodian has the requisite financial strength to provide reasonable care for Fund assets;

(iii) The custodian's general reputation and standing and, in the case of a Securities Depository, the depository's operating history and number of participants; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the custodian, such as by virtue of the existence of any offices of the custodian in the United States or the custodian's consent to service of process in the United States.

(2) Contract. The Fund's foreign custody arrangements must be governed by a written contract (or, in the case of a Securities Depository, by such a contract, by the rules or established practices or procedures of the depository, or by any combination of the foregoing) that the Foreign Custody Manager has determined will provide reasonable care for Fund assets based on the standards specified in paragraph (c)(1) of this section.

(i) Such contract shall include provisions that provide:

(A) For indemnification or insurance arrangements (or any combination of the foregoing) such that the Fund will be adequately protected against the risk of loss of assets held in accordance with such contract;

(B) That the Fund's assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the custodian or its creditors except a claim of payment for their safe custody or administration or, in

the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership for the Fund's assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the safekeeping of the Fund's assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) Such contract may contain, in lieu of any or all of the provisions specified in paragraph (c)(2)(i) of this section, such other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for Fund assets as the specified provisions, in their entirety.

(3)(i) Monitoring the Foreign Custody Arrangements. The Foreign Custody Manager must have established a system to monitor the appropriateness of maintaining the Fund's assets with a particular custodian under paragraph (c)(1) of this section, and the contract governing the Fund's arrangements under paragraph (c)(2) of this section.

(ii) If an arrangement no longer meets the requirements of this section, the Fund must withdraw its assets from the custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain outside the United States any investments (including foreign currencies) for which the primary market is outside the United States, and such cash and cash equivalents as are reasonably necessary to effect the Fund's transactions in such investments, in accordance with the requirements of this section, *provided that:*

(1) The assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than $500,000; and

(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

[62 FR 26932, May 16, 1997]

§ 270.17f–6 Custody of investment company assets with Futures Commission Merchants and Commodity Clearing Organizations.

(a) A Fund may place and maintain cash, securities, and similar investments with a Futures Commission Merchant in amounts necessary to effect the Fund's transactions in Exchange-Traded Futures Contracts and Commodity Options, *Provided that:*

(1) The manner in which the Futures Commission Merchant maintains the Fund's assets shall be governed by a written contract, which provides that:

(i) The Futures Commission Merchant shall comply with the segregation requirements of section 4d(2) of the Commodity Exchange Act (7 U.S.C. 6d(2)) and the rules thereunder (17 CFR Chapter I) or, if applicable, the secured amount requirements of rule 30.7 under the Commodity Exchange Act (17 CFR 30.7);

(ii) The Futures Commission Merchant, as appropriate to the Fund's transactions and in accordance with the Commodity Exchange Act (7 U.S.C. 1 through 25) and the rules and regulations thereunder (including 17 CFR part 30), may place and maintain the Fund's assets to effect the Fund's transactions with another Futures Commission Merchant, a Clearing Organization, a U.S. or Foreign Bank, or a member of a foreign board of trade, and shall obtain an acknowledgment, as required under rules 1.20(a) or 30.7(c) under the Commodity Exchange Act [17 CFR 1.20(a) or 30.7(c)], as applicable, that such assets are held on behalf of the Futures Commission Merchant's customers in accordance with the provisions of the Commodity Exchange Act; and

(iii) The Futures Commission Merchant shall promptly furnish copies of

or extracts from the Futures Commission Merchant's records or such other information pertaining to the Fund's assets as the Commission through its employees or agents may request.

(2) Any gains on the Fund's transactions, other than de minimis amounts, may be maintained with the Futures Commission Merchant only until the next business day following receipt.

(3) If the custodial arrangement no longer meets the requirements of this section, the Fund shall withdraw its assets from the Futures Commission Merchant as soon as reasonably practicable.

(b) For purposes of this section:

(1) *Clearing Organization* means a clearing organization as defined in rule 1.3(d) under the Commodity Exchange Act (17 CFR 1.3(d)) and includes a clearing organization for a foreign board of trade.

(2) *Exchange-Traded Futures Contracts and Commodity Options* means commodity futures contracts, options on commodity futures contracts, and options on physical commodities traded on or subject to the rules of:

(i) Any contract market designated for trading such transactions under the Commodity Exchange Act and the rules thereunder; or

(ii) Any board of trade or exchange outside the United States, as contemplated in Part 30 under the Commodity Exchange Act.

(3) *Fund* means an investment company registered under the Act (15 U.S.C. 80a–1 *et seq.*).

(4) *Futures Commission Merchant* means any person that is registered as a futures commission merchant under the Commodity Exchange Act and that is not an affiliated person of the Fund or an affiliated person of such person.

(5) *U.S. or Foreign Bank* means a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)), or a banking institution or trust company that is incorporated or organized under the laws of a country other than the United States and that is regulated as such by the country's government or an agency thereof.

[61 FR 66212, Dec. 17, 1996]

§ 270.17g–1 Bonding of officers and employees of registered management investment companies.

(a) Each registered management investment company shall provide and maintain a bond which shall be issued by a reputable fidelity insurance company, authorized to do business in the place where the bond is issued, against larceny and embezzlement, covering each officer and employee of the investment company, who may singly, or jointly with others, have access to securities or funds of the investment company, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities, unless the officer or employee has such access solely through his position as an officer or employee of a bank (hereinafter referred to as ''covered persons'').

(b) The bond may be in the form of (1) an individual bond for each covered person or a schedule or blanket bond covering such persons, (2) a blanket bond which names the registered management investment company as the only insured (hereinafter referred to as ''single insured bond'') or (3) a bond which names the registered management investment company and one or more other parties as insureds (hereinafter referred to as a ''joint insured bond''), such other insured parties being limited to (i) persons engaged in the management or distribution of the shares of the registered investment company, (ii) other registered investment companies which are managed and/or whose shares are distributed by the same persons (or affiliates of such persons), (iii) persons who are engaged in the management and/or distribution of shares of companies included in paragraph (b)(3)(i) of this section, (iv) affiliated persons of any registered management investment company named in the bond or of any person included in paragraph (b)(3)(i) or (b)(3)(iii) of this section who are engaged in the administration of any registered management investment company named as insured in the bond, and (v) any trust, pension, profit-sharing or other benefit plan for officers, directors or employees of persons named in the bond.

(c) A bond of the type described in paragraph (b)(1) or (b)(2) of this section shall provide that it shall not be cancelled, terminated or modified except after written notice shall have been given by the acting party to the affected party and to the Commission not less than sixty days prior to the effective date of cancellation, termination or modification. A joint insured bond described in paragraph (b)(3) of this section shall provide, that (1) it shall not be cancelled terminated or modified except after written notice shall have been given by the acting party to the affected party, and by the fidelity insurance company to all registered investment companies named as insureds and to the Commission, not less than sixty days prior to the effective date of cancellation, termination, or modification and (2) the fidelity insurance company shall furnish each registered management investment company named as an insured with (i) a copy of the bond and any amendment thereto promptly after the execution thereof, (ii) a copy of each formal filing of a claim under the bond by any other named insured promptly after the receipt thereof, and (iii) notification of the terms of the settlement of each such claim prior to the execution of the settlement.

(d) The bond shall be in such reasonable form and amount as a majority of the board of directors of the registered management investment company who are not ''interested persons'' of such investment company as defined by section 2(a)(19) of the Act shall approve as often as their fiduciary duties require, but not less than once every twelve months, with due consideration to all relevant factors including, but not limited to, the value of the aggregate assets of the registered management investment company to which any covered person may have access, the type and terms of the arrangements made for the custody and safekeeping of such assets, and the nature of the securities in the company's portfolio: *Provided, however*, That (1) the amount of a single insured bond shall be at least equal to an amount computed in accordance with the following schedule:

Amount of registered management investment company gross assets—at the end of the most recent fiscal quarter prior to date (in dollars)	Minimum amount of bond (in dollars)
Up to 500,000	50,000.
500,000 to 1,000,000	75,000.
1,000,000 to 2,500,000	100,000.
2,500,000 to 5,000,000	125,000.
5,000,000 to 7,500,000	150,000.
7,500,000 to 10,000,000	175,000.
10,000,000 to 15,000,000	200,000.
15,000,000 to 20,000,000	225,000.
20,000,000 to 25,000,000	250,000.
25,000,000 to 35,000,000	300,000.
35,000,000 to 50,000,000	350,000.
50,000,000 to 75,000,000	400,000.
75,000,000, to 100,000,000	450,000.
100,000,000 to 150,000,000	525,000.
150,000,000 to 250,000,000	600,000.
250,000,000 to 500,000,000	750,000.
500,000,000 to 750,000,000	900,000.
750,000,000 to 1,000,000,000	1,000,000.
1,000,000,000 to 1,500,000,000	1,250,000.
1,500,000,000 to 2,000,000,000	1,500,000.
Over 2,000,000,000	1,500,000 plus 200,000 for each 500,000,000 of gross assets up to a maximum bond of 2,500,000.

(2) A joint insured bond shall be in an amount at least equal to the sum of (i) the total amount of coverage which each registered management investment company named as an insured would have been required to provide and maintain individually pursuant to the schedule hereinabove had each such registered management investment company not been named under a joint insured bond, plus (ii) the amount of each bond which each named insured other than a registered management investment company would have been

required to provide and maintain pursuant to federal statutes or regulations had it not been named as an insured under a joint insured bond.

(e) No premium may be paid for any joint insured bond or any amendment thereto unless a majority of the board of directors of each registered management investment company named as an insured therein who are not ''interested persons'' of such company shall approve the portion of the premium to be paid by such company, taking all relevant factors into consideration including, but not limited to, the number of the other parties named as insured, the nature of the business activities of such other parties, the amount of the joint insured bond, and the amount of the premium for such bond, the ratable allocation of the premium among all parties named as insureds, and the extent to which the share of the premium allocated to the investment company is less than the premium such company would have had to pay if it had provided and maintained a single insured bond.

(f) Each registered management investment company named as an insured in a joint insured bond shall enter into an agreement with all of the other named insureds providing that in the event recovery is received under the bond as a result of a loss sustained by the registered management investment company and one or more other named insureds, the registered management investment company shall receive an equitable and proportionate share of the recovery, but at least equal to the amount which it would have received had it provided and maintained a single insured bond with the minimum coverage required by paragraph (d)(1) of this section.

(g) Each registered management investment company shall:

(1) File with the Commission (i) within 10 days after receipt of an executed bond of the type described in paragraph (b)(1) or (2) of this section or any amendment thereof, (*a*) a copy of the bond, (*b*) a copy of the resolution of a majority of the board of directors who are not ''interested persons'' of the registered management investment company approving the form and amount of the bond, and (*c*) a statement as to the period for which premiums have been paid; (ii) within 10 days after receipt of an executed joint insured bond, or any amendment thereof, (*a*) a copy of the bond, (*b*) a copy of the resolution of a majority of the board of directors who are not ''interested persons'' of the registered management investment company approving the amount, type, form and coverage of the bond and the portion of the premium to be paid by such company, (*c*) a statement showing the amount of the single insured bond which the investment company would have provided and maintained had it not been named as an insured under a joint insured bond, (*d*) a statement as to the period for which premiums have been paid, and (*e*) a copy of each agreement between the investment company and all of the other named insureds entered into pursuant to paragraph (f) of this section; and (iii) a copy of any amendment to the agreement entered into pursuant to paragraph (f) of this section within 10 days after the execution of such amendment,

(2) File with the Commission, in writing, within five days after the making of any claim under the bond by the investment company, a statement of the nature and amount of the claim,

(3) File with the Commission, within five days of the receipt thereof, a copy of the terms of the settlement of any claim made under the bond by the investment company, and

(4) Notify by registered mail each member of the board of directors of the investment company at his last known residence address of (i) any cancellation, termination or modification of the bond, not less than forty-five days prior to the effective date of the cancellation or termination or modification, (ii) the filing and of the settlement of any claim under the bond by the investment company, at the time the filings required by paragraph (g) (2) and (3) of this section are made with the Commission, and (iii) the filing and of the proposed terms of settlement of any claim under the bond by any other named insured, within five days of the receipt of a notice from the fidelity insurance company.

(h) Each registered management investment company shall designate an

officer thereof who shall make the filings and give the notices required by paragraph (g) of this section.

(i) Where the registered management investment company is an unincorporated company managed by a depositor, trustee or investment adviser, the terms ''officer'' and ''employee'' shall include, for the purposes of this rule, the officers and employees of the depositor, trustee, or investment adviser.

(j) Any joint insured bond provided and maintained by a registered management investment company and one or more other parties shall be a transaction exempt from the provisions of section 17(d) of the Act and the rules thereunder: *Provided*, That the terms and provisions of such bond comply with the provisions of this rule, and further provided that the terms and provisions of any agreement required by paragraph (f) of this section comply with the provisions of that paragraph.

(k) At the next anniversary date of an existing fidelity bond, but not later than one year from the effective date of this rule, arrangements between registered management investment companies and fidelity insurance companies and arrangements between registered management investment companies and other parties named as insureds under joint insured bonds which would not permit compliance with the provisions of this rule shall be modified by the parties so as to effect such compliance.

(Secs. 6(c), 17(d), 17(g), 38(a); 54 Stat. 800, 815, 84 Stat. 1421, 54 Stat. 841; (15 U.S.C. 80a–6(c), 80a–17(d), 80a–17(g), 80(a)–37(a)))
[39 FR 10579, Mar. 21, 1974]

§ 270.17j–1 Certain unlawful acts, practices, or courses of business and requirements relating to codes of ethics with respect to registered investment companies.

(a) It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company, or any affiliated person of an investment adviser of or principal underwriter for a registered investment company in connection with the purchase or sale, directly or indirectly, by such person of a security held or to be acquired, as defined in this section, by such registered investment company:

(1) To employ any device, scheme or artifice to defraud such registered investment company;

(2) To make to such registered investment company any untrue statement of a material fact or omit to state to such registered investment company a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any such registered investment company; or

(4) To engage in any manipulative practice with respect to such registered investment company.

(b)(1) Every registered investment company, and each investment adviser of or principal underwriter for such investment company, shall adopt a written code of ethics containing provisions reasonably necessary to prevent its access persons from engaging in any act, practice, or course of business prohibited by paragraph (a) of this section and shall use reasonable diligence, and institute procedures reasonably necessary, to prevent violations of such code.

(2) The requirements of paragraph (b)(1) shall not apply to any underwriter (i) which is not an affiliated person of the registered investment company or its investment adviser, and (ii) none of whose officers, directors or general partners serves as an officer, director or general partner of such registered investment company or investment adviser.

(c)(1) Every access person of a registered investment company or of an investment adviser of or principal underwriter for such investment company shall report to such investment company, investment adviser or principal underwriter of which he or she is an access person the information described in paragraph (c)(2) with respect to transactions in any security in which such access person has, or by reason of such transaction acquires, any direct or indirect beneficial ownership in the security: *Provided, however,* That any such report may contain a statement that the report shall not be construed as an admission by the person making

such report that he or she has any direct or indirect beneficial ownership in the security to which the report relates. For purposes of this section, beneficial ownership shall be interpreted in the same manner as it would be in determining whether a person is subject to the provisions of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder, except that the determination of direct or indirect beneficial ownership shall apply to all securities which the access person has or acquires.

(2) Every report required to be made pursuant to paragraph (c)(1) shall be made not later than 10 days after the end of the calendar quarter in which the transaction to which the report relates was effected, and shall contain the following information:

(i) The date of the transaction, the title and the number of shares, and the principal amount of each security involved;

(ii) The nature of the transaction (i.e., purchase, sale or any other type of acquisition or disposition);

(iii) The price at which the transaction was effected; and

(iv) The name of the broker, dealer or bank with or through whom the transaction was effected.

(3) Notwithstanding the provision of paragraph (c)(1), no person shall be required to make a report:

(i) With respect to transactions effected for any account over which such person does not have any direct or indirect influence or control;

(ii) If such person is not an ''interested person'' of a registered investment company within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)], and would be required to make such a report solely by reason of being a director to make such a report solely by reason of being a director of such investment company, except where such director knew or, in the ordinary course of fulfilling his official duties as a director of the registered investment company, should have known that during the 15-day period immediately preceding or after the date of the transaction in a security by the director such security is or was purchased or sold by such investment company or such purchase or sale by such investment company is or was considered by the investment company or its investment adviser;

(iii) Where the principal underwriter, as to which such person is an access person, (A) is not an affiliated person of the registered investment company or any investment adviser of such investment company, and (B) has no officers, directors, or general partners who serve as officers, directors or general partners of such investment company or any such investment adviser; or

(iv) Where a report made to an investment adviser would duplicate information recorded pursuant to Rules 204–2(a)(12) or 204–2(a)(13) [17 CFR 275.204–2(a)(12) and 275.204–2(a)(13)] under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1, et seq.].

(4) Each registered investment company, investment adviser and principal underwriter to which reports are required to be made pursuant to this section shall identify all access persons who are under a duty to make such reports to it and shall inform such persons of such duty.

(d) Each registered investment company, investment adviser and principal underwriter which is required to adopt a code of ethics or to which reports are required to be made by access persons shall, at its principal place of business, maintain records in the manner and to the extent set forth below, and make such records available to the Commission or any representative thereof at any time and from time to time for reasonable periodic, special or other examination.

(1) A copy of each such code of ethics which is, or at any time within the past five years has been, in effect shall be preserved in an easily accessible place;

(2) A record of any violation of such code of ethics, and of any action taken as a result of such violation, shall be preserved in an easily accessible place for a period of not less than five years following the end of the fiscal year in which the violation occurs;

(3) A copy of each report made by an access person pursuant to this rule shall be preserved for a period of not less than five years from the end of the fiscal year in which it is made, the first

two years in an easily accessible place; and

(4) A list of all persons who are, or within the past five years have been, required to make reports pursuant to this section shall be maintained in an easily accessible place.

(e) As used in this rule

(1) *Access person* means:

(i) With respect to a registered investment company or an investment adviser thereof, any director, officer, general partner, or advisory person, as defined in this section, of such investment company or investment adviser;

(ii) With respect to a principal underwriter, any director, officer, or general partner of such principal underwriter who in the ordinary course of his business makes, participates in or obtains information regarding the purchase or sale of securities for the registered investment company for which the principal underwriter so acts or whose functions or duties as part of the ordinary course of his business relate to the making of any recommendation to such investment company regarding the purchase or sale of securities.

(iii) Notwithstanding the provisions of paragraph (e)(1)(i), where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, the term ''access person'' shall mean: any director, officer, general partner, or advisory person of the investment adviser who, with respect to any registered investment company, makes any recommendation, participates in the determination of which recommendation shall be made, or whose principal function or duties relate to the determination of which recommendation shall be made to any registered investment company; or who, in connection with his duties, obtains any information concerning securities recommendations being made by such investment adviser to any registered investment company.

(iv) An investment adviser is ''primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients'' when, for each of its most recent three fiscal years or for the period of time since its organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (A) its total sales and revenues, and (B) its income (or loss) before income taxes and extraordinary items from such other business or businesses.

(2) *Advisory person* of a registered investment company or an investment adviser thereof means:

(i) Any employee of such company or investment adviser (or of any company in a control relationship to such investment company or investment adviser) who, in connection with his regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of a security by a registered investment company, or whose functions relate to the making of any recommendations with respect to such purchases or sales; and

(ii) Any natural person in a control relationship to such company or investment adviser who obtains information concerning recommendations made to such company with regard to the purchase or sale of a security.

(3) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)].

(4) *Purchase or sale of a security* includes, *inter alia*, the writing of an option to purchase or sell a security.

(5) *Security* shall have the meaning set forth in section 2(a)(36) of the Act [15 U.S.C. 80a–2(a)(36)], except that it shall not include securities issued by the Government of the United States, bankers' acceptances, bank certificates of deposit, commercial paper and shares of registered open-end investment companies.

(6) *Security held or to be acquired* by a registered investment company means any security as defined in this rule which, within the most recent 15 days, (i) is or has been held by such company, or (ii) is being or has been considered by such company or its investment adviser for purchase by such company.

[45 FR 73919, Nov. 7, 1980]

§ 270.18c–1 Exemption of privately held indebtedness.

The issuance or sale of more than one class of senior securities representing

indebtedness by a small business investment company, licensed under the Small Business Investment Act of 1958, shall not be prohibited by section 18(c) so long as such small business investment company does not have outstanding any publicly held indebtedness, and all securities of any such class are (a) privately held by the Small Business Administration, or banks, insurance companies or other institutional investors, (b) not intended to be publicly distributed, and (c) not convertible into, exchangeable for, or accompanied by any option to acquire, any equity security.

[26 FR 11240, Nov. 29, 1961]

§270.18c–2 Exemptions of certain debentures issued by small business investment companies.

(a) The issuance or sale of any class of senior security representing indebtedness by a small business investment company licensed under the Small Business Investment Act of 1958 shall not be prohibited by section 18(c) of the Act provided such senior security representing indebtedness is (1) not convertible into, exchangeable for, or accompanied by an option to acquire any equity security; (2) fully guaranteed as to timely payment of all principal and interest by the Small Business Administration and backed by the full faith and credit of the United States; and (3) subordinated to any other debt securities not issued pursuant to this section or, if such security is not so subordinated, that such security, according to its own terms, will not be preferred over any other unsecured debt securities in the payment of principal and interest: *And further provided*, That all other debt securities then outstanding issued by such small business investment company were issued as permitted by §270.18c–1 or this section.

(b) Any security issued and sold as permitted by paragraph (a) of this section shall be deemed for purposes of §270.18c–1 to be privately held by the Small Business Administration and for purposes of §270.18c–1 shall not be deemed to be publicly held outstanding indebtedness.

(c) The issuance or sale of any security as permitted by paragraph (a) of this section shall not be deemed to be a sale to any person other than the Small Business Administration by any small business investment company licensed under the Small Business Investment Company Act of 1958 which is exempt from any provision of the Investment Company Act, if such exemption is conditioned on such company not offering or selling its securities to any person other than the Small Business Administration.

(Secs. 6(c), 38(a), 54 Stat. 800, 841, 15 U.S.C. 80a–6(c), 80a–37(a))

[37 FR 7590, Apr. 18, 1972]

§270.18f–1 Exemption from certain requirements of section 18(f)(1) (of the Act) for registered open-end investment companies which have the right to redeem in kind.

(a) A registered open-end investment company which has the right to redeem securities of which it is the issuer in assets other than cash may file with the Commission at any time a notification of election on Form N–18F–1 (§274.51 of this chapter) committing itself to pay in cash all requests for redemption by any shareholder of record, limited in amount with respect to each shareholder during any 90-day period to the lesser of

(1) $250,000 or

(2) 1 percent of the net asset value of such company at the beginning of such period.

(b) An election pursuant to paragraph (a) of this section:

(1) Shall be described in either the prospectus or the Statement of Additional Information, at the discretion of the investment company, and

(2) Shall be irrevocable while this §270.18f–1 is in effect unless the Commission by order upon application permits the withdrawal of such notification of election as being appropriate in the public interest and consistent with the protection of investors.

(c) Upon making the election described in paragraph (a) of this section, an investment company shall be exempt from the requirements of section 18(f)(1) (of the Act) to the extent necessary for such company to effectuate redemptions in the manner set forth in such paragraph.

(Secs. 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and secs. 8, 30

and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37))
[36 FR 11919, June 23, 1971, as amended at 48 FR 37940, Aug. 22, 1983]

§ 270.18f–2 Fair and equitable treatment for holders of each class or series of stock of series investment companies.

(a) For purposes of this § 270.18f–2 a series company is a registered open-end investment company which, in accordance with the provisions of section 18(f)(2) of the Act, issues two or more classes or series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series. Any matter required to be submitted by the provisions of the Act or of applicable State law, or otherwise, to the holders of the outstanding voting securities of a series company shall not be deemed to have been effectively acted upon less approved by the holders of a majority of the outstanding voting securities of each class or series of stock affected by such matter.

(b) For the purposes of paragraph (a) of this § 270.18f–2, a class or series of stock will be deemed to be affected by such a matter, unless (1) the interests of each class or series in the matter are substantially identical, or (2) the matter does not affect any interest of such class or series.

(c)(1) With respect to the submission of an investment advisory contract to the holders of the outstanding voting securities of a series company for the approval required by section 15(a) of the Act, such matter shall be deemed to be effectively acted upon with respect to any class or series of securities of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (i) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (ii) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company, provided that if such a majority is required by State law or otherwise, such requirement shall apply.

(2) If any class or series of securities of a series company fails to approve an investment advisory contract in the manner required by paragraph (c)(1) of this section, the investment adviser of such company may continue to serve or act in such capacity for the period of time pending such required approval of such contract, of a new contract with the same or different adviser, or other definitive action: *Provided*, That the compensation received by such investment adviser during such period is equal to no more than its actual costs incurred in furnishing investment advisory services to such class or series or the amount it would have received under the advisory contract, whichever is less.

(d) With respect to the submission of a change in investment policy to the holders of the outstanding voting securities of a series company for the approval required by section 13 of the Act, such matter shall be deemed to have been effectively acted upon with respect to any class or series of such company if a majority of the outstanding voting securities of such class or series vote for the approval of such matter, notwithstanding (1) that such matter has not been approved by the holders of a majority of the outstanding voting securities of any other class or series affected by such matter, and (2) that such matter has not been approved by the vote of a majority of the outstanding voting securities of such company: *Provided*, That if such a majority is required by State law or otherwise, such requirement shall apply.

(e) The submission to shareholders of the selection of the independent public accountant of a series company required by section 32(a) (of the Act) shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(f) The submission to shareholders of a contract with a principal underwriter of a series company required by section 15(b) of the Act shall be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(g) The submission to shareholders of nominees for election as directors required by section 16(a) of the Act shall

be exempt from the separate voting requirements of paragraph (a) of this § 270.18f–2.

(h) For the purposes of this § 270.18f–2 a ''majority of the outstanding voting securities'' of a class or series, (1) when used with respect to a matter required by any provision of the Act to be submitted to the outstanding voting securities of a series company, shall have the same meaning as a ''majority of the outstanding voting securities of a company'' as defined in section 2(a)(42) of the Act; and (2) when used with respect to any other matter required to be submitted to the outstanding voting securities of a series company, shall mean the lesser of (i) the minimum vote of the outstanding voting securities of a company required by applicable State law or other applicable requirement, or (ii) the minimum vote specified by paragraph (1) of this paragraph (h), unless State law requires approval of such matters by a specified percentage of the outstanding voting securities of a particular class or series, in which case, State law shall apply.

(Secs. 6(c), 13, 15(a), 15(b), 16(a), 18(f)(2), 32(a), 54 Stat. 800, 811, 812, 813, 817, 838, 841, 15 U.S.C. 80a–6(c), 80a–13, 80a–15(b), 80a–16(a), 80a–18(f)(2), 80a–31(a), 80a–37(a), Pub. L. 91–547, 84 Stat. 1421)

[37 FR 17386, Aug. 26, 1972]

§ 270.18f–3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a–18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a–18(f)(2)) whose shares are registered on Form N–1A [§§ 239.15A and 274.11A of this chapter] (''company'') may issue more than one class of voting stock, *provided* that:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company's assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company's adviser, underwriter, or any other provider of services to the company.

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company (''relative net assets'');

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; that the company has received undertakings from its adviser, underwriter, or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by

one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net income daily, including any money market fund that determines net asset value using the amortized cost method permitted by § 270.2a–7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be reasonably necessary to evaluate the plan.

(e) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the ''purchase class'') will be exchanged automatically for shares of another class of the company (the ''target class'') after a specified period of time, *provided that:*

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b–1 (''rule 12b–1 plan''), for the target class are not higher than the expenses, including payments authorized under a rule 12b–1 plan, for the purchase class; and

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the

same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that:*

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge.

[60 FR 11885, Mar. 2, 1995, as amended at 62 FR 51765, Oct. 3, 1997]

§ 270.19a–1 Written statement to accompany dividend payments by management companies.

(a) Every written statement made pursuant to section 19 by or on behalf of a management company shall be made on a separate paper and shall clearly indicate what portion of the payment per share is made from the following sources:

(1) Net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties.

(2) Accumulated undistributed net profits from the sale of securities or other properties (except that an open-end company may treat as a separate source its net profits from such sales during its current fiscal year).

(3) Paid-in surplus or other capital source.

To the extent that a payment is properly designated as being made from a source specified in paragraph (a) (1) or (2) of this section, it need not be designated as having been made from a source specified in this paragraph.

(b) If the payment is made in whole or in part from a source specified in paragraph (a)(2) of this section the written statement shall indicate, after giving effect to the part of such payment so specified, the deficit, if any, in the aggregate of (1) accumulated undistributed realized profits less losses on the sale of securities or other properties and (2) the net unrealized appreciation or depreciation of portfolio securities, all as of a date reasonably close to the end of the period as of which the dividend is paid. Any statement made pursuant to the preceding sentence shall specify the amount, if any, of such deficit which represents unrealized depreciation of portfolio securities.

(c) Accumulated undistributed net income and accumulated undistributed net profits from the sale of securities or other properties shall be determined, at the option of the company, either (1) from the date of the organization of the company, (2) from the date of a reorganization, as defined in clause (A) or (B) of section 2(a)(33) of the Act (54 Stat. 790; 15 U.S.C. 80a–2(a)(33)), (3) from the date as of which a write-down of portfolio securities was made in connection with a corporate readjustment, approved by stockholders, of the type known as ''quasi- reorganization,'' or (4) from January 1, 1925, to the close of the period as of which the dividend is paid, without giving effect to such payment.

(d) For the purpose of this section, open-end companies which upon the sale of their shares allocate to undistributed income or other similar account that portion of the consideration received which represents the approximate per share amount of undistributed net income included in the sales price, and make a corresponding deduction from undistributed net income upon the purchase or redemption of shares, need not treat the amounts so allocated as paid-in surplus or other capital source.

(e) For the purpose of this section, the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is paid without giving effect to such payment. If any such estimate is subsequently ascertained to be inaccurate in a significant amount, a correction thereof shall be made by a written statement pursuant to section 19(a) of the Act or in the first report to stockholders following discovery of the inaccuracy.

(f) Insofar as a written statement made pursuant to section 19(a) of the Act relates to a dividend on preferred stock paid for a period of less than a year, a company may elect to indicate only that portion of the payment

which is made from sources specified in paragraph (a)(1) of this section, and need not specify the sources from which the remainder was paid. Every company which in any fiscal year elects to make a statement pursuant to the preceding sentence shall transmit to the holders of such preferred stock, at a date reasonably near the end of the last dividend period in such fiscal year, a statement meeting the requirements of paragraph (a) of this section on an annual basis.

(g) The purpose of this section, in the light of which it shall be construed, is to afford security holders adequate disclosure of the sources from which dividend payments are made. Nothing in this section shall be construed to prohibit the inclusion in any written statement of additional information in explanation of the information required by this section. Nothing in this section shall be construed to permit a dividend payment in violation of any State law or to prevent compliance with any requirement of State law regarding dividends consistent with this rule.

[Rule N–19–1, 6 FR 1114, Feb. 25, 1941. Redesignated at 36 FR 22901, Dec. 2, 1971 and amended at 38 FR 8593, Apr. 4, 1973]

CROSS REFERENCE: For interpretative release applicable to § 270.19a–1, see No. 71 in tabulation, part 271 of this chapter.

§ 270.19b–1 Frequency of distribution of capital gains.

(a) No registered investment company which is a ''regulated investment company'' as defined in section 851 of the Internal Revenue Code of 1986 (''Code'') shall distribute more than one capital gain dividend (''distribution''), as defined in section 852(b)(3)(C) of the Code, with respect to any one taxable year of the company, other than a distribution otherwise permitted by this rule or made pursuant to section 855 of the Code which is supplemental to the prior distribution with respect to the same taxable year of the company and which does not exceed 10% of the aggregate amount distributed for such taxable year.

(b) No registered investment company which is not a ''regulated investment company'' as defined in section 851 of the Code shall make more than one distribution of long-term capital gains, as defined in the Code, in any one taxable year of the company: *Provided*, That a unit investment trust may distribute capital gain dividends received from a ''regulated investment company'' within a reasonable time after receipt.

(c) The provisions of this rule shall not apply to a unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in Rule 14a–3(b) (17 CFR 270.14a–3(b)) under this Act); *Provided*, That:

(1) The capital gain distribution is a result of—

(i) An issuer's calling or redeeming an eligible trust security held by the Trust,

(ii) The sale of an eligible trust security by the Trust to provide funds for redemption of Trust units when the amount received by the Trust for such sale exceeds the amount required to satisfy the redemption distribution,

(iii) The sale of an eligible trust security to maintain qualification of the Trust as a ''regulated investment company'' under section 851 of the Code,

(iv) Regular distributions of principal and prepayment of principal on eligible trust securities, or

(v) The sale of an eligible trust security in order to maintain the investment stability of the Trust; and

(2) Capital gains distributions are clearly described as such in a report to the unitholder which accompanies each such distribution.

(d) For purposes of paragraph (c) of this section, sales made to maintain the investment stability of the Trust means sales made to prevent deterioration of the value of the eligible trust securities held in the Trust portfolio when one or more of the following factors exist:

(1) A default in the payment of principal or interest on an eligible trust security;

(2) An action involving the issuer of an eligible trust security which adversely affects the ability of such issuer to continue payment of principal or interest on its eligible trust securities; or

(3) A change in market, revenue or credit factors which adversely affects the ability of such issuer to continue payment of principal or interest on its eligible trust securities.

(e) If a registered investment company because of unforeseen circumstances in a particular taxable year proposes to make a distribution which would be prohibited by the provisions of this section, it may file a request with the Commission for authorization to make such a distribution. Such request shall comply with the requirements of § 270.0–2 of this chapter and shall set forth the pertinent facts and explain the circumstances which the company believes justify such distribution. The request shall be deemed granted unless the Commission within 15 days after receipt thereof shall deny such request as not being necessary or appropriate in the public interest or for the protection of investors and notify the company in writing of such denial.

(f) A registered investment company may make one additional distribution of long-term capital gains, as defined in the Code, with respect to any one taxable year of the company, which distribution is made, in whole or in part, for the purpose of not incurring any tax under section 4982 of the Code. Such additional distribution may be made prior or subsequent to any distribution otherwise permitted by paragraph (a) of this section.

(Secs. 6(c), 19(b) (15 U.S.C. 80a–19(b), and sec. 38(a)))

[36 FR 22901, Dec. 2, 1971, as amended at 44 FR 29647, May 22, 1979; 44 FR 40064, July 9, 1979; 52 FR 42428, Nov. 5, 1987]

§ 270.20a–1 Solicitation of proxies, consents and authorizations.

(a) No person shall solicit or permit the use of his or her name to solicit any proxy, consent, or authorization with respect to any security issued by a registered Fund, except upon compliance with Regulation 14A (§ 240.14a–1 of this chapter), Schedule 14A (§ 240.14a–101 of this chapter), and all other rules and regulations adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 that would be applicable to such solicitation if it were made in respect of a security registered pursuant to section 12 of the Securities Exchange Act of 1934. Unless the solicitation is made in respect of a security registered on a national securities exchange, none of the soliciting material need be filed with such exchange.

(b) If the solicitation is made by or on behalf of the management of the investment company, then the investment adviser or any prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the investment company promptly transmit to the investment company all information necessary to enable the management of such company to comply with the rules and regulations applicable to such solicitation. If the solicitation is made by any person other than the management of the investment company, on behalf of and with the consent of the investment adviser or prospective investment adviser, then the investment adviser or prospective investment adviser and any affiliated person thereof as to whom information is required in the solicitation shall upon request of the person making the solicitation promptly transmit to such person all information necessary to enable such person to comply with the rules and regulations applicable to the solicitation.

Instruction. Registrants that have made a public offering of securities and that hold security holder votes for which proxies, consents, or authorizations are not being solicited pursuant to the requirements of this section should refer to section 14(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(c)) and the information statement requirements set forth in the rules thereunder.

[25 FR 1865, Mar. 3, 1960, as amended at 37 FR 1472, Jan. 29, 1972; 52 FR 48985, Dec. 29, 1987; 57 FR 1102, Jan. 10, 1992; 59 FR 52700, Oct. 19, 1994]

§§ 270.20a–2—270.20a–4 [Reserved]

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) No registered investment company issuing any redeemable security, no person designated in such issuer's

prospectus as authorized to consummate transactions in any such security, and no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security: *Provided,* That:

(1) This paragraph shall not prevent a sponsor of a unit investment trust (hereinafter referred to as the ''Trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in Rule 14a–3(b) (17 CFR 270.14a–3(b))) from selling or repurchasing Trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the Trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(2) This paragraph shall not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company which meets the conditions specified in § 270.17a–8.

(b) For the purposes of this section,

(1) The current net asset value of any such security shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the investment company sets, in accordance with paragraph (e) of this section, except on:

(i) Days on which changes in the value of the investment company's portfolio securities will not materially affect the current net asset value of the investment company's redeemable securities;

(ii) Days during which no security is tendered for redemption and no order to purchase or sell such security is received by the investment company; or

(iii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus; and

(2) A ''qualified evaluator'' shall mean any evaluator which represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in the Trust's portfolio, whether—

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week, and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(c) Notwithstanding the provisions above, any registered separate account offering variable annuity contracts, any person designated in such account's prospectus as authorized to consummate transactions in such contracts, and any principal underwriter of or dealer in such contracts shall be permitted to apply the initial purchase payment for any such contract at a price based on the current net asset value of such contract which is next computed:

(1) Not later than two business days after receipt of the order to purchase by the insurance company sponsoring the separate account (''insurer''), if the contract application and other information necessary for processing the order to purchase (collectively, ''application'') are complete upon receipt; or

(2) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, *Provided*, That, if an incomplete application is not made complete within five business days after receipt,

(i) The prospective purchaser shall be informed of the reasons for the delay, and

(ii) The initial purchase payment shall be returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(3) As used in this section:

(i) *Prospective Purchaser* shall mean either an individual contractowner or an individual participant in a group contract.

(ii) *Initial Purchase Payment* shall refer to the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

(d) The board of directors shall initially set the time or times during the day that the current net asset value shall be computed, and shall make and approve such changes as the board deems necessary.

(Secs. 6(c), 22(c) and 38(a), 15 U.S.C. 80a–6(c), 80a–22(c) and 80a–37(a))

[44 FR 29647, May 22, 1979, as amended at 44 FR 48660, Aug. 20, 1979; 45 FR 12409, Feb. 26, 1980; 50 FR 7911, Feb. 27, 1985; 50 FR 24763, June 13, 1985; 50 FR 42682, Oct. 22, 1985; 58 FR 49922, Sept. 24, 1993]

§ 270.22d–1 Exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule.

A registered investment company that is the issuer of redeemable securities, a principal underwriter of such securities or a dealer therein shall be exempt from the provisions of section 22(d) to the extent necessary to permit the sale of such securities at prices that reflect scheduled variations in, or elimination of, the sales load. These price schedules may offer such variations in or elimination of the sales load to particular classes of investors or transactions, *Provided*, That:

(a) The company, the principal underwriter and dealers in the company's shares apply any scheduled variation uniformly to all offerees in the class specified;

(b) The company furnishes to existing shareholders and prospective investors adequate information concerning any scheduled variation, as prescribed in applicable registration statement form requirements;

(c) Before making any new sales load variation available to purchasers of the company's shares, the company revises its prospectus and statement of additional information to describe that new variation; and

(d) The company advises existing shareholders of any new sales load variation within one year of the date when that variation is first made available to purchasers of the company's shares.

(Secs. 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)))

[50 FR 7911, Feb. 27, 1985]

§ 270.22d–2 Exemption from section 22(d) for certain registered separate accounts.

A registered separate account, any principal underwriter for such account, any dealer in contracts or units of interest or participations in such contracts issued by such account and any insurance company maintaining such account shall, with respect to any variable annuity contracts, units, or participations therein issued by such account, be exempted from section 22(d) to the extent necessary to permit the sale of such contracts, units or participations by such persons at prices which reflect variations in the sales load or in any administrative charge or other deductions from the purchase payments; *Provided, however,* That (a) the prospectus discloses as precisely as possible the amount of the variations and the circumstances, if any, in which such variations shall be available or describes the basis for such variations and the manner in which entitlement shall be determined, and (b) any such variations reflect differences in costs or services and are not unfairly discriminatory against any person.

(Secs. 6(c) (15 U.S.C. 80a–6(c)) and 38(a) (15 U.S.C. 80a–37(a)))

[40 FR 33970, Aug. 13, 1975. Redesignated at 50 FR 7911, Feb. 27, 1985]

§ 270.22e–1 Exemption from section 22(e) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

(a) A registered separate account, shall during the annuity payment period of variable annuity contracts participating in such account, be exempt from the provisions of section 22(e) of the Act prohibiting the suspension of the right of redemption or postponement of the date of payment or satisfaction upon redemption of any redeemable security, with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)
[34 FR 12696, Aug. 5, 1969]

§ 270.22e–2 Pricing of redemption requests in accordance with Rule 22c–1.

An investment company shall not be deemed to have suspended the right of redemption if it prices a redemption request by computing the net asset value of the investment company's redeemable securities in accordance with the provisions of Rule 22c–1.
[50 FR 24764, June 13, 1985]

§ 270.23c–1 Repurchase of securities by closed-end companies.

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.

(7) The issuer discloses to the seller or, if the seller is acting through a broker, to the seller's broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the issuer to any affiliated person of the issuer in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The issuer files with the Commission, on or before the tenth day of the calendar month following the month in which the purchase occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities under this rule sent or given during the month by or on behalf of the issuer to ten or more persons. Form N–23C–1 is hereby prescribed as the form to be used for such report.

(b) Notwithstanding the conditions of paragraph (a) of this section, a closed-end company may purchase fractional

interests in, or fractional rights to receive, any security of which it is the issuer.

(c) This rule does not apply to purchase of securities made pursuant to section 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a–23). A registered closed-end company may file an application with the Commission for an order under section 23(c)(3) of the Act permitting the purchase of any security of which it is the issuer which does not meet the conditions of this rule and which is not to be made pursuant to section 23(c)(1) or (2) of the Act.

(d) This rule relates exclusively to the requirements of section 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the issuer were issued.

[Rule N–23C–1, 7 FR 10424, Dec. 15, 1942]

CROSS REFERENCE: For interpretative release applicable to ″270.23c–1, see No. 78 in tabulation, part 271 of this chapter.

§ 270.23c–2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c–1 (Rule N–23c–1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: *Provided*, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; *Provided, however*, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N–23C–2, 7 FR 6669, Aug. 25, 1942]

§ 270.23c–3 Repurchase offers by closed-end companies.

(a) *Definitions*. For purposes of this section:

(1) *Periodic interval* shall mean an interval of three, six, or twelve months.

(2) *Repurchase offer* shall mean an offer pursuant to this section by an investment company to repurchase common stock of which it is the issuer.

(3) *Repurchase offer amount* shall mean the amount of common stock that is the subject of a repurchase offer, expressed as a percentage of such stock outstanding on the repurchase request deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a repurchase request deadline. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the directors of the company.

(4) *Repurchase payment deadline* with respect to a tender of common stock shall mean the date by which an investment company must pay securities holders for any stock repurchased. A repurchase payment deadline shall occur seven days after the repurchase pricing date applicable to such tender.

(5) *Repurchase pricing date* with respect to a tender of common stock shall mean the date on which an investment company determines the net asset value applicable to the repurchase of the securities. A repurchase

pricing date shall occur no later than the fourteenth day after a repurchase request deadline, or the next business day if the fourteenth day is not a business day. In no event shall an investment company determine the net asset value applicable to the repurchase of the stock before the close of business on the repurchase request deadline.

(i) For an investment company making a repurchase offer pursuant to paragraph (b) of this section, the number of days between the repurchase request deadline and the repurchase pricing date for a repurchase offer shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an investment company making a repurchase offer pursuant to paragraph (c) of this section, the repurchase pricing date shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a repurchase pricing date may be a date earlier than the date determined pursuant to paragraph (a)(5) (i) or (ii) of this section if, on or immediately following the repurchase request deadline, it appears that the use of an earlier repurchase pricing date is not likely to result in significant dilution of the net asset value of either stock that is tendered for repurchase or stock that is not tendered.

(6) *Repurchase request* shall mean the tender of common stock in response to a repurchase offer.

(7) *Repurchase request deadline* with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdrawals or modifications of previously submitted repurchase requests. The first repurchase request deadline after the effective date of the registration statement for the common stock that is the subject of a repurchase offer, or after a shareholder vote adopting the fundamental policy specifying a company's periodic interval, whichever is later, shall occur no later than two periodic intervals thereafter.

(b) *Periodic repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock at periodic intervals, pursuant to repurchase offers made to all holders of the stock, *Provided* that:

(1) The company shall repurchase the stock for cash at the net asset value determined on the repurchase pricing date and shall pay the holders of the stock by the repurchase payment deadline except as provided in paragraph (b)(3) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a repurchase offer upon the tender of any minimum amount of shares.

(2)(i) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, stating:

(A) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(B) The periodic intervals between repurchase request deadlines;

(C) The dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and

(D) The maximum number of days between each repurchase request deadline and the next repurchase pricing date.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) Its policy under paragraph (b)(2)(i) of this section; and

(B) With respect to repurchase offers by the company during the period covered by the annual report, the number of repurchase offers, the repurchase offer amount and the amount tendered in each repurchase offer, and the extent to which in any repurchase offer the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making repurchase offers pursuant to a

policy within paragraph (b)(2)(i) of this section if:

(A) The company makes repurchase offers to its security holders at periodic intervals and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such repurchase offers; and

(B) The company's board of directors adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the periodic interval specified therein conforms generally to the frequency of the company's prior repurchase offers.

(3)(i) The company shall not suspend or postpone a repurchase offer except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(A) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code [26 U.S.C. 851–860];

(B) If the repurchase would cause the stock that is the subject of the offer that is either listed on a national securities exchange or quoted in an inter-dealer quotation system of a national securities association to be neither listed on any national securities exchange nor quoted on any inter-dealer quotation system of a national securities association;

(C) For any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading in such market is restricted;

(D) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or

(E) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a repurchase offer is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the repurchase offer, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)(i) No less than twenty-one and no more than forty-two days before each repurchase request deadline, the company shall send to each holder of record and to each beneficial owner of the stock that is the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date, and the possibility that the company may use an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) of this section;

(E) The procedures for security holders to tender their shares and the right of the security holders to withdraw or modify their tenders until the repurchase request deadline;

(F) The procedures under which the company may repurchase such shares on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The circumstances in which the company may suspend or postpone a repurchase offer pursuant to paragraph (b)(3) of this section;

(H) The net asset value of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(I) The market price, if any, of the common stock on the date on which such net asset value was computed, and the means by which security holders may ascertain the market price thereafter.

(ii) The company shall file three copies of the notification with the Commission within three business days

after sending the notification to security holders. Those copies shall be accompanied by copies of Form N–23c–3 (§ 274.221 of this chapter) (''Notification of Repurchase Offer''). The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b–12 of this chapter.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company knows that shares of common stock that is the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a–13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of stock not to exceed two percent of the common stock outstanding on the repurchase request deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender stock in an amount exceeding the repurchase offer amount plus two percent of the common stock outstanding on the repurchase request deadline, the company shall repurchase the shares tendered on a pro rata basis; *Provided, however,* That this provision shall not prohibit the company from:

(i) Accepting all stock tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the repurchase request deadline but shall not permit tenders to be withdrawn or modified thereafter.

(7)(i) The current net asset value of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set.

(ii) The current net asset value of the company's common stock shall be computed daily on the five business days preceding a repurchase request deadline at such specific time or times during the day that the board of directors of the company shall set.

(iii) For purposes of section 23(b) [15 U.S.C. 80a–23(b)], the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the current net asset value of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the company shall set, except on:

(A) Days on which changes in the value of the company's portfolio securities will not materially affect the current net asset value of the common stock;

(B) Days during which no order to purchase its common stock is received, other than days when the net asset value would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) Customary national, local, and regional business holidays described or listed in the prospectus.

(8) A majority of the directors of the company shall be directors who are not interested persons of the company, and the selection and nomination of those directors shall be committed to the discretion of those directors.

(9) Any senior security issued by the company or other indebtedness contracted by the company either shall mature by the next repurchase pricing date or shall provide for the redemption or call of such security or the repayment of such indebtedness by the

company by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such repurchase offer amount as the directors of the company shall determine in compliance with the asset coverage requirements of section 18 [15 U.S.C. 80a–18] or 61 [15 U.S.C. 80a–60], as applicable.

(10)(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company's assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a–24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) *Discretionary repurchase offers.* A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) *Exemption from the definition of redeemable security.* A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a–2(a)(32)].

[58 FR 19343, Apr. 14, 1993; 58 FR 29695, May 21, 1993]

§ 270.24b–1 Definitions.

(a) The term *form letter* as used in section 24(b) of the Act includes (1) one of a series of identical sales letters, and (2) any sales letter a substantial portion of which consists of a statement which is in essence identical with similar statements in sales letters sent to 25 or more persons within any period of 90 consecutive days.

(b) The term *distribution* as used in section 24(b) of the Act includes the distribution or redistribution to prospective investors of the content of any written sales literature, whether such distribution or redistribution is effected by means of written or oral representations or statements.

(c) The terms *rules and regulations* as used in section 24 (a) and (c) of the Act shall include the forms for registration of securities under the Securities Act of 1933 and the related instructions thereto.

(Sec. 19, 48 Stat. 85, as amended, sec. 319, 53 Stat. 1173; 15 U.S.C. 77s, 77sss)

[Rule N–24B–1, 6 FR 3020, June 21, 1941, as amended by 21 FR 1046, Feb. 15, 1956]

§ 270.24b–2 Filing copies of sales literature.

Copies of material filed with the Commission for the sole purpose of complying with section 24(b) of the Act either shall be accompanied by a letter of transmittal which makes appropriate references to said section or shall make such appropriate reference on the face of the material. Such material shall be submitted to the Commission in paper only, whether or not the investment company to which the material relates is otherwise required to file in electronic format.

[Rule N–24B–2, 6 FR 3020, June 21, 1941, as amended at 58 FR 14860, Mar. 18, 1993]

§ 270.24b–3 Sales literature deemed filed.

Any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors shall be deemed filed with the Commission for purposes of section 24(b) of the Act [15 U.S.C. 80a–24(b)] upon filing with a national securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*] that has adopted rules providing standards for the investment company advertising practices of its members and has established and implemented procedures to review that advertising.

[53 FR 3880, Feb. 10, 1988]

§ 270.24e–1 Filing of certain prospectuses as post-effective amendments to registration statements under the Securities Act of 1933.

Section 24(e) of the Act requires that when a prospectus is revised so that it may be available for use in compliance with section 10(a)(3) of the Securities Act of 1933 for a period extending beyond the time when the previous prospectus would have ceased to be available for such use, such revised prospectus, in order to meet the requirements of section 10 of said Act, must be filed as an amendment to the registration statement under said Act and such amendment must have become effective prior to the use of the revised prospectus. Except as hereinabove provided, section 24(e) of the Act shall not be deemed to govern the times and conditions under which post-effective amendments shall be filed to registration statements under the Securities Act of 1933.

(Sec. 24, 54 Stat. 825, as amended; 15 U.S.C. 80a–24)

[20 FR 2856, Apr. 28, 1955, as amended at 62 FR 47938, Sept. 12, 1997]

§ 270.24f–2 Registration under the Securities Act of 1933 of certain investment company securities.

(a) *General.* Any face-amount certificate company, open-end management company or unit investment trust (''issuer'') that is deemed to have registered an indefinite amount of securities pursuant to section 24(f) of the Act (15 U.S.C. 80a–24(f)) must not later than 90 days after the end of any fiscal year during which it has publicly offered such securities, file Form 24F–2 (17 CFR 274.24) with the Commission. Form 24F–2 must be prepared in accordance with the requirements of that form, and must be accompanied by the payment of a registration fee with respect to the securities sold during the fiscal year in reliance upon registration pursuant to section 24(f) of the Act calculated in the manner specified in section 24(f) of the Act and in the Form. An issuer that pays the registration fee more than 90 days after the end of its fiscal year must pay interest in the manner specified in section 24(f) of the Act and in Form 24F–2.

(b) *Issuer ceasing operations; mergers and other transactions.* For purposes of this section, if an issuer ceases operations, the date the issuer ceases operations will be deemed to be the end of its fiscal year. In the case of a liquidation, merger, or sale of all or substantially all of the assets (''merger'') of the issuer, the issuer will be deemed to have ceased operations for the purposes of this section on the date the merger is consummated; *provided*, *however*, that in the case of a merger of an issuer or a series of an issuer (''Predecessor Issuer'') with another issuer or a series of an issuer (''Successor Issuer''), the Predecessor Issuer will not be deemed to have ceased operations and the Successor issuer will assume the obligations, fees, and redemption credits of the Predecessor Issuer incurred

pursuant to section 24(f) of the Act and § 270.24e–2 (as in effect prior to October 11, 1997; see 17 CFR part 240 to end, revised as of April 1, 1997) if the Successor Issuer:

(1) had no assets or liabilities, other than nominal assets or liabilities, and no operating history immediately prior to the merger;

(2) Acquired substantially all of the assets and assumed substantially all of the liabilities and obligations of the Predecessor Issuer; and

(3) The merger is not designed to result in the Predecessor Issuer merging with, or substantially all of its assets being acquired by, an issuer (or a series of an issuer) that would not meet the conditions of paragraph (b)(1) of this section.

(c) *Counting days.* To determine the date on which Form 24F–2 must be filed with the Commission under paragraph (a) of this section, the first day of the 90–day period is the first calendar day of the fiscal year following the fiscal year for which the Form is to be filed. If the last day of the 90–day period falls on a Saturday, Sunday, or federal holiday, the period ends on the first business day thereafter.

NOTE TO PARAGRAPH (C): For example, a Form 24F–2 for a fiscal year ending on June 30 must be filed no later than September 28. If September 28 falls on a Saturday, Sunday, the Form must be filed on the following Monday.

[62 FR 47938, Sept. 12, 1997]

§ 270.26a–1 Payment of administrative fees to the depositor or principal underwriter of a unit investment trust; exemptive relief for separate accounts.

(a) For purposes of section 26(a)(2)(C) of the Act, payment of a fee to the depositor of or a principal underwriter for a registered unit investment trust, or to any affiliated person or agent of such depositor or underwriter (collectively, ''depositor''), for bookkeeping or other administrative services provided to the trust shall be allowed the custodian or trustee (''trustee'') as an expense, *Provided,* That such fee is an amount not greater than the expenses, without profit: (1) Actually paid by such depositor directly attributable to the services provided and (2) increased by the services provided directly by such depositor, as determined in accordance with generally accepted accounting principles consistently applied.

(b) A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of sections 26(a) and 27(c)(2) of the Act [15 U.S.C. 80a–26(a) and 80a–27(c)(2)] with respect to any variable annuity contract participating in such account to the extent necessary to permit the deduction of any fee that would be allowed a trustee as an expense as provided in paragraph (a) of this section, *Provided,* That the standard used in paragraph (a) of this section shall be applied as follows: if the separate account reserves the right to increase the fee, the fee shall not be greater than the cost of the services to be provided for one year; if the fee is guaranteed not to increase for a specified period of time, the fee shall not be greater than the average expected cost of the services to be provided during the period of the guarantee.

(Sec. 6(c), 26(a), and 38(a) (15 U.S.C. 80a–6(c), 80a–26(a), and 80a–37(a)))

[49 FR 31063, Aug. 3, 1984]

§ 270.26a–2 Exemptions from certain provisions of sections 26 and 27 for registered separate accounts and others regarding custodianship of and deduction of certain fees and charges from the assets of such accounts.

A registered separate account, and any depositor of or principal underwriter for such account, shall be exempt from the provisions of Sections 26(a) and 27(c)(2) of the Act [15 U.S.C. 80a–26(a) and 80a–27(c)(2)] with respect to any variable annuity contract participating in such account to the extent necessary:

(a) To permit the insurance company that sponsors such account to hold the assets of the separate account and to hold such assets not pursuant to a trust indenture or other such instrument;

(b) To permit any separate account registered under the Act as a unit investment trust to hold the securities of

any underlying portfolio companies in uncertificated form;

(c) To permit any separate account registered under the Act as a management investment company to hold its assets in any manner permitted by section 17(f) of the Act [15 U.S.C. 80a–17(f)] or any rules thereunder; and

(d) To permit the deduction from the assets of the separate account of amounts for premium taxes imposed by any State or other governmental entity and, if the separate account is registered under the Act as an open-end management investment company, an investment advisory fee.

(Secs. 6(c) and 38(a) (15 U.S.C. 80a–6(c) and 80a–37(a), respectively))
[49 FR 31064, Aug. 3, 1984]

§ 270.27a–1 Conditions for compliance with and exemptions from certain provisions of section 27(a)(1) and section 27(h)(1) of the Act for certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall with respect to any variable annuity contract participating in such account, be deemed to satisfy the requirements of section 27(a)(1) and section 27(h)(1) of the Act if such contract provides for a sales load which will not exceed 9 per centum of the total payments to be made thereon as of a date not later than the end of the 12th year of such payments: *Provided*, That if a contract be issued for any stipulated shorter payment period the sales load under such contract shall not exceed 9 per centum of the total payments thereunder for such period.
[36 FR 11645, June 17, 1971]

§ 270.27a–2 Exemption from section 27(a)(3) and section 27(h)(3) of the Act for certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall be exempt from paragraph (3) of section 27(a) and paragraph (3) of section 27(h) of the Act: *Provided*, That with respect to any variable annuity contract participating in such account the proportionate amount of sales load deducted from any payment during the contract period shall not exceed the proportionate amount deducted from any prior payment during the contract period.
[36 FR 11645, June 17, 1971]

§ 270.27a–3 Exemption from section 27(a)(4) and section 27(h)(5) of the Act for certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall be exempt from paragraph (4) of section 27(a) of the Act and paragraph (5) of section 27(h) of the Act as to payments under any variable annuity contract participating in such account which (1) is purchased in connection with a plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, as amended (Code), or the requirements for deduction of the employer's contributions under section 404(a)(2) of the Code, or (2) meets the requirements of section 403(b) of the Code, but such exemptions shall apply only to contributions or payments within the exclusion allowance for any employee under section 403(b) except as clause (3) hereof applies, or (3) permits no sales load deduction from any payment in excess of 9 per centum of such payment.
[36 FR 11645, June 17, 1971, as amended at 36 FR 23624, Dec. 11, 1971]

§ 270.27c–1 Exemption from section 27(c)(1) and section 27(d) of the Act during annuity payment period of variable annuity contracts participating in certain registered separate accounts.

(a) A registered separate account, and any depositor of or underwriter for such account, shall, during the annuity payment period of variable annuity contracts participating in such account, be exempt from the requirement of paragraph (1) of section 27(c) of the Act that a periodic payment plan certificate be a redeemable security and from section 27(d) of the Act with respect to such contracts under which payments are being made based upon life contingencies.

(Sec. 6(c), 54 Stat. 800, 841; sec. 16, 84 Stat. 1424, 15 U.S.C. 80a–27(h))
[36 FR 11645, June 17, 1971]

§ 270.27d–1 Reserve requirements for principal underwriters and depositors to carry out the obligations to refund charges required by section 27(d) and section 27(f) of the Act.

(a)(1) Every depositor of or principal underwriter for the issuer of a periodic payment plan certificate sold subject to section 27(d) or section 27(f) of the Act or both, shall deposit and maintain funds in a segregated trust account as a reserve and as security for the purpose of assuring the refund of charges required by sections 27(d) and 27(f) of the Act.

(2) The assets of such trust account may be held as cash or invested only in one or more of (i) government securities as defined in section 2(a)(16) of the Act (except equity securities) or (ii) negotiable certificates of deposit issued by a bank, as defined in section 2(a)(5) of the Act and having capital and surplus of at least $10 million: *Provided,* That no such investment may have a maturity of more than 5 years, no more than 50 percent of the assets may be invested in obligations having a maturity of more than 1 year, and certificates of deposit of a single issuer may not constitute more than 10 percent of the value of the assets in the account.

(3) Any income, gains, or losses from assets allocated to such account, whether or not realized, shall be credited to or charged against such account without regard to other income, gains, or losses of the depositor or principal underwriter.

(4) The assets of such trust account may be withdrawn only as permitted by paragraph (f) of this section and shall in no event be chargeable with liabilities arising out of any aspect of the business of the depositor or principal underwriter other than assuring the ability of the depositor or principal underwriter to refund the amounts required by such sections.

(b) For purposes of this section:

(1) ''Excess sales load'' on any payment is that portion of the sales load in excess of 15 percent of that payment.

(2) ''Monthly payment'' shall be the amount of the smallest monthly installment scheduled to be paid during the life of the plan. If payments are required or permitted to be made on a basis less frequently than monthly, an equivalent monthly payment shall be the amount determined by dividing the smallest minimum payment required or permitted in a payment period by the number of months included in such period.

(3) The assets in the segregated trust account shall be valued as follows: (i) With respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities, fair value as determined in good faith by the depositor or principal underwriter.

(c) For every periodic payment plan certificate governed by section 27(d), the depositor or principal underwriter shall deposit into the segregated trust account not less than 45 percent of the excess sales load on each of the first six monthly payments or their equivalent.

(d) For all periodic payment plan certificates governed by section 27(d) which have not been surrendered in accordance with their terms, and for which the depositor or principal underwriter may be liable for the refund of any sales load, the depositor or principal underwriter shall maintain in the segregated trust account an amount equal to not less than 15% of the total refundable sales load on the payments made on those certificates. The depositor or principal underwriter shall also maintain in the segregated trust account such additional amounts as the Commission by order may require for the depositor or principal underwriter to carry out refund obligations pursuant to sections 27(d) and 27(f) of the Act.

(e) For every periodic payment plan certificate governed by section 27(f) of the Act, and for which the depositor or principal underwriter has no obligation to refund any excess sales load pursuant to section 27(d) of the Act, the depositor or principal underwriter shall deposit and maintain during the refund period, at least the following amounts in the segregated trust account:

(1) For certificates that require monthly payments of $100 or less, 20 percent of the difference between the gross payments made and the net amount invested;

(2) For certificates that require monthly payments in excess of $100 and

for single payment plan certificates, 30 percent of the difference between the gross payments made and the net amount invested;

(3) For certificates with respect to which the holder is entitled to receive the greater of the refund provided by section 27(f) (of the Act) or a refund of total payments and upon which a total of at least $1,000 has been paid, 100 percent of the difference between the gross payments made and net amount invested; and

(4) Such additional amounts as the Commission by order may require to carry out the obligation to refund charges pursuant to section 27(f) of the Act.

(f) Assets may be withdrawn from the segregated trust account by each depositor or principal underwriter:

(1) To refund excess sales load to a certificate holder exercising the right of surrender specified in section 27(d) of the Act; or

(2) To refund to a certificate holder exercising the right of withdrawal specified in section 27(f) of the Act the difference between the amount of his gross payments and the net amount invested; or

(3) For any other purpose: *Provided, however,* That such withdrawal shall not reduce the segregated trust account to an amount less than the sum of (i) 130 percent of the amount required to be maintained by paragraph (d) of this section, if any, and (ii) 100 percent of that amount required to be maintained by paragraph (e) of this section, if any.

(g) The minimum amounts required to be maintained by paragraphs (d) and (e) of this section shall be computed at least monthly. Any additional deposits required by paragraph (d) or (e) of this section shall be made immediately after such computation, and any withdrawals permitted by paragraph (f)(3) of this section may be made only at such time.

(h) Nothing in this section shall be construed to prohibit a depositor or principal underwriter, acting as such for two or more registered investment companies issuing periodic payment plan certificates, from combining in a single segregated trust account the reserves for such companies required by this section.

(i) The refunds required to be made to certificate holders pursuant to sections 27(d) and 27(f) (of the Act) shall be paid in cash not more than 7 days from the date the certificate is received in proper form by the custodian bank or such other paying agent as may be designated under the periodic payment plan.

(j) Each depositor or principal underwriter shall file with the Commission, within the appropriate period of time specified, an Accounting of Segregated Trust Account. Form N–27D–1 (§ 274.127d–1 of this chapter) is hereby prescribed as such accounting form.

[36 FR 13136, July 15, 1971, as amended at 40 FR 50712, Oct. 31, 1975]

§ 270.27d–2 Insurance company undertaking in lieu of segregated trust account.

(a) Any depositor of or principal underwriter for the issuer of a periodic payment plan certificate sold subject to section 27(d) or 27(f) of the Act, or both, shall be exempt from the requirements of § 270.27d–1 if an insurance company (as defined in section 2(a)(17) of the Act) undertakes in writing to guarantee the performance of all obligations of such depositor or principal underwriter to refund charges under sections 27(d) and 27(f) of the Act and paragraph (b) of this section: *Provided, however,* That:

(1) Such insurance company at all times shall have (i) combined capital paid-up, gross paid in and contributed surplus and unassigned surplus, if a stock company, or (ii) unassigned surplus, if a mutual company, at least equal to the larger of (*a*) $1 million or (*b*) 200 percent of the amount of the total refund obligation of the depositor or underwriter pursuant to sections 27(d) and 27(f) (of the Act) less any liability reserve established by such insurance company to meet such obligations; and

(2) Such depositor or underwriter shall file or cause to be filed with the Commission as an exhibit to the registration statement or any amendment thereto pursuant to the Securities Act of 1933 of the registered investment company issuing periodic payment plan

certificates (i) a copy of such written undertaking, and any amendment thereto, (ii) an annual statement certified by a responsible officer of the insurance company indicating that at least on a monthly basis throughout its fiscal year the insurance company has met the requirements of the proviso in paragraph (a)(1) of this section, and (iii) a Statement of Financial Condition (Balance Sheet) of the insurance company certified by an independent public accountant. Such balance sheet shall be filed at least annually, within 90 days after the close of the insurance company's fiscal year.

(b) The refunds required to be made to certificate holders pursuant to sections 27(d) and 27(f) (of the Act) shall be paid in cash not more than 7 days from the date the certificate is received in proper form by the custodian bank or such other paying agent as may be designated under the periodic payment plan.

[36 FR 13137, July 15, 1971]

§270.27e–1 Requirements for notice to be mailed to certain purchasers of periodic payment plan certificates sold subject to section 27(d) of the Act.

(a) The notice required by section 27(e) of the Act shall be sent by first class mail and shall be accompanied by a written instruction sheet and a return form to be used in connection with the exercise of the surrender right described in the notice. No other written or graphic material may be included with such notice.

(b) In the event that regular payments throughout the first 18 months of the plan are required less frequently than monthly, such a notice shall be mailed to any certificate holder who has missed any payment or payments equal to or greater in amount than the amount of payments which, if missed, would have required the mailing of a notice if equal monthly payments had been required during such 15- or 18-month periods.

(c) Any payment not made within 31 days after it is due shall be deemed a missed payment whether or not an equivalent payment is made subsequently by the certificate holder.

(d) In the event any such notice is not mailed prior to 15 days before the expiration of the 18th month, the certificate holder shall have 15 days from the date such notice is mailed within which to exercise the right of surrender described therein. Nothing herein contained shall require a second notice to be mailed to any certificate holder who has been mailed a notice within 30 days following 15 months after the issuance of his certificate.

(e) Notwithstanding the requirements of section 27(e) of the Act, no notice need be mailed to a certificate holder if, at the time such notice would be required to be mailed, he would not be entitled to receive any refund of sales loading upon surrender of his certificate.

(f) Form N–27E–1 is hereby prescribed to inform certificate holders of their right to surrender their certificates pursuant to section 27(d) of the Act. The text of Form N–27E–1 is as follows:

FORM N–27E–1—NOTICE TO PERIODIC PAYMENT PLAN CERTIFICATE HOLDERS OF 18 MONTHS SURRENDER RIGHTS WITH RESPECT TO PERIODIC PAYMENT PLAN CERTIFICATES[2]

IMPORTANT

(Date of mailing)

Re: —(1)———.

DEAR —(2)———: This notice is required to be sent to all purchasers of plan certificates pursuant to laws administered by the U.S. Securities and Exchange Commission. You should read it carefully and retain it with your financial records.

You have missed —(3)——— after your —(4)——— plan certificate was issued. Until —(5) ——— you will be entitled to surrender your plan certificate and receive, in addition to the value of your account on the date your certificate is received, a refund of that portion of the sales charges you have paid in excess of 15 percent of the gross payments under your plan.

For example, if your certificate had been received for surrender — (6) ——— you would have received a total of $— (7) ——— for it (the value of your account $— (8) ——— plus a refund of $— (9) ——— of the sales charges you have paid). After your right expires you will be entitled to receive only the value of your account. Of course, the value of your account will vary from day to day and by the

[2] See the General Instructions to Form N–27E–1 in paragraph (f) of §270.27e–1 of this chapter, 36 FR 13138.

date your right expires it may be more or less than it is today.

In determining whether to exercise your right to terminate your plan, you should consider that, while the average sales charge deducted from your payments has amounted to — (10) ——— percent of the total payments made, the sales charge for the remainder of the payments under the plan, if you continue the plan, will be — (11) ———and the average sales charge if you complete the plan will be — (12) ——— percent. Exercising your right to terminate your plan, however, will result in a net sales charge of 15 percent of your total payments. Accordingly, if you believe you may discontinue making further payments on your plan, it would probably be to your advantage to exercise this right now.

If you wish to exercise your right to terminate your plan, you may return your certificate to — (13) ——— by — (14) ——— in accordance with the enclosed instructions.

Very truly yours,

— (15) ———.

FORM N–27E–1 INSTRUCTIONS

General instructions. A. The notice shall be legible and shall be printed or typed on letter-sized paper. It shall be in modern type at least as large as 10-point modern type. All type shall be leaded at least 2 points. Parenthetical references should be completed in accordance with the itemized instructions below and need not be underlined or boldfaced.

B. The notice shall bear the letterhead of the sender and the mailing date. An inconspicuous reference to the form number may appear on the notice.

Itemized instructions. Insert the following in the corresponding numbered spaces on Form N–27E–1:

(1) The name of the plan and the account number of the certificate holder. An additional internal recordkeeping reference may also be included at the option of the sender.

(2) The name of certificate holder or an identification such as ''Investor'' or ''Planholder.''

(3) Whichever of the following statements is appropriate: ''three or more payments during the first 15 months'' or ''a payment after the 15th month.''

(4) The name of the plan.

(5) The date of the first business day which is 18 months from the date of the issuance of the certificate or in the event such notice is not mailed prior to 15 days before the expiration of the 18th month, the date of the first business day which is 15 days from the date such notice is mailed.

(6) A date which is not more than 2 business days prior to the date of the notice.

(7) The sum of Items 8 and 9.

(8) The value of the account payable to the certificate holder if the certificate had been received on the date set forth in Item 6. In the event such certificate holder has made a partial withdrawal in accordance with the terms of his certificate, the notice may state after the first sentence in the third paragraph that ''The value of your account reflects the partial withdrawal which you made previously.''

(9) The amount as of the date set forth in Item 6 which is equal to that part of the excess paid for sales loading which is over 15 percent of the gross payments made by the certificate holder.

(10) Average percentage deducted for sales charges to the date set forth in Item 6.

(11) The percentage to be deducted for sales charges after the date set forth in Item 6.

If the holder has made less than 12 monthly payments, the following shall be substituted for the first sentence of the third paragraph of the notice:

''In determining whether to exercise your right to terminate your plan, you should consider that, while the sales charge deducted from your payments has amounted to ——— (10) percent of the total payments made, the sales charge for the next ——— (11a) payments will be ——— (11b) percent and the sales charge for the remainder of the payments will be ——— (11c) percent. If you complete the plan, the average sales charge will be ——— (12) percent.''

(11a) The number of payments yet to be made which are subject to the initial sales to completion.

(11b) The percentage to be deducted from sales charges from such payments.

(11c) The percentage to be deducted for sales charges from all subsequent payments.

(12) Average percentage to be deducted for sales charges from inception of the plan to completion.

(13) Name and address of custodian bank or other person authorized to accept surrendered certificates.

(14) Same date as in Item 5.

(15) The name of a responsible officer of the sender, with his title.

[36 FR 13137, July 15, 1971, as amended at 36 FR 14727, Aug. 11, 1971; 37 FR 9990, May 18, 1972]

§ 270.27f–1 Notice of right of withdrawal required to be mailed to periodic payment plan certificate holders and exemption from section 27(f) for certain periodic payment plan certificates.

(a) The notice and statement of charges (notice) required by section 27(f) of the Act shall be sent by first-class mail and shall be accompanied by a written instruction sheet and a return form to be used in connection with the exercise of the right of withdrawal described in the notice. Except

for a confirmation slip, the plan certificate, and any notice required by applicable State law, no other written or graphic material may be included with such notice.

(b) The notice may be mailed by the issuer, the principal underwriter for, or the depositor of, the issuer or a recordkeeping agent for the issuer if the custodian bank has delegated the mailing of the notice to any of them or the issuer has been permitted to operate without a custodian bank by Commission order.

(c) Solely for purposes of section 27(f) of the Act, the postmark date on the envelope containing the certificate shall determine whether a certificate has been surrendered within the 45-day period.

(d) Form N–27F–1 is hereby prescribed to inform certificate holders, other than holders of plans upon which the amount of sales load deducted from any payment does not exceed 9 percent of any payment and variable annuity contracts, of their withdrawal right pursuant to section 27(f) of the Act. The text of Form N–27F–1 is as follows:

FORM N–27F–1 NOTICE TO PERIODIC PAYMENT PLAN CERTIFICATE HOLDERS OF 45-DAY WITHDRAWAL RIGHT WITH RESPECT TO PERIODIC PAYMENT PLAN CERTIFICATES

IMPORTANT

(Date of mailing)

Re: —— (1) ——

Dear —— (2) ——: This notice is required to be sent to all purchasers of plan certificates pursuant to laws administered by the U.S. Securities and Exchange Commission. You should read it carefully and retain it with your financial records.

Of the $—— (3) —— you have paid on your —— (4) —— plan, representing —— (5) —— regular monthly payments, $—— (6) —— or —— (7) —— percent has been deducted for various charges.

[The following sentence is to be included when any periodic payment remains outstanding in which the sales load charges exceed 9 percent of such payment.]

A total of $—— (8) —— or —— (9) —— percent of your first —— (10) —— monthly payments will be deducted from those payments for similar charges.

Charges of $—— (11)—— or —— (12) —— percent will be deducted from each subsequent payment. You have until —— (13) —— to surrender your certificate for any reason and receive a refund of all of the charges which have been deducted from your payments, and, in addition, the value of your account on the date your certificate is received.

In determining whether or not to exercise your right you should consider, among other things, the projected cost of your investment and your ability to make the scheduled payments over the life of your plan as they become due. Your plan provides for —— (14) —— payments of $—— (15) —— per —— (16) ——, or total payments of $—— (17) ——. If you made all of the scheduled payments over the full term of your plan, the total deductions would be $—— (18) —— or an effective charge of —— (19) —— percent of your total payments. However, if you do not complete your program, the deduction of various charges from your initial payments will result in your paying effective charges in excess of that rate. For a more complete description of the charges deducted under your plan, carefully review your prospectus.

If you wish to exercise your right of withdrawal, return your plan certificate to —— (20) —— by —— (21) —— in accordance with the enclosed instructions.

Very truly yours,

—— (22) ——.

INSTRUCTIONS FOR USE OF FORM N–27F–1

General instructions. A. The notice shall be legible and shall be printed or typed on letter-size paper. It shall be in modern type at least as large as 10-point modern type. All type shall be leaded at least 2 points. Parenthetical references should be completed in accordance with the Itemized Instructions below and need not be underlined or boldfaced.

B. The notice shall bear the letterhead of the sender and the mailing date. An inconspicuous reference to the form number may appear on the notice.

Itemized Instructions. Insert the following in the corresponding numbered spaces on Form N–27F–1.

(1) The name of the plan and the account number of the certificate holder. An additional internal record keeping reference may also be included at the option of the sender.

(2) The name of certificate holder or an identification such as ''Investor'' or ''Planholder.''

(3) The total amount paid by the certificate holder as of the date of the mailing.

(4) The name of the plan.

(5) The number of regular monthly payments or their equivalent made by the certificate holder as of the date of mailing.

(6) The total amount deducted for all charges from the amount paid by the certificate holder as of the date of the mailing.

(7) The percentage that the total charges set forth in Item (6) are of the total payments included under Item (3) above.

(8) The total dollar amount of all charges scheduled to be deducted from the payments

made by the certificate holder before the first regular payment upon which there would be a reduction in the rate of the applicable sales charge below 9 percent of the certificate holder's gross payment.

(9) The percentage that the total charges set forth in Item 8 are of the total payments included under Instruction 8 above.

(10) The number of regular monthly payments required to be made before the rate of the sales charges deducted from such regular payment is reduced to less than 9 percent of the certificate holder's gross payment.

(11) The dollar amount of the charges to be deducted from each payment made by the certificate holder after the first regular payment upon which there would be a reduction in the rate of the applicable sales charge below 9 percent of the certificate holder's gross payment. If a portion of the payments is used for the purchase of completion insurance, the amount attributable thereto shall not be included as a charge and the following phrase shall be added: ''Apart from insurance premiums based upon the amount of coverage in effect at the time of payment.''

(12) The percentage that the amount of the charges set forth in Item 11 are of the amount of the payment included under Instruction 11 above.

(13) The date which is 45 days from the date on which the notice will be mailed.

(14) The number of monthly or quarterly payments provided for under the plan.

(15) The dollar amount of each scheduled periodic payment to be made by the certificate holder.

(16) The period (e.g., month, quarter) for which payments are scheduled to be made under the plan.

(17) The dollar amount of total payments scheduled to be made over the full term of the plan by the certificate holder.

(18) The total dollar amount of all charges scheduled to be deducted over the full term of the plan.

(19) The percentage that the total charges as set forth in Item 18 are of the total payments scheduled to be made by the certificate holder over the full term of the plan.

(20) The name and address of the custodian bank or other person authorized to accept surrendered certificates.

(21) The date which is 45 days from the date on which the notice will be mailed.

(22) The name of a responsible officer of the sender with his title.

(Secs. 27(e), 27(f), 38(a), 54 Stat. 829, 841; 15 U.S.C. 80a–27(e), 80a–27(f), 80a–37(a); sec. 16, Pub. L. 91–547, 84 Stat. 1424–1425; sec. 6(c), 15 U.S.C. 80a–6(c))

[36 FR 24055, Dec. 18, 1971, as amended at 37 FR 9990, May 18, 1972; 45 FR 17958, Mar. 20, 1980]

§ 270.27g–1 Election to be governed by section 27(h).

(a) If any registered investment company which issues or intends to issue a periodic payment plan certificate chooses to be governed by the provisions of section 27(h) (of the Act) rather than the provisions of sections 27 (a) and (d) (of the Act), it shall signify such choice by filing with the Commission as an exhibit to its registration statement filed under the Securities Act of 1933 a written Notice of Election to be so governed.

(b) Any registered investment company issuing periodic payment plan certificates which has elected, in accordance with paragraph (a) of this section, to be governed by the provisions of section 27(h) of the Act may thereafter withdraw such election by filing with the Commission, in the manner specified for filing a Notice of Election, a written Notice of Withdrawal of Election: *Provided, however,* That no such withdrawal of election shall be made within 12 months of an election by such company under paragraph (a) of this section and, provided further that such company may not thereafter elect to be governed by the provisions of section 27(h) (of the Act) until an additional 12–month period has elapsed.

[36 FR 13139, July 15, 1971]

§ 270.27h–1 Exemptions from section 27(h)(4) for certain payments.

(a) For purposes of this section and section 27(h)(4) of the Act (1) ''minimum monthly payment, or its equivalent,'' shall be the amount of the smallest monthly installment scheduled to be made during the life of the plan; and (2) ''quarter'' shall be the 3-month period which commences on the date a periodic payment plan is issued and each 3–month period thereafter.

(b) The provisions of section 27(h) (4) (of the Act) shall not apply to:

(1) That portion of the first payment on a periodic payment plan certificate which equals the amount of five minimum monthly payments: *Provided, however,* That the deduction for sales load on any other payments received during the first quarter after the

issuance of the certificate may not exceed the sales load applicable to payments subsequent to the first 48 monthly payments or their equivalent;

(2) A payment or payments received in any subsequent quarter which equals the amount of three minimum monthly payments: *Provided, however,* That after an amount equivalent to three minimum monthly payments (not including payments of arrears) is received in any such subsequent quarter the deduction for sales load on any additional payments received in such quarter may not exceed the sales load applicable to payments subsequent to the first 48 monthly payments or their equivalent;

(3) Payments of arrears by a certificate holder who is delinquent in his payments; and

(4) Any payments made on a periodic payment plan certificate out of the proceeds of completion insurance received upon the death of the certificate holder.

[36 FR 13139, July 15, 1971]

§ 270.28b–1 Investment in loans partially or wholly guaranteed under the Servicemen's Readjustment Act of 1944, as amended.

(a) The term *qualified investments* as used in section 28(b) of the Investment Company Act of 1940 shall include:

(1) Any loan, any portion of which is guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, and which is secured by a first lien on real estate: *Provided,* The amount of the loan not so guaranteed does not exceed 66⅔ percent of the reasonable value of such real estate as determined by proper appraisal made by an appraiser designated by the Administrator of Veterans' Affairs;

(2) Any secondary loan the full amount of which is guaranteed under section 505(a) of Title III of the above mentioned act and which is secured by a second lien on real estate:

Provided, however, That any such loan shall be deemed a qualified investment only so long as (i) insurance policies are required to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality, and (ii) the loan shall remain guaranteed under Title III of the Servicemen's Readjustment Act of 1944, as amended, to the extent specified in paragraph (a) (1) or (2) of this section, as the case may be.

(b) Loans made pursuant to this section shall be valued at the original principal amount of the loan less all payments made thereon which have been applied to the reduction of such principal amount.

(Secs. 28(b), 38, 54 Stat. 832, 841; 15 U.S.C. 80a–28(b), 80a–38)

[Rule N–28B–1, 11 FR 6483, June 13, 1946]

§ 270.30a–1 Annual report.

A registered management investment company required to file an annual report pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 and section 30(a) of the Investment Company Act of 1940 shall be deemed to have satisfied its requirement to file an annual report by the filing of semi-annual reports on form N–SAR in accordance with the rules and procedures specified thereof. Every registered unit investment trust shall file an annual report on form N–SAR with respect to each calendar year not more than sixty calendar days after the close of each year. A registered unit investment trust that has filed a registration statement with the Commission registered its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

(Secs. 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d), and 78w(a)) and secs. 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37))

[50 FR 1450, Jan. 11, 1985, as amended at 61 FR 49961, Sept. 24, 1996]

§ 270.30b1–1 Semi-annual report.

Every registered management investment company shall file a semi-annual report on form N–SAR, not more than sixty calendar days after the close of each fiscal year and fiscal second quarter. A registered management company that has filed a registration statement

with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

(Secs. 13, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d), and 78w(a)) and secs. 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37))

[50 FR 1450, Jan. 11, 1985. Redesignated at 50 FR 27940, July 9, 1985, as amended at 61 FR 49961, Sept. 24, 1996]

§ 270.30b1–2 Semi-annual report for totally-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of rules 30a–1 and 30b1–1, a registered investment company that is a totally-owned subsidiary of a registered management investment company need not file a semi-annual report on Form N–SAR if financial information with respect to that subsidiary is reported in the parent's semi-annual report on Form N–SAR.

[54 FR 10321, Mar. 13, 1989]

§ 270.30b1–3 Transition reports.

Every registered management investment company filing reports on Form N–SAR that changes its fiscal year end shall file a report on Form N–SAR not more than 60 calendar days after the later of either the close of the transition period or the date of the determination to change the fiscal year end which report shall not cover a period longer than six months.

[54 FR 10321, Mar. 13, 1989, as amended at 61 FR 49961, Sept. 24, 1996]

§ 270.30b2–1 Filing of copies of reports to stockholders.

Four copies of every periodic or interim report or similar communication containing financial statements and transmitted by or on behalf of any registered investment company to any class of such company's security holders shall be filed with the Commission not later than 10 days after such transmission.

[Rule N–30B2–1, 6 FR 74, Jan. 4, 1941]

§ 270.30d–1 Reports to stockholders of management companies.

(a) Every registered management company shall transmit to each stockholder of record, at least semi-annually, a report containing the financial statements required to be included in such reports by the company's registration statement form under the 1940 Act, except that the initial report of a newly registered company shall be made as of a date not later than the close of the fiscal year or half-year occurring on or after the date on which the company's notification of registration under the 1940 Act is filed with the Commission.

(b) If any matter was submitted during the period covered by the shareholder report to a vote of shareholders, through the solicitation of proxies or otherwise, furnish the following information:

(1) The date of the meeting and whether it was an annual or special meeting.

(2) If the meeting involved the election of directors, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting.

(3) A brief description of each matter voted upon at the meeting and the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes as to each such matter, including a separate tabulation with respect to each matter or nominee for office.

Instruction. The solicitation of any authorization or consent (other than a proxy to vote at a shareholders' meeting) with respect to any matter shall be deemed a submission of such matter to a vote of shareholders within the meaning of this paragraph (b).

(c) Each report shall be transmitted within 60 days after the close of the period for which such report is being made.

(d) As the equivalent of any report required to be transmitted to shareholders by this rule, an open-end company may transmit a copy of its currently effective prospectus or Statement of Additional Information, or both, under the Securities Act, provided such prospectus or Statement of Additional Information, or both, include the following additional information:

(1) In the case of the prospectus or Statement of Additonal Information, or both, serving as an annual or semiannual report, the compensation disclosure required by section 30(d)(5) of the 1940 Act for the period for which the prospectus or Statement of Additional Information, or both, are serving as a report;

(2) In the case of the prospectus or Statement of Additonal Information, or both, serving as a semiannual report, financial statements and condensed financial information for the fiscal half-year period of the report. Such prospectus or Statement of Additional Information, or both, shall be transmitted within 60 days after the close of the period for which the report is being made.

(e) The period of time within which any report prescribed by this rule shall be transmitted may be extended by the Commission upon written request showing good cause therefor. Section 270.0–5 shall not apply to such requests.

(Secs. 7, 10, and 19 of the Securities Act of 1933 (15 U.S.C. 77g, 77j, and 77s) and secs. 8, 30 and 38 of the Investment Company Act of 1940 (15 U.S.C. 80a–8, 80a–29 and 80a–37) secs. 6, 7, 8, 10 and 19(a) of the Securities Act and secs. 12, 13, 14, 15(d) and 23(a) of the Exchange Act)

[46 FR 36126, July 14, 1981, as amended at 48 FR 37940, Aug. 22, 1983; 48 FR 44477, Sept. 29, 1983; 50 FR 26160, June 25, 1985; 57 FR 56836, Dec. 1, 1992; 59 FR 52700, Oct. 19, 1994;61 FR 24657, May 15, 1996]

§ 270.30d–2 Reports to shareholders of unit investment trusts.

At least semiannually every registered unit investment trust substantially all the assets of which consist of securities issued by a management company shall transmit to each shareholder of record (including record holders of periodic payment plan certificates), a report containing all the applicable information and financial statements, or their equivalent, required by Rule N–30D–1 to be included in reports of such management company for the same fiscal period. Each such report shall be transmitted within the period allowed such management company by Rule N–30D–1 for transmitting reports to its stockholders.

[Rule N–30D–2, 6 FR 74, Jan. 4, 1941, as amended at 61 24657, May 15, 1996]

§ 270.30f–1 Applicability of section 16 of the Exchange Act to section 30(f)

(a) The filing of any statement prescribed under section 16(a) of the Securities Exchange Act of 1934 shall satisfy the corresponding requirements of section 30(f) of the Investment Company Act of 1940.

(b) The rules under section 16 of the Securities Exchange Act of 1934 shall apply to any duty, liability or prohibition imposed with respect to a transaction involving any security of a registered closed-end company under section 30(f) of the Act.

(c) No statements need be filed pursuant to section 30(f) of the Act by an affiliated person of an investment adviser in his or her capacity as such if such person is solely an employee, other than an officer, of such investment adviser.

[56 FR 7275, Feb. 21, 1991]

§ 270.31a–1 Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and keep current the accounts, books, and other documents relating to its business which constitute the record forming the basis for financial statements required to be filed pursuant to section 30 of the Investment Company Act of 1940 and of the auditor's certificates relating thereto.

(b) Every registered investment company shall maintain and keep current the following books, accounts, and other documents:

(1) Journals (or other records of original entry) containing an itemized daily record in detail of all purchases and sales of securities (including sales and redemptions of its own securities), all receipts and deliveries of securities (including certificate numbers if such detail is not recorded by custodian or transfer agent), all receipts and disbursements of cash and all other debits and credits. Such records shall show for each such transaction the name and quantity of securities, the unit and aggregate purchase or sale price, commission paid, the market on which effected, the trade date, the settlement date, and the name of the person through or from whom purchased or received or to whom sold or delivered. In the case of a money market fund, also identify the provider of any Demand Feature or Guarantee (as defined in § 270.2a–7(a)(8) or § 270.2a–7(a)(15) respectively) and give a brief description of the nature of the Demand Feature or Guarantee (*e.g.*, unconditional demand feature, conditional demand feature, letter of credit, or bond insurance) and, in a subsidiary portfolio investment record, provide the complete legal name and accounting and other information (including sufficient information to calculate coupons, accruals, maturities, puts, and calls) necessary to identify, value, and account for each investment.

(2) General and auxiliary ledgers (or other records) reflecting all assets, liability, reserve, capital, income and expense accounts, including:

(i) Separate ledger accounts (or other records) reflecting the following:

(*a*) Securities in transfer;

(*b*) Securities in physical possession;

(*c*) Securities borrowed and securities loaned;

(*d*) Monies borrowed and monies loaned (together with a record of the collateral therefor and substitutions in such collateral);

(*e*) Dividends and interest received;

(*f*) Dividends receivable and interest accrued.

Instruction. (*a*) and (*b*) of this subdivision shall be stated in terms of securities quantities only; (*c*) and (*d*) of this subdivision shall be stated in dollar amounts and securities quantities as appropriate; (*e*) and (*f*) of this subdivision shall be stated in dollar amounts only.

(ii) Separate ledger accounts (or other records) for each portfolio security, showing (as of trade dates) (*a*) the quantity and unit and aggregate price for each purchase, sale, receipt, and delivery of securities and commodities for such accounts, and (*b*) all other debits and credits for such accounts. Securities positions and money balances in such ledger accounts (or other records) shall be brought forward periodically but not less frequently than at the end of fiscal quarters. Any portfolio security, the salability of which is conditioned, shall be so noted. A memorandum record shall be available setting forth, with respect to each portfolio security account, the amount and declaration ex-dividend, and payment dates of each dividend declared thereon.

(iii) Separate ledger accounts (or other records) for each broker-dealer bank or other person with or through which transactions in portfolio securities are effected, showing each purchase or sale of securities with or through such persons, including details as to the date of the purchase or sale, the quantity and unit and aggregate price of such securities, and the commissions or other compensation paid to such persons. Purchases or sales effected during the same day at the same price may be aggregated.

(iv) Separate ledger accounts (or other records), which may be maintained by a transfer agent or registrar, showing for each shareholder of record of the investment company the number of shares of capital stock of the company held. In respect of share accumulation accounts (arising from periodic investment plans, dividend reinvestment plans, deposit of issued shares by the owner thereof, etc.), details shall be available as to the dates and number of shares of each accumulation, and except with respect to already issued shares deposited by the owner thereof, prices of each such accumulation.

(3) A securities record or ledger reflecting separately for each portfolio security as of trade date all ''long'' and ''short'' positions carried by the investment company for its own account and showing the location of all securities

long and the off-setting position to all securities short. The record called for by this paragraph shall not be required in circumstances under which all portfolio securities are maintained by a bank or banks or a member or members of a national securities exchange as custodian under a custody agreement or as agent for such custodian.

(4) Corporate charters, certificates of incorporation or trust agreements, and by-laws, and minute books of stockholders' and directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings.

(5) A record of each brokerage order given by or in behalf of the investment company for, or in connection with, the purchase or sale of securities, whether executed or unexecuted. Such record shall include the name of the broker, the terms and conditions of the order and of any modification or cancellation thereof, the time of entry or cancellation, the price at which executed, and the time of receipt of report of execution. The record shall indicate the name of the person who placed the order in behalf of the investment company.

(6) A record of all other portfolio purchases or sales showing details comparable to those prescribed in paragraph (b)(5) of this section.

(7) A record of all puts, calls, spreads, straddles, and other options in which the investment company has any direct or indirect interest or which the investment company has granted or guaranteed; and a record of any contractual commitments to purchase, sell, receive or deliver securities or other property (but not including open orders placed with broker-dealers for the purchase or sale of securities, which may be cancelled by the company on notices without penalty or cost of any kind); containing, at least, an identification of the security, the number of units involved, the option price, the date of maturity, the date of issuance, and the person to whom issued.

(8) A record of the proof of money balances in all ledger accounts (except shareholder accounts), in the form of trial balances. Such trial balances shall be prepared currently at least once a month.

(9) A record for each fiscal quarter, which shall be completed within ten days after the end of such quarter, showing specifically the basis or bases upon which the allocation of orders for the purchase and sale of portfolio securities to named brokers or dealers and the division of brokerage commissions or other compensation on such purchase and sale orders among named persons were made during such quarter. The record shall indicate the consideration given to (i) sales of shares of the investment company by brokers or dealers, (ii) the supplying of services or benefits by brokers or dealers to the investment company, its investment adviser or principal underwriter or any persons affiliated therewith, and (iii) any other considerations other than the technical qualifications of the brokers and dealers as such. The record shall show the nature of the services or benefits made available, and shall describe in detail the application of any general or specific formula or other determinant used in arriving at such allocation of purchase and sale orders and such division of brokerage commissions or other compensation. The record shall also include the identities of the persons responsible for the determination of such allocation and such division of brokerage commissions or other compensation.

(10) A record in the form of an appropriate memorandum identifying the person or persons, committees, or groups authorizing the purchase or sale of portfolio securities. Where an authorization is made by a committee or group, a record shall be kept of the names of its members who participated in the authorization. There shall be retained as part of the record required by this paragraph any memorandum, recommendation, or instruction supporting or authorizing the purchase or sale of portfolio securities. The requirements of this paragraph are applicable to the extent they are not met by compliance with the requirements of paragraph (b)(4) of this section.

(11) Files of all advisory material received from the investment adviser, any advisory board or advisory committee, or any other persons from

whom the investment company accepts investment advice, other than material which is furnished solely through uniform publications distributed generally.

(12) The term ''other records'' as used in the expressions ''journals (or other records of original entry)'' and ''ledger accounts (or other records)'' shall be construed to include, where appropriate, copies of voucher checks, confirmations, or similar documents which reflect the information required by the applicable rule or rules in appropriate sequence and in permanent form, including similar records developed by the use of automatic data processing systems.

(c) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(d) Every depositer of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end investment company, shall maintain such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(e) Every investment advisor which is a majority-owned subsidiary of a registered investment company shall maintain in the form prescribed therein such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(f) Every investment adviser not a majority-owned subsidiary of a registered investment company shall maintain such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a–30)

[27 FR 11993, Dec. 5, 1962, as amended at 61 FR 13983, Mar. 28, 1996; 62 FR 64986, Dec. 9, 1997]

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) Every registered investment company shall:

(1) Preserve permanently, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (1) through (4) of § 270.31a–1(b);

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (5) through (12) or § 270.31a–1(b) and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, and other documents required to be maintained by § 270.31a–1(a) and not enumerated in § 270.31a–1(b);

(3) Preserve for a period not less than 6 years from the end of the fiscal year last used, the first 2 years in an easily accessible place, any advertisement, pamphlet, circular, form letter or other sales literature addressed to or intended for distribution to prospective investors.

(b) Every underwriter, broker, or dealer which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934.

(c) Every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-

end company, shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by brokers and dealers by rule adopted under section 17 of the Securities Exchange Act of 1934, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(d) Every investment adviser which is a majority-owned subsidiary of a registered investment company shall preserve for the periods prescribed therein such accounts, books and other documents as are required to be preserved by investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940.

(e) Every investment adviser not a majority-owned subsidiary of a registered investment company shall preserve for a period of not less than six years such accounts, books and other documents as are required to be maintained by registered investment advisers by rule adopted under section 204 of the Investment Advisers Act of 1940, to the extent such records are necessary or appropriate to record such person's transactions with such registered investment company.

(f)(1) The records required to be maintained and preserved under paragraphs (a) through (d) of Rule 31a–1 and paragraphs (a) through (c) of Rule 31a–2 may be immediately produced or reproduced on photographic film or, as provided in paragraph (f)(2) of this section, on magnetic tape, disk, or other computer storage medium, and be maintained and preserved for the required time in that form. If such records are produced or reproduced by photographic film or computer storage medium by, or on behalf of, an investment company, such investment company shall:

(i) Arrange the records and index and file the films or computer storage medium in such a manner as to permit the immediate access and retrieval of any particular record;

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copies of the computer storage medium that the Commission, by its examiners or other representatives, or the directors of such investment company may request;

(iii) Store separately from the original one other copy of the photographic film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(v) With respect to records stored on photographic film, at all times have available for examination of its records by the Commission, pursuant to section 31 of the Investment Company Act of 1940, or by the directors of such investment company, facilities for immediate, easily readable projection of the photographic film and for producing easily readable facsimile enlargements.

(2) Under paragraph (f)(1) of this section, an investment company may maintain and preserve on computer tape, disk, or other computer storage medium records that, in the ordinary course of the investment company's business, are created by, or on behalf of, the investment company on electronic media or are received by, or on behalf of, the investment company solely on electronic media or by electronic data transmission.

(3) Notwithstanding the provisions of paragraphs (a) through (e) of this section, any record, book or other document may be destroyed in accordance with a plan previously submitted to and approved by the Commission. A plan shall be deemed to have been approved by the Commission if notice to the contrary has not been received within 90 days after submission of the plan to the Commission.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a–30)

[27 FR 11994, Dec. 5, 1962, as amended at 38 FR 7797, Mar. 26, 1973; 51 FR 42209, Nov. 24, 1986; 53 FR 3880, Feb. 10, 1988]

§270.31a–3 Records prepared or maintained by other than person required to maintain and preserve them.

(a) If the records required to be maintained and preserved pursuant to the provisions of §§270.31a–1 and 270.31a–2 are prepared or maintained by others on behalf of the person required to

maintain and preserve such records, the person required to maintain and preserve such records shall obtain from such other person an agreement in writing to the effect that such records are the property of the person required to maintain and preserve such records and will be surrendered promptly on request.

(b) In cases where a bank or member of a national securities exchange acts as custodian, transfer agent, or dividend disbursing agent, compliance with this section shall be considered to have been met if such bank or exchange member agrees in writing to make any records relating to such service available upon request and to preserve for the periods prescribed in § 270.31a–2 any such records as are required to be maintained by § 270.31a–1.

(Sec. 31, 54 Stat. 838; 15 U.S.C. 80a–30)
[27 FR 11994, Dec. 5, 1962]

§ 270.32a–1 Exemption of certain companies from affiliation provisions of section 32(a).

A registered investment company shall be exempt from the provisions of paragraph (1) of section 32(a) of the Act (54 Stat. 838; 15 U.S.C. 80a–31), insofar as said paragraph requires that independent public accounts for such company be selected by a majority of certain members of the board of directors, if:

(a) Such company meets the conditions of paragraphs (1) to (8), inclusive, of section 10(d) of the Act (54 Stat. 807; 15 U.S.C. 80a–10); and

(b) Such accountants are selected by a majority of all the members of the board of directors.

[Rule N–32A–1, 6 FR 6631, Dec. 23, 1941]

§ 270.32a–2 Exemption for initial period from vote of security holders on independent public accountant for certain registered separate accounts.

(a) A registered separate account shall be exempt from the requirement under paragraph (2) of section 32(a) of the Act that selection of an independent public accountant shall have been submitted for ratification or rejection at the next succeeding annual meeting of security owners, subject to the following conditions:

(1) Such registered separate account qualifies for exemption from section 14(a) of the Act pursuant to § 270.14a–2, or is exempt therefrom by order of the Commission upon application; and

(2) The selection of such accountant shall be submitted for ratification or rejection to variable annuity contract owners at their first meeting after the effective date of the registration statement under the Securities Act of 1933, as amended (15 U.S.C. 77a et seq.), relating to contracts participating in such account: *Provided,* That such meeting shall take place within 1 year after such effective date, unless the time for the holding of such meeting shall be extended by the Commission upon written request showing good cause therefor.

(Sec. 6, 54 Stat. 800; 15 U.S.C. 80a–6)
[34 FR 12696, Aug. 5, 1969]

§ 270.32a–3 Exemption from provision of section 32(a)(1) regarding the time period during which a registered management investment company must select an independent public accountant.

(a) A registered management investment company (''company'') organized in a jurisdiction that does not require it to hold regular annual meetings of its stockholders, and which does not hold a regular annual stockholders' meeting in a given fiscal year, shall be exempt in that fiscal year from the requirement of section 32(a)(1) of the Act (15 U.S.C. 80a–31(a)(1)) that the independent public accountant (''accountant'') be selected at a board of directors meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year, *provided,* that such company is either:

(1) In a set of investment companies as defined in paragraph (b) of this section, if not all the members of such set have an identical fiscal year end and if such company selects an accountant at a board of directors meeting held within 90 days before or after the beginning of that fiscal year; or

(2) Not in a set of investment companies, or is in a set, each of whose members has the same fiscal year end, and

if such company selects an accountant at a board of directors meeting held within 30 days before or 90 days after the beginning of that fiscal year.

(b) For purposes of this rule, ''set of investment companies'' means any two or more registered management investment companies that hold themselves out to investors as related companies for purposes of investment and investor services, and

(1) That have a common investment adviser or principal underwriter, or

(2) If the investment adviser or principal underwriter of one of the companies is an affiliated person as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)) of the investment adviser or principal underwriter of each of the other companies.

[54 FR 31332, July 28, 1989]

§ 270.34b–1 Sales literature deemed to be misleading.

Any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act [15 U.S.C. 80a–24(b)] (''sales literature'') shall have omitted to state a fact necessary in order to make the statements made therein not materially misleading unless the sales literature includes the information specified in paragraphs (a) and (b) of this section.

(a) Sales literature for a money market fund shall contain the information required by paragraph (a)(7) of § 230.482 of this chapter;

(b)(1) Except as provided in paragraph (b)(3) of this section:

(i) In any sales literature that contains performance data for an investment company, include the disclosure required by paragraph (a)(6) of § 230.482 of this chapter.

(ii) In any sales literature for a money market fund:

(A) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the money market fund with a quotation of current yield specified by paragraph (d)(1)(i) of § 230.482 of this chapter;

(B) Accompany any quotation of the money market fund's tax equivalent yield or tax equivalent effective yield with a quotation of current yield as specified in § 230.482(d)(1)(iii) of this chapter; and

(C) Accompany any quotation of the money market fund's total return with a quotation of the money market fund's current yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter. Place the quotations of total return and current yield next to each other, in the same size print, and if there is a material difference between the quoted total return and the quoted current yield, include a statement that the yield quotation more closely reflects the current earnings of the money market fund than the total return quotation.

(iii) In any sales literature for an investment company other than a money market fund that contains performance data:

(A) Include the total return information required by paragraph (e)(3) of § 230.482 of this chapter;

(B) Accompany any quotation of yield or similar quotation purporting to demonstrate the income earned or distributions made by the company with a quotation of current yield specified by paragraph (e)(1) of § 230.482 of this chapter; and

(C) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the company with a quotation of tax equivalent yield specified in paragraph (e)(2) and current yield specified by paragraph (e)(1) of § 230.482 of this chapter.

(2) Any performance data included in sales literature under paragraphs (b)(1)(ii) or (iii) of this section must meet the currentness requirements of paragraph (f) of § 230.482 of this chapter.

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a–29), containing performance data for a period commencing no earlier than the first day of the period covered by the report, nor shall the requirements of paragraphs (e)(3)(ii) and (f) of § 230.482 of this chapter apply to any

such periodic report containing any other performance data.

NOTE: Sales literature (except that of a money market fund) containing a quotation of yield or tax equivalent yield must also contain the total return information. In the case of sales literature, the currentness provisions apply from the date of distribution and not the date of submission for publication.

[58 FR 19055, Apr. 12, 1993; 58 FR 21927, Apr. 26, 1993, as amended at 62 FR 64986, Dec. 9, 1997; 63 FR 13987, Mar. 23, 1998]

EFFECTIVE DATE NOTE: At 63 FR 13987, Mar. 23, 1998, § 270.34b–1 was amended by revising paragraph (b)(1)(ii)(B), effective June 1, 1998. For the convenience of the user, the superseded text is set forth as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) * * *

(ii) * * *

(B) Accompany any quotation of tax equivalent yield or other similar quotation purporting to demonstrate the tax equivalent yield earned or distributions made by the money market fund with a quotation of currency yield specified in paragraph (d)(1)(i) of § 230.482 of this chapter; and

* * * * *

§ 270.45a–1 Confidential treatment of names and addresses of dealers of registered investment company securities.

(a) Exhibits calling for the names and addresses of dealers to or through whom principal underwriters of registered investment companies are currently offering securities and which are required to be furnished with registration statements filed pursuant to section 8(b) of the Act (54 Stat. 804; 15 U.S.C. 80a–8), or periodic reports filed pursuant to section 30(a) or section 30(b)(1) of the Act (54 Stat. 836; 15 U.S.C. 80a–30), shall be the subject of confidential treatment and shall not be made available to the public, except that the Commission may by order make such exhibits available to the public if, after appropriate notice and opportunity for hearing, it finds that public disclosure of such material is necessary or appropriate in the public interest or for the protection of investors.

(b) The exhibits referred to in paragraph (a) of this section shall be filed in quadruplicate with the Commission at the time the registration statement or periodic report is filed. Such exhibits shall be enclosed in a separate envelope marked ''Confidential Treatment'' and addressed to the Chairman, Securities and Executive Commission, Washington, DC. Confidential treatment requests shall be submitted in paper only, whether or not the registrant is required to file in electronic format.

[Rule N–45A–1, 7 FR 197, Jan. 10, 1942, as amended at 20 FR 7036, Sept. 20, 1955; 58 FR 14860, Mar. 18, 1993]

§ 270.57b–1 Exemption for downstream affiliates of business development companies.

Notwithstanding subsection (b)(2) of section 57 of the Act, the provisions of subsection (a) of that section shall not apply to any person (a) solely because that person is directly or indirectly controlled by a business development company or (b) solely because that person is, within the meaning of section 2(a)(3) (C) or (D) of the Act [15 U.S.C. 80a–2(a)(3) (C) or (D)], an affiliated person of a person described in (a) of this section.

[46 FR 16674, Mar. 13, 1981]

§ 270.60a–1 Exemption for certain business development companies.

Section 12(d)(1) (A) and (C) of the Act shall not apply to the acquisition by a business development company of the securities of a small business investment company licensed to do business under the Small Business Investment Act of 1958 which is operated as a wholly-owned subsidiary of the business development company.

[46 FR 16674, Mar. 13, 1981]

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission respecting distinctions between the reporting requirements of section 16(a) of the Securities Exchange Act of 1934 and section 30(f) of the Investment Company Act of 1940.	12	Nov. 16, 1940	11 FR 10991.
Letter of General Counsel relating to sections(b) and 26(c)	69	Feb. 19, 1941	Do.
Letter of the Director of the Investment Company Division relating to section 19 and Rule N–19–1 (17 CFR, 270.19a–1).	71	Feb. 21, 1941	Do.
Statement by the Commission relating to section 23(c)(3) and Rule N–23C–1 (17 CFR, 270.23c–1).	78	Mar. 4, 1941	Do.
Letter of General Counsel relating to section 22(d)	87	Mar. 14, 1941	11 FR 10992.
Letter of General Counsel relating to section 22(d)	89	Mar. 13, 1941	Do.
Letter of General Counsel relating to section 24(b)	150	June 20, 1941	Do.
Opinion of General Counsel relating to sections 8(b)(1) and 13(a)	167	July 23, 1941	11 FR 10993.
Letter of General Counsel relating to section 10(a)	214	Sept. 15, 1941	11 FR 10994.
Extract from letter of the Director of the Corporation Finance Division relating to sections 20 and 34(b).	446	Feb. 5, 1943	Do.
Excerpts from letters of the Director of the Corporation Finance Division relating to section 14 and Schedule 14A under Regulation X–14.	448	Feb. 17, 1943	Do.
Letter of the Director of the Corporation Finance Division relating to section 20 of the Investment Company Act of 1940 and to Rule X–14A–7 under the Securities Exchange Act of 1934 (17 CFR, 240.14a–7).	735	Jan. 3, 1945	11 FR 10995.
Statement of the Commission on the offering of common stock to the public at a per share price substantially in excess of the net asset value of the stock.	3187	Feb. 6, 1961	26 FR 1275.
Opinion of the Commission that ''Equity Funding,'' ''Secured Funding,'' or ''Life Funding'' constitutes an investment contract and when publicly offered is required to be registered under the Securities Act of 1933.	3480	May 22, 1962	27 FR 5190.
Statement of the Commission advising all registered investment companies to divest themselves of interest and securities acquired in contravention of the provisions of section 12(d)(3) of the Investment Company Act of 1940 within a reasonable period of time.	3542	Sept. 21, 1962	27 FR 9652.
Statement of the Commission advising any closed-end investment company contemplating repurchase of its own shares to consult with the Division of Corporate re nature of disclosure to be made to security holders.	3548	Oct. 3, 1962	27 FR 9987.
Opinion and statement of the Commission in regard to proper reporting of deferred income taxes arising from installment sales.	4426	Dec. 7, 1965	30 FR 15420.
Statement of the Commission to clarify the meaning of ''beneficial ownership of securities'' as relates to beneficial ownership of securities held by family members.	4483	Jan. 19, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	4516	Feb. 14, 1966	31 FR 3175.
Staff interpretative and no-action positions relating to property rights of an investment company and its investment adviser in the company's name and to the status of arrangement funding qualified Self-Employed Individual's Retirement Plans with life insurance contracts and investment company securities. The staff's comments do not purport to be an official expression of the Commission.	5510	Oct. 8, 1968	33 FR 15650.
Statement of the Director of the Commission's Division of Corporate Regulation re the filing of supplements to investment company prospectuses under the Securities Act of 1933 as a result of changes in stock exchange rules effective December 5, 1968 relating to ''customer-directed give ups''.	5554	Dec. 3, 1968	33 FR 18576.
Interpretative positions of the Division of Corporate Regulation on questions relating to Rule 22c–1 which was adopted Oct. 16, 1968; text of questions and answers.	5569	Dec. 27, 1968	34 FR 382.
Statement of the Commission setting forth emergency procedures adopted by the Division of Corporate Regulation to expedite processing of registration statements, amendments, and proxy statements.	5632	Mar. 12, 1969	34 FR 5547.
Letter by Philip A. Loomis, Jr., General Counsel for the Commission, explaining obligations of mutual fund managements and brokers with respect to commissions on portfolio brokerage of mutual funds.	.....	Nov. 10, 1969	34 FR 18543.
Commission's statement discussing restricted securities	5847	Oct. 21, 1969	35 FR 19989.
Commission's statement that disclosure requirements set forth in release of October 21, 1969 will be applied to lists of portfolio securities set forth not only in registration statements but also in reports to the Commission and to shareholders, in sales literature and in proxy statements.	6026	Apr. 13, 1970	35 FR 19991.
Publication of the Commission's guidelines re applicability of Federal securities law to offer and sale outside the U.S. of shares of registered open-end investment companies.	6082	June 23, 1970	36 FR 12103.

PART 271—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT COMPANY ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission reminding reporting companies of obligation re Commission's rules to file reports on a timely basis.	6209	Oct. 15, 1970	35 FR 16733.
Commission's views relating to important questions re the accounting by registered investment companies for investment securities in their financial statements and in the periodic computations of net asset value for the purpose of pricing their shares.	6295	Dec. 23, 1970	35 FR 19986.
Publication of the Commission's procedure to be followed if requests are to be met for no action or interpretative letters and responses thereto to be made available for public use.	6330	Jan. 25, 1971	36 FR 2600.
First in a series of statements by the Commission alerting registered companies, their counsel, and other interested persons re certain changes made in the Investment Company Act of 1940 by Pub. L. 91–547 (1970 Act) such as approval of investment advisory contracts which should be considered in connection with 1971 annual meetings.	6336	Feb. 2, 1971	36 FR 2867.
The Commission's views on the purchase, redemption, or repurchase of fund shares.	6366	Mar. 5, 1971	36 FR 4978.
Second in a series of statements by the Commission calling attention to some important provisions of Pub. L. 91–547 (1970 Act) which in this case require companies that issue periodic payment plans and face-amount certificates to take certain actions.	6392	Mar. 19, 1971	36 FR 5840.
Third in a series of statements by the Commission on problems arising under Pub. L. 91–547 (1970 Act) re registration and regulation of insurance company separate accounts used as funding vehicles for certain employee stock bonus, pension and profit sharing plans.	6430	Apr. 2, 1971	36 FR 7897.
Publication by the Commission of certain important amendments relating to the repeal and modification of certain exemptions by the Investment Company Amendments Act of 1970 (Pub. L. 91–547) and to the pyramiding of investment companies and the regulation of fund holding companies under the same act.	6440	Apr. 6, 1971	36 FR 8729.
Commission's statement on amendments contained in Pub. L. 91–547 concerning policies of a registered investment company; ineligibility of certain persons to serve as employees of a registered company; legal standards for investment company reorganizations of unit investment trusts; and filing of certain legal documents with the Commission.	6506	May 5, 1971	36 FR 9130.
Commission's interpretative position relating to judiciary duty of Directors of a Registered Investment Company.	6480	May 10, 1971	36 FR 9627.
Commission's issuance of guidelines for additional disclosures for contractual plan prospectuses concerning new refund and election provisions of the Investment Company Amendments Act of 1970 (Pub. L. 91–547).	6568	June 11, 1971	36 FR 12164.
Commission's guidelines relating to checking accounts established by investment companies having bank custodians.	6863	Jan. 29, 1972	37 FR 1474.
Commission endorses the establishment by all publicly held companies of audit committees composed of outside directors.	7091	Apr. 5, 1972	37 FR 6850.
Commission's statement of factors to be considered in connection with investment company advisory contracts containing incentive arrangements.	7113	Apr. 19, 1972	37 FR 7690.
Applicability of Commission's policy statement on the future structure of securities markets to selection of brokers and payment of commissions by institutional managers.	7170	May 18, 1972	37 FR 9988.
Commission's statement and policy on misleading pro rata stock distributions to shareholders.	7204	June 9, 1972	37 FR 11559.
Commission's guidelines prepared by the Division of Corporate Regulation for use in preparing and filing registration statements for open-end and closed-end management investment companies on Forms S–4 and S–5.	7220	June 9, 1972	37 FR 12790.
Guidelines prepared by the Commission's Division of Corporate Regulation for use in preparation and filing of registration statements for both open-end and closed-end management investment companies on Form N–8B–1.	7221	June 9, 1972	37 FR 12790.
Commission's guidelines on independence of certifying accountants; example cases and Commission's conclusions.	7264	July 5, 1972	37 FR 14294.
Commission's decisions on advisory committee recommendations regarding commencement of enforcement proceedings and termination of staff investigations.	7390	Mar. 1, 1973	38 FR 5457.
Commission's interpretation of risk-sharing in pooling-of-interest accounting ..	7395	Oct. 5, 1972	37 FR 20937.
Amendment of previous interpretation (AS–130) of risk-sharing test in pooling-of-interest accounting.	7606	Jan. 18, 1973	38 FR 1734.
Commission expresses concern with failure of issuers to timely file periodic and current reports.	7856	July 10, 1973	38 FR 18366.
Commission's conclusion as to certain problems relating to the effect of treasury stock transaction on accounting for business combinations.	7955	Sept. 10, 1973	38 FR 24635.

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Commission request for comments on Accounting Series Release No. 146 ...	8025	Oct. 17, 1973	38 FR 28819.
Commission's statement on procedure to be followed upon issuance of a notice pursuant to Rule 0–5.	8236	Mar. 7, 1974	39 FR 8916.
Commission's statement of policy and interpretations	7955A	Apr. 12, 1974	39 FR 14588.
Commission's views on business combinations involving open-end investment companies.	8410	July 3, 1974	39 FR 26719.
Commission's guidelines for filings related to extractive reserves and natural gas supplies.	8433	July 22, 1974	39 FR 28520.
Commission's statement on two-tier real estate investment companies	8456	Sept. 5, 1974	39 FR 32129.
Division of Investment Management Regulation Interpretive Position Relating to Rule 22c–1.	8752	Apr. 24, 1975	40 FR 17986.
Commission's guidelines in Accounting Series Release No. 148	8819	June 13, 1975	40 FR 27441.
Commission's guidelines for filing of application for Order permitting registration of foreign investment companies.	8959	Oct. 2, 1975	40 FR 45424.
Commission's statements of investment policies of money market funds relating to industry concentration.	9011	Oct. 30, 1975	40 FR 54241.
Procedures for filing and processing registration statements and post-effective amendments filed by registered investment companies.	9426	Sept. 13, 1976	41 FR 39012. 41 FR 46851.
Valuation of debt instruments by money market funds and certain other open end investment companies.	9786	May 31, 1977	42 FR 28999.
Rescission of certain accounting series releases	9817	June 15, 1977	42 FR 33282.
Withdrawal of undertaking required of investment companies	9889	Aug. 12, 1977	42 FR 42196.
Disclosure of management remuneration	9900	Aug. 18, 1977	42 FR 43058; 42 FR 46047.
Bearing of distribution expenses by mutual funds	9915	Aug. 31, 1977	42 FR 44810.
Division of investment management interpretative position relating to rights offerings by closed-end investment companies below net asset value.	9932	Sept. 15, 1977	42 FR 47553.
Disclosure of management remuneration	10112	Feb. 6, 1978	43 FR 6060.
Sales load variation in special offerings to permit mutual fund shareholders to purchase additional shares.	10419	Oct. 4, 1978	43 FR 47492; 43 FR 52022.
Disclosure of management remuneration	10597	Feb. 22, 1979	44 FR 16368.
General statement of policy regarding exemptive provisions relating to annuity and insurance contracts.	10653	Apr. 5, 1979	44 FR 21629.
General statement of policy regarding securities trading practices of registered investment companies.	10666	Apr. 18, 1979	44 FR 25128.
Shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.	10860	Sept. 6, 1979	44 FR 53426.
Statement of staff position on pooled income funds	11016	Jan. 10, 1980	45 FR 3258.
Effect of credit controls on the operations of certain registered investment companies including money market refunds.	11088	Mar. 14, 1980	45 FR 17954.
Effective of the termination of credit controls on the operations of certain registered investment companies including money market funds.	11263	July 21, 1980	45 FR 49917.
Indemnification by investment companies	11330	Sept. 4, 1980	45 FR 62423; 45 FR 67082.
Issuance of ''Retail Repurchase Agreements'' by banks and savings and loan associations.	11958	Sept. 25, 1981	46 FR 48637.
Effect of revenue ruling 81–225 on issuers and holders of certain variable annuity contracts.	11960	Sept. 28, 1981	46 FR 48640.
Disclosure of management remuneration	12070	Dec. 3, 1981	46 FR 60421.
Statement of staff position on adoption of permanent notification forms for business development companies.	12274	Mar. 5, 1982	47 FR 10518.
Statement of staff position regarding securities trading practices of registered investment companies.	13005	Feb. 2, 1983	48 FR 5894.
Public statements by corporate representatives	13718	Jan. 13, 1984	49 FR 2469.
Statement of position of Commission's Division of Investment Management ..	14492	Apr. 30, 1985	50 FR 19339.
Statement of the Commission Regarding Disclosure Obligations of Companies Affected by the Government's Defense Contract Procurement Inquiry and Related Issues.	16509	Aug. 1, 1988	53 FR 29228.
Management's discussion and analysis of financial condition and results of operations; certain investment company disclosure.	16961	May 18, 1989	54 FR 22427.
Status under the Investment Company Act of 1940 of United States Branches or Agencies of Foreign Banks Issuing Securities;Interpretive Release.	17681	Aug. 17, 1990	55 FR 34551.
Ownership reports and trading by officers, directors and principal security holders.	18114	Apr. 26, 1991	56 FR 19928.
Use of electronic media for delivery purposes	21399	Oct. 6, 1995	60 FR 53467.
Use of electronic media for delivery purposes	21945	May 9, 1996	60 FR 24651.

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Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore.	23071	March 23, 1998	63 FR 14813

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Sec.

274.0–1 Availability of forms.

Subpart A—Registration Statements

274.5 Form N–5, for registration statement of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940.
274.10 Form N–8A, for notification of registration.
274.11 Form N–1, registration statement of open end management investment companies.
274.11A Form N–1A, registration statement of open-end management investment companies.
274.11a–1 Form N–2, registration statement of closed end management investment companies.
274.11b Form N–3, registration statement of separate accounts organized as management investment companies.
274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.
274.12 Form N–8B–2, registration statement of unit investment trusts which are currently issuing securities.
274.13 Form N–8B–3, registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates.
274.14 Form N–8B–4, registration statements of face-amount certificate companies.
274.15 Form N–6F, notice of intent to elect to be subject to sections 55 through 65 of the Investment Company Act of 1940.
274.24 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities.
274.51 Form N–18F–1, for notification of election pursuant to §270.18f–1 of this chapter.
274.53 Form N–54A, notification of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed pursuant to section 54(a) of the Act.
274.54 Form N–54C, notification of withdrawal of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed pursuant to section 54(c) of the Investment Company Act of 1940.

Subpart B—Forms for Reports

274.101 Form N–SAR, semi-annual report of registered investment companies.
274.102—274.126 [Reserved]
274.127d–1 Form N–27D–1, accounting of segregated trust account.
274.127e–1 Form N–27E–1, notice to periodic payment plan certificate holders of 18-month surrender rights with respect to periodic payment plan certificates.
274.127f–1 Form N–27F–1, notice of periodic payment plan certificate holders of 45-day withdrawal right with respect to periodic payment plan certificates.
274.200 Form N–17D–1, report filed by small business investment company (SBIC) registered under the Investment Company Act of 1940 and an affiliated bank, with respect to investments by the SBIC and the bank, submitted pursuant to paragraph (d)(3) of §270.17d–1 of this chapter.

Subpart C—Forms for Other Statements

274.201 Form N–23C–1, statement by registered closed-end investment company with respect to purchases of its own securities pursuant to Rule 23c–1 during the last calendar month.
274.202 Form 3, initial statement of beneficial ownership of securities.
274.203 Form 4, statement of changes in beneficial ownership of securities.
274.218 Form N–8F, for application by certain registered investment companies applying for orders pursuant to section 8(f) of the Investment Company Act of 1940 declaring that such a company has ceased to be an investment company.
274.219 Form N–17f–1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the custody of a member of a national securities exchange, filed pursuant to rule 17f–1.
274.220 Form N–17f–2, cover page for each

certificate of accounting of securities and similar investments in the custody of a registered management investment company, filed pursuant to rule 17f–2.
274.221 Form N–23c–3, Notification of repurchase offer.

Subpart D—Forms for Exemptions

274.301 Notification of claim of exemption pursuant to Rule 6e–2 or Rule 6e–3(T) under the Investment Company Act.
274.302 Form N–27I–1, notice of right of withdrawal and refund for variable life insurance contractholders required pursuant to Rule 6e–2 (§ 270.6e–2 of this chapter).
274.303 Form N–27I–2, notice of withdrawal right and statement of charges for variable life insurance contractholders required pursuant to Rule 6e–2 (§ 270.6e–2 of this chapter).

Subpart E—Forms for Electronic Filing

274.401 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.
274.402 Form ID, uniform application for access codes to file on EDGAR.
274.403 Form SE, form for submission of paper format exhibits by electronic filers.
274.404 Form TH—Notification of reliance on temporary hardship exemption.

AUTHORITY: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

SOURCE: 33 FR 19003, Dec. 20, 1968, unless otherwise noted.

§ 274.0–1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Investment Company Act of 1940.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See § 200.11 of this chapter for the addresses of SEC regional and district offices)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5946, Feb. 9, 1994]

Subpart A—Registration Statements

§ 274.5 Form N–5, for registration statement of small business investment company under the Securities Act of 1933 and the Investment Company Act of 1940.

This form shall be used for the registration statement under both sections 6 and 7 of the Securities Act of 1933 (15 U.S.C. 77f, 77g) and section 8(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–8(b)), by a small business investment company which is licensed as such under the Small Business Investment Act of 1958 or which has received preliminary approval of the Small Business Administration and has been notified by that Administration that it may submit a license application.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–5, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.10 Form N–8A, for notification of registration.

This form shall be used as the notification of registration filed with the Commission pursuant to section 8(a) of the Investment Company Act of 1940.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–8A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.11 Form N–1, registration statement of open-end management investment companies.

Form N–1 shall be used as the registration statement to be filed pursuant to Section 8(b) of the Investment Company Act of 1940 by open-end management investment companies that are separate accounts of insurance companies. This form shall also be used for registration under the Securities Act of 1933 of the securities of all such companies. This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[49 FR 32060, Aug. 10, 1984, as amended at 59 FR 52701, Oct. 19, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–1, see the List of

CFR Sections Affected in the Finding Aids section of this volume.

§ 274.11A Form N–1A, registration statement of open-end management investment companies.

Form N–1A shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by open-end management investment companies other than separate accounts of insurance companies or companies which issue periodic payment plan certificates or which are sponsors or depositors of companies issuing such certificates. This form shall be used for registration under the Securities Act of 1933 of the securities of all open-end management investment companies other than registered separate accounts of insurance companies. This form is not applicable for small business investment companies which register pursuant to § 293.24 and § 274.5 of this chapter.

[48 FR 37940, Aug. 22, 1983, as amended at 59 FR 52701, Oct. 19, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–1A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.11a–1 Form N–2, registration statement of closed end management investment companies.

This form shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by closed end management investment companies other than companies which isssue periodic payment plan certificates or which are sponsors or depositors of companies issuing such certificates. This form also shall be used for registration under the Securities Act of 1933 of the securities of all closed end management investment companies. This form is not applicable for small business investment companies which register pursuant to §§ 239.24 and 274.5 of this chapter.

[43 FR 39553, Sept. 5, 1978, as amended at 59 FR 52701, Oct. 19, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.

Form N–3 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as management investment companies. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17a of this chapter).

[50 FR 26161, June 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.

Form N–4 shall be used as the registration statement to be filed pursuant to section 8(b) of the Investment Company Act of 1940 by separate accounts that offer variable annuity contracts to register as unit investment trusts. This form shall also be used for registration under the Securities Act of 1933 of the securities of such separate accounts (§ 239.17b of this chapter).

[50 FR 26161, June 25, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.12 Form N–8B–2, registration statement of unit investment trusts which are currently issuing securities.

(a) This form shall be used as the registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unit investment trusts which are currently issuing securities, including unit investment trusts which are issuers of periodic payment plan certificates.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–8B–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.13 Form N–8B–3, registration statement of unincorporated management investment companies currently issuing periodic payment plan certificates.

(a) This form shall be used for registration statement to be filed, pursuant to section 8(b) of the Investment Company Act of 1940, by unincorporated management investment companies currently issuing periodic payment plan certificates.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–8B–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.14 Form N–8B–4, registration statements of face-amount certificate companies.

This form shall be used for registration statements of face-amount certificate companies registered under the Investment Company Act of 1940.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–8B–4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.15 Form N–6F, notice of intent to elect to be subject to sections 55 through 65 of the Investment Company Act of 1940.

This form shall be used by a company that would be excluded from the definition of an investment company by section 3(c)(1) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(1)], except that at the time of filing it proposes to make a public offering of its securities as a business development company, to notify the Securities and Exchange Commission that the company intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 55 through 65 of the Investment Company Act of 1940 [15 U.S.C. 80a–54 through 64].

The text of the form is set forth in the appendix to this release.[1]

[47 FR 10520, Mar. 11, 1982]

[1] A copy of Form N–6F accompanied this release as originally filed in the Office of the Federal Register.

§ 274.24 Form 24F–2, annual filing of securities sold pursuant to registration of certain investment company securities.

Form 24F–2 shall be used as the annual report filed by face amount certificate companies, open-end management companies, and unit investment trusts pursuant to § 270.24f–2 of this chapter for reporting securities sold during the fiscal year.

[62 FR 47940, Sept. 12, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 24F–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.51 Form N–18F–1, for notification of election pursuant to § 270.18f–1 of this chapter.

(a) This form shall be filed with the Commission in triplicate as the notification of election pursuant to § 270.18f–1 of this chapter by a registered open-end investment company to commit itself to pay in cash all redemptions requested by a shareholder of record as provided in said section.

[36 FR 11920, June 23, 1971 as amended at 36 FR 20504, Oct. 23, 1971; 39 FR 36003, Oct. 7, 1974; 59 FR 52701, Oct. 19, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–18F–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.53 Form N–54A, notification of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed pursuant to section 54(a) of the Act.

This form shall be used pursuant to section 54(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–53(a)] by a company of the type defined in sections 2(a)(48) (A) and (B) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48) (A) and (B) to notify the Securities and Exchange Commission of its election to be subject to the provisions of sections 55 through 65 of said Act [15 U.S.C. 80a–54 through 64].

The text of the form is set forth in the appendix to this release.[2]

[47 FR 10520, Mar. 11, 1982]

[2] A copy of Form N–54A accompanied this release as originally filed in the Office of the Federal Register.

§ 274.54 Form N–54C, notification of withdrawal of election to be subject to sections 55 through 65 of the Investment Company Act of 1940 filed pursuant to section 54(c) of the Investment Company Act of 1940.

This form shall be used pursuant to section 54(c) of the Investment Company Act of 1940 [15 U.S.C. 80a–53(c)] by a business development company to file a notice of withdrawal of its election under section 54(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–53(a)].

The text of the form is set forth in the appendix to this release.[3]

[47 FR 10520, Mar. 11, 1982]

Subpart B—Forms for Reports

§ 274.101 Form N–SAR, semi-annual report of registered investment companies.

This form shall be used by registered investment companies for semi-annual or annual reports to be filed pursuant to rule 30a–1 (17 CFR 270.30a–1) or 30b1–1 (17 CFR 270.30b1–1) in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 that every registered investment company must file annually with the Commission such information, documents and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder (same as § 249.330 of this chapter).

[50 FR 1450, Jan. 11, 1985, as amended at 54 FR 10322, Mar. 13, 1989; 59 FR 52701, Oct. 19, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–SAR, see the List of CFR Sections Affected in the Finding Aids section of this volume.

[3] A copy of Form N–54C accompanied this release as originally filed in the Office of the Federal Register.

§§ 274.102—274.126 [Reserved]

§ 274.127d–1 Form N–27D–1 accounting of segregated trust account.

This form shall be completed and filed with the Commission as a report required by § 270.27d–1 of this chapter by each depositor or principal underwriter, within 15 days after the close of each quarter during the first 2 years after the effective date of § 270.27d–1 of this chapter, and thereafter this form shall be filed annually on or before January 31 of the following calendar year. Each investment company for which a segregated trust account is established shall be listed on the cover page. Two copies of the form, plus an additional copy for each registered investment company covered, shall be filed and the filing shall be signed by an authorized representative of the depositor or underwriter.

[36 FR 24056, Dec. 18, 1971]

§ 274.127e–1 Form N–27E–1, notice to periodic payment plan certificate holders of 18-month surrender rights with respect to periodic payment plan certificates.

This form is to be reproduced by the issuer or any depositor of or underwriter for such issuer and will not be available at the Securities and Exchange Commission. For required text of the form see paragraph (f) of § 270.27e–1 of this chapter.

[36 FR 13139, July 15, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–27E–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.127f–1 Form N–27F–1, notice to periodic payment plan certificate holders of 45-day withdrawal right with respect to periodic payment plan certificates.

This form is to be reproduced by the issuer or any depositor of or underwriter for such issuer and will not be available at the Securities and Exchange Commission. For required text

of the form see paragraph (d) of §270.27f–1 of this chapter.

[45 FR 17958, Mar. 20, 1980]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–27F–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§274.200 Form N–17D–1, report filed by small business investment company (SBIC) registered under the Investment Company Act of 1940 and an affiliated bank, with respect to investments by the SBIC and the bank, submitted pursuant to paragraph (d)(3) of §270.17d–1 of this chapter.

This form shall be filed pursuant to Rule 17d–2 (§270.17d–2 of this chapter) as the report required, under subparagraph (d)(3) of Rule 17d–1 (§270.17d–1(d)(3) of this chapter), to be filed, either jointly or separately, by a small business investment company (SBIC) licensed as such under the Small Business Investment Act of 1958, and by a bank which is an affiliated person of either the SBIC or of an affiliated person of the SBIC, with respect to investments in a small business concern by the SBIC and the bank.

Subpart C—Forms for Other Statements

§274.201 Form N–23C–1, statement by registered closed-end investment company with respect to purchases of its own securities pursuant to Rule 23c–1 during the last calendar month.

This form shall be filed, pursuant to subparagraph (a)(11) of Rule 23c–1 (§270.23c–1(a)(11) of this chapter) and section 23(c) of the Investment Company Act of 1940, by a registered closed-end investment company for reporting monthly purchases of securities of which it is the issuer, on or before the tenth day of the calendar month following the month in which the purchase occurs; but no report need be filed for any month in which there have been no such purchases.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–23C–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§274.202 Form 3, initial statement of beneficial ownership of securities.

This form shall be filed pursuant to Rule 30f–1 (§270.30f–1 of this chapter) for initial statements of beneficial ownership of securities required to be filed pursuant to section 30(f) of the Investment Company Act of 1940. (Same as §249.103 of this chapter.)

§274.203 Form 4, statement of changes in beneficial ownership of securities.

This form shall be filed pursuant to Rule 30f–1 (§270.30f–1 of this chapter) for statements of changes in beneficial ownership of securities required to be filed pursuant to section 30(f) of the Investment Company Act of 1940. (Same as §249.104 of this chapter.)

§274.218 Form N–8F, for application by certain registered investment companies applying for orders pursuant to section 8(f) of the Investment Company Act of 1940 declaring that such a company has ceased to be an investment company.

This form shall be used as the application for an order of the Commission pursuant to section 8(f) of the Act in cases where the applicant (a) has distributed substantially all of its assets to its shareholders, and has effected, or is in the process of effecting, a winding-up of its affairs; or (b) has never made a public offering of its securities, has not more than one hundred securityholders for the purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind; or (c) has (1) sold substantially all of its assets to another registered investment company, or (2) merged into or consolidated with another registered investment company.

The text of Form N–8F will be set forth in its entirety as an appendix to this release when published in the SEC Docket.[1] Copies of Form N–8F will also be available from: Publications Section, Securities and Exchange Commission, Washington, DC 20549.

[1] A copy of Form N–8F accompanied this release as originally filed in the Office of the Federal Register.

[43 FR 21665, May 19, 1978]

§ 274.219 Form N–17f–1, cover page for each certificate of accounting of securities and similar investments of a management investment company in the custody of a member of a national securities exchange, filed pursuant to rule 17f–1.

[54 FR 32049, Aug. 4, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–17f–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.220 Form N–17f–2, cover page for each certificate of accounting of securities and similar investments in the custody of a registered management investment company, filed pursuant to rule 17f–2.

[54 FR 32049, Aug. 4, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–17f–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.221 Form N–23c–3, Notification of repurchase offer.

Form N–23c–3 shall be filed with copies of notifications of repurchase offers submitted to the Commission as required under rule 23c–3 (§ 270.23c–3 of this chapter).

[58 FR 19345, Apr. 14, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–23c–3, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart D—Forms for Exemptions

AUTHORITY: Secs. 6(c), (15 U.S.C. 80a–6(c)), 6(e), (15 U.S.C. 80a–6(e)), 38(a), 15 U.S.C. 80a–37(a) of the Act.

§ 274.301 Notification of claim of exemption pursuant to Rule 6e–2 or Rule 6e–3(T) under the Investment Company Act.

This form shall be filed with the Commission as required by § 270.6e–2 or § 270.6e–3(T) of this chapter by each insurance company with respect to each separate account for which exemption is claimed pursuant to § 270.6e–2 or § 270.6e–3(T).

[49 FR 47228, Dec. 3, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–6EI–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.302 Form N–27I–1, notice of right of withdrawal and refund for variable life insurance contractholders required pursuant to Rule 6e–2 (§ 270.6e–2 of this chapter).

[41 FR 47032, Oct. 27, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–27I–1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.303 Form N–27I–2, notice of withdrawal right and statement of charges for variable life insurance contractholders required pursuant to Rule 6e–2 (§ 270.6e–2 of this chapter).

[41 FR 47032, Oct. 27, 1976]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form N–27I–2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

Subpart E—Forms for Electronic Filing

SOURCE: 50 FR 40485, Oct. 4, 1985, unless otherwise noted.

§ 274.401 Form ET, transmittal form for electronic format documents on magnetic tape or diskette to be filed on the EDGAR system.

This form shall accompany electronic filings submitted on magnetic tape or diskette under the EDGAR system.

[57 FR 18221, Apr. 29, 1992]

§ 274.402 Form ID, uniform application for access codes to file on EDGAR.

(a) Form ID is to be used by registrants, third party filers, or their agents for the purpose of requesting assignment of access codes to permit filing on EDGAR, as follows:

(1) Central Index Key (CIK)—uniquely identifies each filer, filing agent, and training agent.

(2) CIK Confirmation Code (CCC)—used in the header of a filing in conjunction with the CIK of the filer to ensure that the filing has been authorized by the filer.

(3) Password (PW)—allows a filer, filing agent or training agent to log on to the EDGAR system, submit filings, and change its CCC.

(4) Password Modification Authorization Code (PMAC)—allows a filer, filing agent or training agent to change its Password.

(b) Form ID also may be used for the purpose of requesting a reassignment of their CCC, PW and PMAC.

[57 FR 18221, Apr. 29, 1992]

§ 274.403 Form SE, form for submission of paper format exhibits by electronic filers.

This form shall be used by an electronic filer for the submission of any paper format document relating to an otherwise electronic filing, as provided in rule 311 of Regulation S–T (§ 232.311 of this chapter).

[58 FR 14861, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form SE, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 274.404 Form TH—Notification of reliance on temporary hardship exemption.

Form TH shall be filed by any electronic filer who submits to the Commission, pursuant to a temporary hardship exemption, a document in paper format that otherwise would be required to be submitted electronically, as prescribed by rule 201(a) of Regulation S–T (§ 232.201(a) of this chapter).

[58 FR 14861, Mar. 18, 1993]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form TH, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

Sec.

275.0–2 Consent to service of process to be furnished by non-resident investment advisers and by non-resident investment general partners or managing agents of investment advisers.
275.0–3 References to rules and regulations.
275.0–4 General requirements of papers and applications.
275.0–5 Procedure with respect to applications and other matters.
275.0–6 Incorporation by reference in applications.
275.0–7 Small entities for purposes of the Regulatory Flexibility Act.
275.202 (a)(1)–1 Certain transactions not deemed assignments.
275.203–1 Application for registration of investment adviser.
275.203–2 Withdrawal from registration.
275.203–3 [Reserved]
275.203 (b)(3)–1 Definition of ''client'' of an investment adviser.
274.203A–1 Eligibility for Commission registration.
275.203A–2 Exemptions from prohibition on Commission registration.
275.203A–3 Definitions.
275.203A–4 Investment advisers registered with a State securities commission.
275.203A–5 Transition rules.
275.204–1 Amendments to application for registration.
275.204–2 Books and records to be maintained by investment advisers.
275.204–3 Written disclosure statements.
275.205–1 Definition of ''investment performance'' of an investment company and ''investment record'' of an appropriate index of securities prices.
275.205–2 Definition of ''specified period'' over which the asset value of the company or fund under management is averaged.
275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for registered investment advisers.
275.206 (3)–1 Exemption of investment advisers registered as broker-dealers in connection with the provision of certain investment advisory services.
275.206 (3)–2 Agency cross transactions for advisory clients.
275.206 (4)–1 Advertisements by investment advisers.
275.206 (4)–2 Custody or possession of funds or securities of clients.
275.206 (4)–3 Cash payments for client solicitations.
275.206 (4)–4 Financial and disciplinary information that investment advisers must disclose to clients.
275.222–1 Definitions.
275.222–2 Definition of ''client'' for purposes of the national de mimimis standard.

AUTHORITY: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6A, 80b–11, unless otherwise noted.

Section 275.203A–1 is also issued under 15 U.S.C. 80b–3A.

Section 275.203A–2 is also issued under 15 U.S.C. 80b–3A.

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

§ 275.0–2 Consent to service of process to be furnished by non-resident investment advisers and by non-resident investment general partners or managing agents of investment advisers.

(a) Each non-resident investment adviser registered or applying for registration pursuant to section 203 of the Investment Advisers Act of 1940, each non-resident general partner of an investment adviser partnership which is registered or applying for registration, and each non-resident managing agent of any other unincorporated investment adviser 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, where the cause of action (i) accrues on or after the effective date of this section, (ii) 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 an investment adviser, and (iii) 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 non-resident investment adviser registered at the time this section becomes effective, and each non-resident general partner or managing agent of an unincorporated investment adviser registered at the time this section becomes effective, shall furnish such consent and power of attorney within 60 days after such date;

(2) Each investment adviser 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 investment adviser and by each general partner or managing agent thereof: *Provided, however*, That where an application for registration of an investment adviser is pending at the time this rule becomes effective such consents and powers of attorney shall be furnished within 30 days after this section becomes effective.

(3) Each investment adviser registered or applying for registration who or which becomes a non-resident investment adviser after the effective date of this section, and each general partner or managing agent, or an unincorporated investment adviser registered or applying for registration, who becomes a non-resident after the effective date of this section shall furnish such consent and 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 on 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 *investment adviser* shall have the meaning set out in section 202(a)(11) of the Investment Advisers Act of 1940.

(2) The term *managing agent* shall mean any person, including a trustee,

who directs or manages or who participates in the directing or managing of the affairs of any unincorporated organization or association which is not a partnership.

(3) The term *non-resident investment adviser* 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.

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

(Secs. 19, 23, 48 Stat. 85, as amended, 901, as amended, sec. 319, 53 Stat. 1173, sec. 38, 54 Stat. 841; 15 U.S.C. 77s, 78w, 77sss, 80a–37)
[19 FR 4300, July 14, 1954, as amended at 29 FR 16982, Dec. 11, 1964; 30 FR 4129, Mar. 30, 1965]

§ 275.0–3 References to rules and regulations.

The term *rules and regulations* refers to all rules and regulations adopted by the Commission pursuant to the Act, including the forms for registration and reports and the accompanying instructions thereto.
[30 FR 4129, Mar. 30, 1965]

§ 275.0–4 General requirements of papers and applications.

(a) *Filing of papers*. All papers required to be filed with the Commission shall, unless otherwise provided by the rules and regulations in this part, be delivered through the mails or otherwise to the Securities and Exchange Commission, Washington, DC 20549. Except as otherwise provided by the rules and regulations in this part, such papers shall be deemed to have been filed with the Securities and Exchange Commission on the date when they are actually received by it.

(b) *Formal specifications respecting applications*. Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed, and every amendment to such application, shall be filed in quintuplicate. One copy shall be signed by the applicant, but the other four copies may have facsimile or typed signatures. Such applications shall be on paper no larger than 8½ x 11 inches in size. To the extent that the reduction of larger documents would render them illegible, those documents may be filed on paper larger than 8½ x 11 inches in size. The left margin should be at least 1½ inches wide and, if the application is bound, it should be bound on the left side. All typewritten or printed matter (including deficits in financial statements) should be set forth in black so as to permit photocopying and microfilming.

(c) *Authorization respecting applications*. (1) Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and which is executed by a corporation, partnership, or other company and filed with the Commission, shall contain a concise statement of the applicable provisions of the articles of incorporation, bylaws, or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the same is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions shall be attached as an exhibit to, or the pertinent provisions thereof shall be quoted in, the application.

(2) If an amendment to any such application shall be filed, such amendment shall contain a similar statement or, in lieu thereof, shall state that the authorization described in the original application is applicable to the individual who signs such amendment and that such authorization still remains in effect.

(3) When any such application or amendment is signed by an agent or attorney, the power of attorney evidencing his authority to sign shall contain similar statements and shall be filed with the Commission.

(d) *Verification of applications and statements of fact.* Every application for an order under any provision of the Act, for which a form with instructions is not specifically prescribed and every amendment to such application, and every statement of fact formally filed in support of, or in opposition to, any application or declaration shall be verified by the person executing the same. An instrument executed on behalf of a corporation shall be verified in substantially the following form, but suitable changes may be made in such form for other kinds of companies and for individuals:

State of _____
County of _____, ss: _____

The undersigned being duly sworn deposes and says that he has duly executed the attached _____ dated _____, 19___, for and on behalf of _____ (Name of company); that he is the _____ (Title of officer) of such company; and that all action by stockholders, directors, and other bodies necessary to authorize deponent to execute and file such instrument has been taken. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein set forth are true to the best of his knowledge, information and belief.

(Signature) _____

(Type or print name beneath) _____

Subscribed and sworn to before me a _____ (Title of officer) this _____ day of _____, 19___.

[OFFICIAL SEAL]

My commission expires _____

(e) *Statement of grounds for application.* Each application should contain a brief statement of the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and of the rules and regulations under which application is made.

(f) *Name and address.* Every application shall contain the name and address of each applicant and the name and address of any person to whom any applicant wishes any question regarding the application to be directed.

(g) *Proposed notice.* A proposed notice of the proceeding initiated by the filing of the application shall accompany each application as an exhibit thereto and, if necessary, shall be modified to reflect any amendments to such application.

(h) *Definition of application.* For purposes of this rule, an ''application'' means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

(i) The manually signed original (or in the case of duplicate original) one duplicate originals of all registrations, applications, statements, reports, or other documents filed under the Investment Advisers Act of 1940, as amended, shall be numbered sequentially (in addition to any internal numbering which otherwise may be present) by handwritten, typed, printed, or other legible form of notation from the facing page of the document through the last page of that document and any exhibits or attachments thereto. Further, the total number of pages contained in a numbered original shall be set forth on the first page of the document.

(15 U.S.C. 77s (48 Stat. 85); 15 U.S.C. 78w (48 Stat. 901); 15 U.S.C. 79c and 79t (49 Stat. 810, 833); 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss (53 Stat. 1154, 1156, 1167, 1173); 15 U.S.C. 80w–37, 80c–39 (54 Stat. 841, 342); 15 U.S.C. 80b–3, 80b–4, 80b–11 (54 Stat. 850, 852, 855))

[41 FR 39019, Sept. 14, 1976, as amended at 44 FR 4666, Jan. 23, 1979; 47 FR 58239, Dec. 30, 1982]

§ 275.0–5 Procedure with respect to applications and other matters.

The procedure hereinbelow set forth will be followed with respect to any proceeding initiated by the filing of an application, or upon the Commission's own motion, pursuant to any section of the Act or any rule or regulation thereunder, unless in the particular case a different procedure is provided:

(a) Notice of the initiation of the proceeding will be published in the FEDERAL REGISTER and will indicate the earliest date upon which an order disposing of the matter may be entered. The notice will also provide that any interested person may, within the period of time specified therein, submit to the Commission in writing any facts

bearing upon the desirability of a hearing on the matter and may request that a hearing be held, stating his reasons therefor and the nature of his interest in the matter.

(b) An order disposing of the matter will be issued as of course following the expiration of the period of time referred to in paragraph (a) of this section, unless the Commission thereafter orders a hearing on the matter.

(c) The Commission will order a hearing on the matter, if it appears that a hearing is necessary or appropriate in the public interest or for the protection of investors, (1) upon the request of any interested person or (2) upon its own motion.

(d) *Definition of application*. For purposes of this rule, an ''application'' means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

[41 FR 39020, Sept. 14, 1976, as amended at 61 FR 49962, Sept. 24, 1996]

§ 275.0–6 Incorporation by reference in applications.

(a) A person filing an application may, subject to the limitations of § 228.10(f) and § 229.10(d) of this chapter, incorporate by reference as an exhibit to such application any document or part thereof, including any financial statement or part thereof, previously or concurrently filed with the Commission pursuant to any act administered by the Commission. The incorporation may be made whether the matter incorporated was filed by such applicant or any other person. If any modification has occurred in the text of any such document since the filing thereof, the applicant shall file with the reference a statement containing the text of any such modification and the date thereof. If the number of copies of any document previously or concurrently filed with the Commission is less than the number required to be filed with the application which incorporates such document, the applicant shall file therewith as many additional copies of the document as may be necessary to meet the requirements of the application.

(b) Notwithstanding paragraph (a) of this section, a certificate of an independent public accountant or accountants previously or concurrently filed may not be incorporated by reference in any application unless the written consent of the accountant or accountants to such incorporation is filed with the application.

(c) In each case of incorporation by reference, the matter incorporated shall be clearly identified in the reference. An express statement shall be made to the effect that the specified matter is incorporated in the application at the particular place where the information is required.

(d) Notwithstanding paragraph (a) of this section, no application shall incorporate by reference any exhibit or financial statement which (1) has been withdrawn, or (2) was filed under any act administered by the Commission in connection with a registration which has ceased to be effective, or (3) is contained in an application for registration, registration statement, or report subject, at the time of the incorporation by reference, to pending proceedings under section 8(b) (15 U.S.C. 77a–8(b)) or 8(d) (15 U.S.C. 77a–8(d)) of the Securities Act of 1933 (15 U.S.C. 77a–1 et seq.), section 8(e) (15 U.S.C. 80a–8(e)) of the Investment Company Act of 1940, section 15(b)(4)(A) (15 U.S.C. 78a–15(b)(4)(A)) of the Securities Exchange Act of 1934 (15 U.S.C. 78a–1 et seq.), section 203(e)(1) (15 U.S.C. 80b–3(e)(1)) of the Investment Advisers Act of 1940 or to an order entered under any of those sections.

(e) Notwithstanding paragraph (a) of this section, the Commission may refuse to permit incorporation by reference in any case in which in its judgment such incorporation would render an application incomplete, unclear, or confusing.

(f) *Definition of Application*. For purposes of this rule, an ''application'' means any application for an order of the Commission under the Act other than an application for registration as an investment adviser.

NOTE: Prior to incorporating by reference any document as an exhibit to an application, applicants are advised to review § 228.10(f) and § 229.10(d) of this chapter as in effect at the time the application is filed to determine whether such incorporation by

reference would be permissible under that rule.

[41 FR 39020, Sept. 14, 1976, as amended at 60 FR 32825, June 23, 1995]

§ 275.0–7 Small entities for purposes of the Regulatory Flexibility Act.

(a) For purposes of Commission rulemaking in accordance with the provisions of Chapter Six of the Administrative Procedure Act (5 U.S.C. 601 et seq.), and unless otherwise defined for purposes of a particular rulemaking proceeding, the term ''small business'' or ''small organization'' for purposes of the Investment Advisers Act of 1940 shall mean an investment adviser that:

(1) Manages assets with a total value of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services; or

(2) Solely, or in addition to managing assets of $50 million or less, renders other advisory services, and the assets related to its advisory business do not exceed in value $50,000 as of the end of its most recent fiscal year.

(b) As used in this rule, the term *other advisory services* means the services referred to in Form ADV, Part II, Item 1A (3)–(9).

[47 FR 5223, Feb. 4, 1982, as amended at 50 FR 42909, Oct. 23, 1985]

§ 275.202(a)(1)–1 Certain transactions not deemed assignments.

A transaction which does not result in a change of actual control or management of an investment adviser is not an assignment for purposes of section 205(2) of the Act.

[51 FR 32907, Sept. 17, 1986]

§ 275.203–1 Application for registration of investment adviser.

(a) An application for registration of an investment adviser filed pursuant to section 203(c) of the Act shall be filed on Form ADV in accordance with the instructions contained therein.

(b) A Form ADV filed by an investment-adviser partnership which is not registered when such form is filed and which succeeds to and continues the business of a predecessor partnership registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if it is filed to reflect the changes in the partnership and to furnish required information concerning any new partners.

(c) A Form ADV filed by an investment adviser corporation which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's state of incorporation and the amendment is filed to reflect that change.

(d) A Form ADV filed by an investment adviser corporation, partnership, sole proprietorship or other entity which is not registered when such form is filed and which succeeds to and continues the business of a predecessor corporation, partnership, sole proprietorship or other entity registered as an investment adviser shall be deemed to be an application for registration even though designated as an amendment if the succession is based solely on a change in the predecessor's form of organization and the amendment is filed to reflect that change.

[19 FR 4079, July 3, 1954, as amended at 40 FR 57796, Dec. 12, 1975; 47 FR 22507, May 25, 1982]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 275.203–2 Withdrawal from registration.

(a) Notice of withdrawal from registration as an investment adviser pursuant to section 203(h) shall be filed on Form ADV–W in accordance with the instructions contained therein.

(b) Except as hereinafter provided, a notice to withdraw from registration filed by an investment adviser pursuant to section 203(h) shall become effective on the 60th day after the filing thereof with the Commission or within such shorter period of time as the Commission may determine. If, prior to the effective date of a notice of withdrawal from registration, the Commission has instituted a proceeding pursuant to

section 203(e) to suspend or revoke registration, or a proceeding pursuant to section 203(h) to impose terms or conditions upon withdrawal, the notice of withdrawal shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed pursuant to this section shall constitute a ''report'' within the meaning of sections 204 and 207 and other applicable provisions of the Act.

[32 FR 16151, Nov. 25, 1967, as amended at 39 FR 794, Jan. 3, 1974; 40 FR 57796, Dec. 12, 1975]

§ 275.203–3 [Reserved]

§ 275.203(b)(3)–1 Definition of "client" of an investment adviser.

PRELIMINARY NOTE TO § 203(b)(3)–1

This rule is a safe harbor and is not intended to specify the exclusive method for determining who may be deemed a single client for purposes of section 203(b)(3) of the Act.

(a) *General*. For purposes of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), the following are deemed a single client:

(1) A natural person, and:

(i) Any minor child of the natural person;

(ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(iii) All accounts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries; and

(iv) All trusts of which the natural person and/or the persons referred to in this paragraph (a)(1) are the only primary beneficiaries;

(2)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(1)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a ''legal organization'') that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an ''owner''); and

(ii) Two or more legal organizations referred to in paragraph (a)(2)(i) of this section that have identical owners.

(b) *Special Rules*. For purposes of this section:

(1) An owner must be counted as a client if the investment adviser provides investment advisory services to the owner separate and apart from the investment advisory services provided to the legal organization, *Provided, however,* that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;

(2) An owner need not be counted as a client of an investment adviser solely because the investment adviser, on behalf of the legal organization, offers, promotes, or sells interests in the legal organization to the owner, or reports periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;

(3) A limited partnership is a client of any general partner or other person acting as investment adviser to the partnership;

(4) Any person for whom an investment adviser provides investment advisory services without compensation need not be counted as a client; and

(5) An investment adviser that has its principal office and place of business outside of the United States must count only clients that are United States residents; an investment adviser that has its principal office and place of business in the United States must count all clients.

(c) *Holding Out*. Any investment adviser relying on this section shall not be deemed to be holding itself out generally to the public as an investment adviser, within the meaning of section 203(b)(3) of the Act (15 U.S.C. 80b–3(b)(3)), solely because such investment adviser participates in a non-public offering of interests in a limited partnership under the Securities Act of 1933.

[62 FR 28132, May 22, 1997]

§ 275.203A–1 Eligibility for Commission registration.

(a) *Threshold increased to $30 million of assets under management.* No investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business shall register with the Commission under section 203 of the Act (15 U.S.C. 80b–3), unless the investment adviser:

(1) Has assets under management of not less than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser; or

(2) Is an investment adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*].

(b) *Exemption for Investment advisers having between $25 and $30 million of assets under management.* Notwithstanding paragraph (a) of this section, an investment adviser that is registered or required to be registered as an investment adviser in the State in which it maintains its principal office and place of business may register with the Commission if the investment adviser has assets under management of not less than $25,000,000 but not more than $30,000,000, as reported on the Form ADV (17 CFR 279.1) of the investment adviser. This paragraph (b) shall not apply to an investment adviser:

(1) To an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*); or

(2) That is exempted by § 275.203A–2 from the prohibition in section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) on registering with the Commission.

NOTE TO PARAGRAPHS (A) AND (B)

Paragraphs (a) and (b) together make registration with the Commission optional for certain investment advisers that have between $25 and $30 million of assets under management.

(c) *Grace period for transition from Commission to State Registration.* An investment adviser registered with the Commission, upon filing an amendment to Form ADV (17 CFR 279.1) that indicates that it would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission, shall be subject to having its registration cancelled pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)), *Provided, That* the Commission shall not commence any cancellation proceeding on the basis of the amendment until the expiration of a period of not less than 90 days from the date the investment adviser was required by § 275.204–1(a) to file the amendment.

(d) *Transition From State to Commission Registration.* An investment adviser that is registered with a securities commissioner (or any agency or officer performing like functions) of any State that requires such investment adviser annually to report to it the amount of assets under management pursuant to a form or rule substantially similar to Schedule I to Form ADV (17 CFR 279.1) must register with the Commission within 90 days after the date on which the investment adviser is required to report assets under management of $30,000,000 or more to the state securities commissioner, unless, at the time of registration with the Commission, the investment adviser is prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission.

NOTES TO PARAGRAPH (D)

1. An investment adviser may be prohibited by section 203A(a) from registering with the Commission if its assets under management have decreased to an amount less than $25,000,000 during the 90-day period.

2. An investment adviser not eligible to rely on paragraph (d) must register with the Commission promptly when no longer prohibited by section 203A(a) from registering with the Commission.

[62 FR 28133, May 22, 1997]

§ 275.203A–2 Exemptions from prohibition on Commission registration.

The prohibition of section 203A(a) of the Act [15 U.S.C. 80b–3A(a)] shall not apply to:

(a) *Nationally recognized statistical rating organizations.* An investment adviser that is a nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F), and (H) of § 240.15c3–1 of this chapter.

(b)(1) *Pension consultants.* An investment adviser that is a ''pension consultant,'' as defined in this section, with respect to assets of plans having an aggregate value of at least $50,000,000.

(2) An investment adviser is a pension consultant, for purposes of paragraph (b) of this section, if the investment adviser provides investment advice to:

(i) Any employee benefit plan described in section 3(3) of the Employee Retirement Income Security Act of 1974 (''ERISA'') [29 U.S.C. 1002(3)];

(ii) Any governmental plan described in section 3(32) of ERISA (29 U.S.C. 1002(32)); or

(iii) Any church plan described in section 3(33) of ERISA (29 U.S.C. 1002(33)).

(3) In determining the aggregate value of assets of plans, only that portion of a plan's assets for which the investment adviser provided investment advice (including any advice with respect to the selection of an investment adviser to manage such assets) may be included. The value of assets shall be determined as of the date during the investment adviser's most recent fiscal year that the investment adviser was last employed or retained by contract to provide investment advice to the plan with respect to those assets.

(c) *Investment advisers controlling, controlled by, or under common control with an investment adviser registered with the Commission.* An investment adviser that controls, is controlled by, or is under common control with, an investment adviser eligible to register, and registered with, the Commission (''registered adviser''), provided that the principal office and place of business of the investment adviser is the same as that of the registered adviser. For purposes of this paragraph, control means the power to direct or cause the direction of the management or policies of an investment adviser, whether through ownership of securities, by contract, or otherwise. Any person that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of an investment adviser is presumed to control that investment adviser.

(d) *Investment advisers expecting to be eligible for Commission registration within 120 Days.* An investment adviser that:

(1) Immediately before it registers with the Commission, is not registered or required to be registered with the Commission or a securities commissioner (or any agency or officer performing like functions) of any State and has a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective;

(2) Includes on Schedule E to its Form ADV (17 CFR 279.1) an undertaking to withdraw from registration with the Commission if, on the 120th day after the date the investment adviser's registration with the Commission becomes effective, the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission; and

(3) Within 120 days after the date the investment adviser's registration with the Commission becomes effective, files an amendment to Form ADV (17 CFR 279.1) revising Schedule I thereto and, if the amendment indicates that the investment adviser would be prohibited by section 203A(a) of the Act (15 U.S.C. 80b–3A(a)) from registering with the Commission, the amendment is accompanied by a completed Form ADV–W (17 CFR 279.2) whereby it withdraws from registration with the Commission.

[62 FR 28133, May 22, 1997]

§ 275.203A–3 Definitions.

For purposes of section 203A of the Act (15 U.S.C. 80b–3A) and the rules thereunder:

(a)(1) *Investment adviser representative.* ''Investment adviser representative'' of an investment adviser means a supervised person of the investment adviser more than ten percent of whose clients are natural persons other than excepted persons described in paragraph (a)(3)(i) of this section.

(2) Notwithstanding paragraph (a)(1) of this section, a supervised person is not an investment adviser representative if the supervised person:

(i) Does not on a regular basis solicit, meet with, or otherwise communicate

with clients of the investment adviser; or

(ii) Provides only impersonal investment advice.

(3) For purposes of this section:

(i) *Excepted person* means a natural person who:

(A) Immediately after entering into the investment advisory contract with the investment adviser has at least $500,000 under management with the investment adviser, or

(B) The investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) at the time the contract is entered into of more than $1,000,000.

(ii) ''Impersonal investment advice'' means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

(4) Supervised persons may rely on the definition of ''client'' in § 275.203(b)(3)–1 to identify clients for purposes of paragraph (a)(1) of this section, except that supervised persons need not count clients that are not residents of the United States.

(b) *Place of business.* ''Place of business'' of an investment adviser representative means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(c) *Principal office and place of business.* ''Principal office and place of business'' of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

[62 FR 28134, May 22, 1997]

§ 275.203A–4 Investment advisers registered with a State securities commission.

The Commission shall not assert a violation of section 203 of the Act (15 U.S.C. 80b–3) (or any provision of the Act to which an investment adviser becomes subject upon registration under section 203 of the Act (15 U.S.C. 80b–3)) for the failure of an investment adviser registered with the securities commission (or any agency or office performing like functions) in the State in which it has its principal office and place of business to register with the Commission if the investment adviser reasonably believes that it does not have assets under management of at least $30,000,000 and is therefore not required to register with the Commission.

[62 FR 28134, May 22, 1997]

§ 275.203A–5 Transition rules.

(a) Every investment adviser registered with the Commission on July 8, 1997 shall file a completed Form ADV–T (17 CFR 279.3) no later than July 8, 1997.

(b) If an investment adviser registered with the Commission on July 8, 1997 would be prohibited from registering with the Commission under section 203A(a) of the Act (15 U.S.C. 80b–3A(a)), and is not otherwise exempted by § 275.203A–2 from such prohibition, such investment adviser shall withdraw from registration with the Commission on Form ADV–T (17 CFR 279.3).

(c)(1) Except as provided in paragraph (c)(2) of this section, an investment adviser that indicates on Form ADV–T (17 CFR 279.3) that the investment adviser withdraws from registration with the Commission shall be deemed to have withdrawn from registration as of the later of:

(i) July 8, 1997; or

(ii) The date the investment adviser first files with the Commission Form ADV–T (17 CFR 279.3) or any amendment to Form ADV–T (17 CFR 279.3) that indicates that the investment adviser withdraws from registration with the Commission.

(2) If, prior to the effective date of the withdrawal from registration of an investment adviser on Form ADV–T (17

CFR 279.3), the Commission has instituted a proceeding pursuant to section 203(e) of the Act (15 U.S.C. 80b–3(e)) to suspend or revoke registration, or a proceeding pursuant to section 203(h) of the Act (15 U.S.C. 80b–3(h)) to impose terms or conditions upon withdrawal, the withdrawal from registration shall not become effective except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

[62 FR 28134, May 22, 1997]

§ 275.204–1 Amendments to application for registration.

(a) Every investment adviser whose registration with the Commission is effective on the last day of its fiscal year shall, within 90 days of the end of its fiscal year, unless its registration has been withdrawn, cancelled, or revoked prior to that day, file:

(1) Schedule I to Form ADV (17 CFR 279.1);

(2) A balance sheet if the balance sheet is required by Item 14 of Part II of Form ADV (17 CFR 279.1); and

(3) An executed page one of Part I of Form ADV (17 CFR 279.1).

(b)(1) If the information contained in the response to Items 1, 2, 3, 4, 5, 8, 11, 13A, 13B, 14A and 14B of Part I of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate for any reason, or if the information contained in response to any question in Items 9 and 10 of Part I, all of Part II (except Item 14), and all of Schedule H of any application for registration as an investment adviser, or in any amendment thereto, becomes inaccurate in a material manner, the investment adviser shall promptly file an amendment on Form ADV (17 CFR 279.1) correcting the information.

(2) For all other changes not designated in paragraph (b)(1) of this section, the investment adviser shall file an amendment on Form ADV (17 CFR 279.1) updating the information together with the amendments required by paragraph (a) of this section.

[62 FR 28135, May 22, 1997]

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) Every investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) shall make and keep true, accurate and current the following books and records relating to its investment advisory business;

(1) A journal or journals, including cash receipts and disbursements, records, and any other records of original entry forming the basis of entries in any ledger.

(2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

(4) All check books, bank statements, cancelled checks and cash reconciliations of the investment adviser.

(5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such.

(6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser.

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to

be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security: *Provided, however,* (*a*) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and (*b*) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

(9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof.

(10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such.

(11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommends the purchase or sale of a specific security and does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons therefor.

(12)(i) A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this paragraph—

(A) The term *advisory representative* shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment advisor prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (*1*) Any person in a control relationship to the investment advisor, (*2*) any affiliated person of such controlling person, and (*3*) any affiliated person of such affiliated person.

(B) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(iii) An investment adviser shall not be deemed to have violated the provisions of paragraph (a)(12) of this section because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(13)(i) Notwithstanding the provisions of paragraph (a)(12) of this section above, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (A) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (B) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

(ii) For purposes of this paragraph—

(A) The term *advisory representative*, when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendation being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations: (*1*) Any person in a control relationship to the investment adviser, (*2*) any affiliated person of such controlling person, and (*3*) any affiliated person of such affiliated person.

(B) *Control* shall have the same meaning as that set forth in section 2(a)(9) of the Investment Company Act of 1940, as amended.

(C) An investment adviser is ''primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients'' when, for each of its most recent three fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of (*1*) its total sales and revenues, and (*2*) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) An investment adviser shall not be deemed to have violated the provisions of this paragraph (a)(13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule 204–3 under the Act, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

(15) All written acknowledgments of receipt obtained from clients pursuant to § 275.206(4)–3(a)(2)(iii)(B) and copies of the disclosure documents delivered to clients by solicitors pursuant to § 275.206(4)–3.

(16) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); *provided, however*, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

(b) If an investment adviser subject to paragraph (a) of this section has custody or possession of securities or funds of any client, the records required to be made and kept under paragraph (a) of this section shall include:

(1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.

(2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

(3) Copies of confirmations of all transactions effected by or for the account of any such client.

(4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount or interest of each such client, and the location of each such security.

(c) Every investment adviser subject to paragraph (a) of this section who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.

(2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(d) Any books or records required by this section may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e)(1) All books and records required to be made under the provisions of paragraphs (a) to (c)(1), inclusive, of this rule (except for books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule), shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and

stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(3) Books and records required to be made under the provisions of paragraphs (a)(11) and (a)(16) of this rule shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in an appropriate office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication.

(f) An investment adviser subject to paragraph (a) of this section, before ceasing to conduct or discontinuing business as an investment adviser shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing, at its principal office, Washington, D.C. 20549, of the exact address where such books and records will be maintained during such period.

(g)(1) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photograph on film or, as provided in paragraph (g)(2) of this section, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record,

(ii) Be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request,

(iii) Store separately from the original one other copy of the film or computer storage medium for the time required,

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction, and

(v) With respect to records stored on photographic film, at all times have available for Commission examination of its records pursuant to section 204 of the Investment Advisers Act of 1940, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

(2) Pursuant to paragraph (g)(1) of this section an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h)(1) Any book or other record made, kept, maintained and preserved in compliance with §§ 240.17a–3 and 240.17a–4 of this chapter under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this section, shall be deemed to be made, kept maintained and preserved in compliance with this section.

(2) A record made and kept pursuant to any provision of paragraph (a) of this section, which contains all the information required under any other provision of paragraph (a) of this section, need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of this section.

(i) As used in this section the term ''discretionary power'' shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(j)(1) Except as provided in paragraph (j)(3) of this section, each non-resident investment adviser registered or applying for registration pursuant to section 203 of the Act shall keep, maintain and preserve, at a place within the United States designated in a notice from him as provided in paragraph (j)(2) of this section true, correct, complete and current copies of books and records which he is required to make, keep current, maintain or preserve pursuant to any provisions of any rule or regulation of the Commission adopted under the Act.

(2) Except as provided in paragraph (j)(3) of this section, each nonresident investment adviser subject to this paragraph (j) shall furnish to the Commission a written notice specifying the address of the place within the United States where the copies of the books and records required to be kept and preserved by him pursuant to paragraph (j)(1) of this section are located. Each non-resident investment adviser registered or applying for registration when this paragraph becomes effective shall file such notice within 30 days after such rule becomes effective. Each non-resident investment adviser who files an application for registration after this paragraph becomes effective shall file such notice with such application for registration.

(3) Notwithstanding the provisions of paragraphs (j)(1) and (2) of this section, a non-resident investment adviser need not keep or preserve within the United States copies of the books and records referred to in said paragraphs (j)(1) and (2), if:

(i) Such non-resident investment adviser files with the Commission, at the time or within the period provided by paragraph (j)(2) of this section, a written undertaking, in form acceptable to the Commission and signed by a duly authorized person, to furnish to the Commission, upon demand, at its principal office in Washington, D.C., or at any Regional or District Office of the Commission designated in such demand, true, correct, complete and current copies of any or all of the books and records which he is required to make, keep current, maintain or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in such demand. Such undertaking shall be in substantially the following form:

The undersigned hereby undertakes to furnish at its own expense to the Securities and Exchange Commission at its principal office in Washington, D.C. or at any Regional or District Office of said Commission specified in a demand for copies of books and records made by or on behalf of said Commission, true, correct, complete and current copies of any or all, or any part, of the books and records which the undersigned is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Securities and Exchange Commission under the Investment Advisers Act of 1940. This undertaking shall be suspended during any period when the undersigned is making, keeping current, and preserving copies of all of said books and records at a place within the United States in compliance with Rule 204–2(j) under the Investment Advisers Act of 1940. This undertaking shall be binding upon the undersigned and the heirs, successors and assigns of the undersigned, and the written irrevocable consents and powers of attorney of the undersigned, its general partners and managing agents filed with the Securities and Exchange Commission shall extend to and cover any action to enforce same.

and

(ii) Such non-resident investment adviser furnishes to the Commission, at his own expense 14 days after written demand therefor forwarded to him by registered mail at his last address of record filed with the Commission and signed by the Secretary of the Commission or such person as the Commission may authorize to act in its behalf, true, correct, complete and current copies of any or all books and records which such investment adviser is required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Act, or any part of such books and records which may be specified in said written demand. Such copies shall be furnished to the Commission at its principal office in Washington, D.C., or at any Regional or District Office of the Commission which may be specified in said written demand.

(4) For purposes of this rule the term *non-resident investment adviser* shall have the meaning set out in § 275.0–2(d)(3) under the Act.

(k) Every investment adviser that registers under section 203 of the Act (15 U.S.C. 80b–3) after July 8, 1997 shall be required to preserve in accordance with this section the books and records the investment adviser had been required to maintain by the State in which the investment adviser had its principal office and place of business prior to registering with the Commission.

(Sec. 206, 54 Stat. 852, as amended, 15 U.S.C. 80b–6; sec. 211(a); Pub. L. 76–768, as amended by Pub. L. 86–750; 855 as amended by 74 Stat. 886, 887, 888; secs. 204, 206(4) and 211(a) (15 U.S.C. 80b–4 and 80b–11(a)))

[26 FR 5002, June 6, 1961, as amended at 31 FR 10921, Aug. 17, 1966; 40 FR 8549, Feb. 28, 1975; 40 FR 45162, Oct. 1, 1975; 44 FR 7877, Feb. 7, 1979; 44 FR 42130, July 18, 1979; 50 FR 2543, Jan. 17, 1985; 53 FR 32035, Aug. 23, 1988; 59 FR 5946, Feb. 9, 1994; 62 FR 28135, May 22, 1997]

§ 275.204–3 Written disclosure statements.

(a) *General requirement*. Unless otherwise provided in this rule, an investment adviser, registered or required to be registered pursuant to section 203 of the Act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement which may be either a copy of Part II of its form ADV which complies with § 275.204–1(b) under the Act or a written document containing at least the information then so required by Part II of Form ADV.

(b) *Delivery*. (1) An investment adviser, except as provided in paragraph (2), shall deliver the statement required by this section to an advisory client or prospective advisory client (i) not less than 48 hours prior to entering into any written or oral investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(2) Delivery of the statement required by paragraph (1) need not be made in connection with entering into (i) an investment company contract or (ii) a contract for impersonal advisory services.

(c) *Offer to deliver*. (1) An investment adviser, except as provided in paragraph (2), annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this section.

(2) The delivery or offer required by paragraph (c)(1) of this section need not be made to advisory clients receiving advisory services solely pursuant to (i) an investment company contract or (ii) a contract for impersonal advisory services requiring a payment of less than $200;

(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of $200 or more, an offer of the type specified in paragraph (c)(1) of this section shall also be made at the time of entering into an advisory contract.

(4) Any statement requested in writing by an advisory client pursuant to an offer required by this paragraph must be mailed or delivered within seven days of the receipt of the request.

(d) *Omission of inapplicable information*. If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(e) *Other disclosures*. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

(f) *Sponsors of wrap fee programs*. (1) An investment adviser, registered or required to be registered pursuant to section 203 of the Act, that is compensated under a wrap fee program for

sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of, other investment advisers in the program, shall, in lieu of the written disclosure statement required by paragraph (a) of this section and in accordance with the other provisions of this section, furnish each client and prospective client of the wrap fee program with a written disclosure statement containing at least the information required by Schedule H of Form ADV (§ 279.1 of this chapter). Any additional information included in such disclosure statement should be limited to information concerning wrap fee programs sponsored by the investment adviser.

(2) If an investment adviser is required under this paragraph (f) to furnish disclosure statements to clients or prospective clients of more than one wrap fee program, the investment adviser may omit from the disclosure statement furnished to clients and prospective clients of a wrap fee program or programs any information required by Schedule H that is not applicable to clients or prospective clients of that wrap fee program or programs.

(3) An investment adviser need not furnish the written disclosure statement required by paragraph (f)(1) of this section to clients and prospective clients of a wrap fee program if another investment adviser is required to furnish and does furnish the written disclosure statement to all clients and prospective clients of the wrap fee program.

(4) An investment adviser that is required under this paragraph (f) to furnish a disclosure statement to clients of a wrap fee program shall furnish the disclosure statement to each client of the wrap fee program (including clients that have previously been furnished the brochure required under paragraph (a) of this section) no later than October 1, 1994.

(g) *Definitions*. For the purpose of this rule:

(1) *Contract for impersonal advisory services* means any contract relating solely to the provision of investment advisory services (i) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (ii) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or (iii) any combination of the foregoing services.

(2) *Entering into*, in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) *Investment company contract* means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of section 15(c) of that Act.

(4) *Wrap fee program* means a program under which any client is charged a specified fee or fees not based directly upon transactions in a client's account for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and execution of client transactions.

(Secs. 204, 206(4) and 211(a) (15 U.S.C. 80b–4 and 80b–11(a)))

[44 FR 7877, Feb. 7, 1979, as amended at 47 FR 22507, May 25, 1982; 59 FR 21661, Apr. 26, 1994]

§ 275.205–1 Definition of "investment performance" of an investment company and "investment record" of an appropriate index of securities prices.

(a) *Investment performance* of an investment company for any period shall mean the sum of:

(1) The change in its net asset value per share during such period;

(2) The value of its cash distributions per share accumulated to the end of such period; and

(3) The value of capital gains taxes per share paid or payable on undistributed realized long-term capital gains accumulated to the end of such period; expressed as a percentage of its net asset value per share at the beginning of such period. For this purpose, the value of distributions per share of realized capital gains, of dividends per share paid from investment income and of capital gains taxes per share paid or payable on undistributed realized long-term capital gains shall be treated as

reinvested in shares of the investment company at the net asset value per share in effect at the close of business on the record date for the payment of such distributions and dividends and the date on which provision is made for such taxes, after giving effect to such distributions, dividends and taxes.

(b) *Investment record* of an appropriate index of securities prices for any period shall mean the sum of:

(1) The change in the level of the index during such period; and

(2) The value, computed consistently with the index, of cash distributions made by companies whose securities comprise the index accumulated to the end of such period; expressed as a percentage of the index level at the beginning of such period. For this purpose cash distributions on the securities which comprise the index shall be treated as reinvested in the index at least as frequently as the end of each calendar quarter following the payment of the dividend.

EXHIBIT I

[METHOD OF COMPUTING THE INVESTMENT RECORD OF THE STANDARD & POOR'S 500 STOCK COMPOSITE INDEX FOR CALENDAR 1971]

Quarterly ending—	Index value [1]	Quarterly dividend yield-composite index	
		Annual percent [2]	Quarterly percent [3] (¼ of annual)
Dec. 1970	92.15	.....	.....
Mar. 1971	100.31	3.10	0.78
June 1971	99.70	3.11	.78
Sept. 1971	98.34	3.14	.79
Dec. 1971	102.09	3.01	.75

[1] Source: Standard & Poor's Trade and Securities Statistics, Jan. 1972, p. 33.
[2] *Id.* See Standard & Poor's Trade and Securities Statistics Security and Price Index Record—1970 Edition, p. 133 for explanation of quarterly dividend yield.
[3] Quarterly percentages have been founded to two decimal places.

Change in index value for 1971: 102.09–92.15=9.94.

Accumulated value of dividends for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}} = \frac{\text{March}}{1.0078} \times \frac{\text{June}}{1.0079} \times \frac{\text{Sept.}}{1.0079} \times \frac{\text{Dec.}}{1.0075} - 1.00 = .0314$$

Aggregate value of dividends paid, assuming quarterly reinvestment and computed consistently with the index:

(Percent yield as computed above) × (ending index value)=Aggregate value of dividends paid

For 1971:

$$.0314 \times 102.09 = 3.21$$

Investment record of Standard & Poor's 500 stock composite index assuming quarterly reinvestment dividends:

$$\frac{9.94 + 3.21}{92.15} = 14.27 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the S & P dividend record or to instances where a ''rolling period'' is used for performance comparisons as indicated by the following example of the calculation of the investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	93.99
Index value Nov. 30, 1970	87.20
Change in index value	6.79

Quarter ending—	Dividend yield		Rate for each month of quarter (1/12 of annual)
	Annual rate	¼ of annual	
Dec. 1970	3.41	0.85	0.28
Mar. 1971	3.10	.78	.26
June 1971	3.11	.78	.26
Sept. 1971	3.14	.79	.26
Dec. 1971	3.01	.75	.25

Accumulated value of dividends reinvested:

December=1.0028
January–March=1.0078
April–June=1.0078
July–September=1.0079
October–November=1.0053 [4]
Dividend yield:

$$(1.0028\times1.0078\times1.0078\times1.0079\times1.0053)-1.00=.0320$$

Aggregate value of dividends paid computed consistently with the index:

$$.0320\times93.99=3.01$$

Investment record of the Standard & Poor's 500 Stock Composite Index for the 12 months ended November 30, 1971:

$$\frac{6.79+3.01}{87.20}=11.24 \text{ percent}$$

EXHIBIT II

[METHOD OF COMPUTING THE INVESTMENT RECORD OF THE NEW YORK STOCK EXCHANGE COMPOSITE INDEX FOR CALENDAR 1971]

(1)—Quarter ending	(2)—Index value [1]	(3)—Aggregate market value of shares listed on the NYSE as of end of quarter (billions of dollars) [2]	(4)—Quarterly value of estimated cash payments of shares listed on the NYSE (millions of dollars) [3]	(5)—Estimated yield [4] (quarterly percent)
Dec. 1970	50.23	.....	.....	
Mar. 1971	55.44	$709	$5,106	0.72
June 1971	55.09	710	4,961	.70
Sept. 1971	54.33	709	5,006	.71
Dec. 1971	56.43	742	5,183	.70

[1] Source: New York Stock Exchange Composite Index as reported daily by the New York Stock Exchange.
[2] Source: Monthly Review, New York Stock Exchange.
[3] Source: The Exchange, New York Stock Exchange magazine, May, Aug., Nov. 1971 and Feb. 1972 editions. Upon request the Statistics Division of the Research Department of the NYSE will make this figure available within 10 days of the end of each quarter.
[4] The ratio of column 4 to column 3.

Change in NYSE Composite Index value for 1971: 56.43 – 50.23=6.20.

Accumulated Value of Dividends of NYSE Composite Index for 1971:

$$\frac{\text{Quarter ending:}}{\text{Percent yield}}=\frac{\text{March}}{1.0072}\times\frac{\text{June}}{1.0070}\times\frac{\text{Sept.}}{1.0071}\times\frac{\text{Dec.}}{1.0070}-1.00=0.0286$$

Aggregate value of dividends paid on NYSE Composite Index assuming quarterly reinvestment:

For 1971:

$$.0286\times56.43=1.61$$

Investment record of the New York Stock Exchange Composite Index assuming quarterly reinvestment of dividends:

$$\frac{6.20+1.61}{50.23}=15.55 \text{ percent}$$

The same method can be extended to cases where an investment company's fiscal quarters do not coincide with the fiscal quarters of the NYSE dividend record or to instances where a ''rolling period'' is used for performance comparisons as indicated by the following example of the calculation of the investment record of the NYSE Composite Index for the 12 months ended November 1971:

Index value Nov. 30, 1971	51.84
Index value Nov. 30, 1970	47.41
Change in index value	4.43

Quarter ending	Dividend yield quarterly percent	Rate for each month of quarter (1/12 of annual)
Dec. 1970	0.79	0.26

[4] The rate for October and November would be two-thirds of the yield for the quarter ended Sept. 30 (i.e. .667×.79=5269) since the yield for the quarter ended Dec. 31 would not be available as of Nov. 30.

Quarter ending	Dividend yield quarterly percent	Rate for each month of quarter (1/12 of annual)
Mar. 1971	.72	.24
June 1971	.70	.23
Sept. 1971	.71	.24
Dec. 1971	.70	.23

Accumulated value of dividends reinvested:
December =1.0026
January–March =1.0072
April–June =1.0070
July–September =1.0071
October–November =1.0047[4]
Dividend yield:

$$(1.0026\times1.0072\times1.0070\times1.0071\times1.0047)-1.00=.0289$$

Aggregate value of dividends paid computed consistently with the index:

$$.0289\times51.84=1.50$$

Investment record of the NYSE Composite Index for the 12 months ended November 30, 1971:

$$\frac{4.43+1.50}{47.41}=12.51 \text{ percent}$$

(Secs. 205, 211, 54 Stat. 852, 74 Stat. 887, 15 U.S.C. 80b–205, 80b–211; sec. 25, 84 Stat. 1432, 1433, Pub. L. 91–547)
[37 FR 17468, Aug. 29, 1972]

§ 275.205–2 Definition of "specified period" over which the asset value of the company or fund under management is averaged.

(a) For purposes of this rule:

(1) *Fulcrum fee* shall mean the fee which is paid or earned when the investment company's performance is equivalent to that of the index or other measure of performance.

(2) *Rolling period* shall mean a period consisting of a specified number of subperiods of definite length in which the most recent subperiod is substituted for the earliest subperiod as time passes.

(b) The specified period over which the asset value of the company or fund under management is averaged shall mean the period over which the investment performance of the company or fund and the investment record of an appropriate index of securities prices or such other measure of investment performance are computed.

(c) Notwithstanding paragraph (b) of this section, the specified period over which the asset value of the company or fund is averaged for the purpose of computing the fulcrum fee may differ from the period over which the asset value is averaged for computing the performance related portion of the fee, only if:

(1) The performance related portion of the fee is computed over a rolling period and the total fee is payable at the end of each subperiod of the rolling period; and

(2) The fulcrum fee is computed on the basis of the asset value averaged over the most recent subperiod or subperiods of the rolling period.

(Secs. 205, 106A, 211; 54 Stat. 852, 855; 84 Stat. 1433, 15 U.S.C. 80b–5, 80b–6a, 80b–11)
[37 FR 24896, Nov. 22, 1972]

§ 275.205–3 Exemption from the compensation prohibition of section 205(a)(1) for registered investment advisers.

(a) *General.* The provisions of section 205(a)(1) of the Act (15 U.S.C. 80b–5(a)(1)) shall not prohibit any investment adviser from entering into, performing, renewing or extending an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client, *Provided, That* all the conditions in this section are satisfied.

(b) *Nature of the client.* (1) The client entering into the contract subject to this rule must be (i) a natural person or a company, as defined in paragraphs (b)(2) and (g)(1) of this section, who immediately after entering into the contract has at least $500,000 under the management of the investment adviser; or (ii) a person who the registered investment adviser (and any person acting on his behalf) entering into the contract reasonably believes, immediately prior to entering in to the contract, is a natural person or a company, as defined in paragraphs (b)(2)

[4] The rate for October and November would be two thirds of the yield for the quarter ended September 30 (i.e. .667×.71=4736), since the yield for the quarter ended December 31 would not be available as of November 30.

and (g)(1) of this section, whose net worth at the time the contract is entered into exceeds $1,000,000. (The net worth of a natural person may include assets held jointly with such person's spouse.)

(2) The term *company* as used in paragraph (b)(1) of this section, does not include (i) a private investment company, as defined in paragraph (g)(2) of this section, (ii) an investment company registered under the Investment Company Act of 1940 or (iii) a business development company, as defined in section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners (other than the investment adviser entering into a contract under the rule) of any such company is a natural person or company described in this paragraph (b) of this section.

(c) *Compensation formula.* The compensation paid to the adviser under this rule with respect to the performance of any securities over a given period shall be based on a formula which:

(1) Includes, in the case of securities for which market quotations are readily available, the realized capital losses and unrealized capital depreciation of the securities over the period;

(2) Includes, in the case of securities for which market quotations are not readily available, (i) the realized capital losses of the securities over the period; and (ii) if the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) Provides that any compensation paid to the adviser under this rule is based on the gains less the losses (computed in accordance with paragraphs (c) (1) and (2) of this section) in the client's account for a period of not less than one year.

(d) *Disclosure.* In addition to the requirements of Form ADV, the adviser shall disclose to the client, or the client's independent agent, prior to entering into an advisory contract under this rule, all material information concerning the proposed advisory arrangement including the following:

(1) That the fee arrangement may create an incentive for the adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) Where relevant, that the adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the adviser believes the index is appropriate; and

(5) Where an adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available, how the securities will be valued and the extent to which the valuation will be determined independently.

(e) *Arms-length contract.* The investment adviser (and any person acting on its behalf) who enters into the contract must reasonably believe, immediately prior to entering into the contract, that the contract represents an arm's-length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph (g)(1) of this section, the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph (g)(4) of this section.

(f) *Transition rule.* (1) The proviso of paragraph (a) and paragraphs (b), (c) and (e) of this section do not apply to any advisory contract (or renewal or extension thereof) between an investment adviser and a client where (i) the contract was entered into prior to and continued in force after November 14, 1985; and (ii) the adviser, at the time the contract was entered into, was not registered or required to be registered as an investment adviser under the

Act; provided however, that all provisions of this rule shall apply with respect to any natural person or company who is not a party to the contract prior to and becomes a party to the contract after the effective date of this rule.

(2) Notwithstanding paragraph (f)(1) of this section, the renewal or extension of a contract described therein will be subject to paragraph (e) of this section.

(g) *Definitions.* For the purposes of this rule:

(1) The term *company* has the same meaning as in section 202(a) (5) of the Act, but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(2) The term *private investment company* means a company which would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 but for the exception provided from that definition by section 3(c)(1) of such Act.

(3) The term *affiliated person* has the same meaning as in section 2(a)(3) of the Investment Company Act.

(4) The term *client's independent agent* means any person agreeing to act as the client's agent in connection with the contract other than:

(i) The investment adviser acting in reliance upon this rule, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser, or an interested person of the investment adviser as defined in paragraph (g)(5) of this section;

(ii) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser as defined in paragraph (g)(5) of this section; or

(iii) A person with any material relationship between himself (or an affiliated person of such person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the previous two years.

(5) The term *interested person* as used in paragraph (g)(4) of this section means:

(i) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(ii) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if the beneficial or legal interest of the person in any security issued by the investment adviser or by a controlling person of the investment adviser (A) exceeds one tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or (B) exceeds 5% of the total assets of the person (seeking to act as the client's independent agent).

(iii) Any person or partner or employee of any person who at any time since the beginning of the last two years has acted as legal counsel for the investment adviser.

(6)(i) The term *securities for which market quotations are readily available* in paragraph (c) has the same meaning as in Rule 2a–4(a) (1) under the Investment Company Act of 1940 (17 CFR 270.2a–4(a)(1)).

(ii) The term *securities for which market quotations are not readily available* in paragraph (c) of this section means securities not described in paragraph (g)(6)(i) of this section.

(h) An investment adviser entering into or performing an investment advisory contract under this rule is not relieved of any obligations under section 206 of the Adviser Act or of any other applicable provisions of the Federal securities laws.

(i) Nothing in this rule relieves a client's independent agent from any obigations to the client under applicable law.

(Sec. 206A (15 U.S.C. 80b–6A))

[50 FR 48561, Nov. 26, 1985, as amended at 62 FR 28135, May 22, 1997]

§ 275.206(3)–1 Exemption of investment advisers registered as broker-dealers in connection with the provision of certain investment advisory services.

(a) An investment adviser which is a broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934 shall be exempt from section 206(3) in connection with any transaction in relation to which such broker or dealer is acting as an investment adviser solely (1) by means of publicly distributed written materials or publicly made oral statements; (2) by means of written materials or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts; (3) through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or (4) any combination of the foregoing services: *Provided, however,* That such materials and oral statements include a statement that if the purchaser of the advisory communication uses the services of the adviser in connection with a sale or purchase of a security which is a subject of such communication, the adviser may act as principal for its own account or as agent for another person.

(b) For the purpose of this Rule, publicly distributed written materials are those which are distributed to 35 or more persons who pay for such materials, and publicly made oral statements are those made simultaneously to 35 or more persons who pay for access to such statements.

NOTE: The requirement that the investment adviser disclose that it may act as principal or agent for another person in the sale or purchase of a security that is the subject of investment advice does not relieve the investment adviser of any disclosure obligation which, depending upon the nature of the relationship between the investment adviser and the client, may be imposed by subparagraphs (1) or (2) of section 206 or the other provisions of the federal securities laws.

[40 FR 38159, Aug. 27, 1975]

§ 275.206(3)–2 Agency cross transactions for advisory clients.

(a) An investment adviser, or a person registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and controlling, controlled by, or under common control with an investment adviser, shall be deemed in compliance with the provisions of sections 206(3) of the Act (15 U.S.C. 80b–6(3)) in effecting an agency cross transaction for an advisory client, if:

(1) The advisory client has executed a written consent prospectively authorizing the investment adviser, or any other person relying on this rule, to effect agency cross transactions for such advisory client, provided that such written consent is obtained after full written disclosure that with respect to agency cross transactions the investment adviser or such other person will act as broker for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding, both parties to such transactions;

(2) The investment adviser, or any other person relying on this rule, sends to each such client a written confirmation at or before the completion of each such transaction, which confirmation includes (i) a statement of the nature of such transaction, (ii) the date such transaction took place, (iii) an offer to furnish upon request, the time when such transaction took place, and (iv) the source and amount of any other remuneration received or to be received by the investment adviser and any other person relying on this rule in connection with the transaction, *Provided, however,* That if, in the case of a purchase, neither the investment adviser nor any other person relying on this rule was participating in a distribution, or in the case of a sale, neither the investment adviser nor any other person relying on this rule was participating in a tender offer, the written confirmation may state whether any other remuneration has been or will be received and that the source and amount of such other remuneration will be furnished upon written request of such customer;

(3) The investment adviser, or any other person relying in this rule, sends to each such client, at least annually, and with or as part of any written statement or summary of such account from the investment adviser or such other person, a written disclosure

statement identifying the total number of such transactions during the period since the date of the last such statement or summary, and the total amount of all commissions or other remuneration received or to be received by the investment adviser or any other person relying on this rule in connection with such transactions during such period;

(4) Each written disclosure statement and confirmation required by this rule includes a conspicuous statement that the written consent referred to in paragraph (a)(1) of this section may be revoked at any time by written notice to the investment adviser, or to any other person relying on this rule, from the advisory client; and

(5) No such transaction is effected in which the same investment adviser or an investment adviser and any person controlling, controlled by or under common control with such investment adviser recommended the transaction to both any seller and any purchaser.

(b) For purposes of this rule the term *agency cross transaction for an advisory client* shall mean a transaction in which a person acts as an investment adviser in relation to a transaction in which such investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, acts as broker for both such advisory client and for another person on the other side of the transaction.

(c) This rule shall not be construed as relieving in any way the investment adviser or another person relying on this rule from acting in the best interests of the advisory client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the advisory client; nor shall it relieve such person or persons from any disclosure obligation which may be imposed by subparagraphs (1) or (2) of section 206 of the Act or by other applicable provisions of the federal securities laws.

[42 FR 29301 June 8, 1977, as amended at 48 FR 41379, Sept. 15, 1983; 62 FR 28135, May 22, 1997]

§ 275.206(4)–1 Advertisements by investment advisers.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), directly or indirectly, to publish, circulate, or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advice, anaylsis, report or other service rendered by such investment adviser; or

(2) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person: *Provided*, *however*, That this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately: (i) State the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (ii) contain the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: ''it should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list''; or

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy, sell, or when to buy or sell

them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(4) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(5) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(b) For the purposes of this section the term *advertisement* shall include any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio or television, which offers (1) any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (2) any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

(Sec. 206, 54 Stat. 852, as amended; 15 U.S.C. 80b–6)

[26 FR 10549, Nov. 9, 1961, as amended at 62 FR 28135, May 22, 1997]

§ 275.206(4)–2 Custody or possession of funds or securities of clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) who has custody or possession of any funds or securities in which any client has any beneficial interest, to do any act or take any action, directly or indirectly, with respect to any such funds or securities, unless:

(1) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(2)(i) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds, (ii) such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and (iii) the investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(3) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds and securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds, or securities are being maintained, gives each such client written notice thereof; and

(4) Such investment adviser sends to each client, not less frequently than once every 3 months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits and transactions in such client's account during such period; and

(5) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent public accountant at a time that shall be chosen by such accountant without prior notice to the investment adviser. A certificate of such accountant stating that an examination of such funds and securities has been made, and describing the nature and extent of the examination, shall be attached to a completed Form ADV–E (17 CFR 279.8) and transmitted to the Commission promptly after each examination.

(b) This section shall not apply to an investment adviser also registered as a broker-dealer under section 15 of the Securities Exchange Act of 1934 if (1) such broker-dealer is subject to and in compliance with § 240.15c3–1 under the Securities Exchange Act of 1934, or (2)

such broker-dealer is a member of an exchange whose members are exempt from § 240.15c3–1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

(Sec. 206(4), 54 Stat. 852, as amended; 15 U.S.C. 80b–6)

[27 FR 2150, Mar. 6, 1962, as amended at 54 FR 32049, Aug. 4, 1989; 62 FR 28135, May 22, 1997]

§ 275.206(4)–3 Cash payments for client solicitations.

(a) It shall be unlawful for any investment adviser required to be registered pursuant to section 203 of the Act to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

(1)(i) The investment adviser is registered under the Act;

(ii) The solicitor is not a person (A) subject to a Commission order issued under section 203(f) of the Act, or (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in section 203(e)(2)(A) through (D) of the Act, or (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in paragraphs (1), (5) or (6) of section 203(e) of the Act, or (D) is subject to an order, judgment or decree described in section 203(e)(3) of the Act; and

(iii) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

NOTE: The investment adviser shall retain a copy of each written agreement required by this paragraph as part of the records required to be kept under § 275.204–2(a)(10) of this chapter.

(2) Such cash fee is paid to a solicitor:

(i) With respect to solicitation activities for the provision of impersonal advisory services only; or

(ii) Who is (A) a partner, officer, director or employee of such investment adviser or (B) a partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser: *Provided*, That the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

(iii) Other than a solicitor specified in paragraph (a)(2) (i) or (ii) of this section if all of the following conditions are met:

(A) The written agreement required by paragraph (a)(1)(iii) of this section: (*1*) Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor; (*2*) contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder; (*3*) requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by § 275.204–3 of this chapter (''brochure rule'') and a separate written disclosure document described in paragraph (b) of this rule.

(B) The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

NOTE: The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under § 275.204–2(a)(15) of this chapter.

(C) The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

(b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to

this section shall contain the following information:

(1) The name of the solicitor;

(2) The name of the investment adviser;

(3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

(4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;

(5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

(6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(c) Nothing in this section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

(d) For purposes of this section,

(1) *Solicitor* means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

(2) *Client* includes any prospective client.

(3) *Impersonal advisory services* means investment advisory services provided solely by means of (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client, (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities, or (iii) any combination of the foregoing services.

(Secs. 204, 206, and 211 of the Advisers Act (15 U.S.C. 80b–4, 80b–6 and 80b–11(a)))

[44 FR 42130, July 18, 1979; 54 FR 32441, Aug. 8, 1989, as amended at 62 FR 28135, May 22, 1997]

§ 275.206(4)–4 Financial and disciplinary information that investment advisers must disclose to clients.

(a) It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for any investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) to fail to disclose to any client or prospective client all material facts with respect to:

(1) A financial condition of the adviser that is reasonably likely to impair the ability of the adviser to meet contractual commitments to clients, if the adviser has discretionary authority (express or implied) or custody over such client's funds or securities, or requires prepayment of advisory fees of more than $500 from such client, 6 months or more in advance; or

(2) A legal or disciplinary event that is material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients.

(b) It shall constitute a rebuttable presumption that the following legal or disciplinary events involving the adviser or a management person of the adviser (any of the foregoing being referred to hereafter as ''person'') that were not resolved in the person's favor or subsequently reversed, suspended, or vacated are material within the meaning of paragraph (a)(2) of the rule for a period of 10 years from the time of the event:

(1) A criminal or civil action in a court of competent jurisdiction in which the person—

(i) Was convicted, pleaded guilty or nolo contendere (''no contest'') to a felony or misdemeanor, or is the named subject of a pending criminal proceeding (any of the foregoing referred to hereafter as ''action''), and such action involved: an investment-related business; fraud, false statements, or omissions; wrongful taking of property; or bribery, forgery, counterfeiting, or extortion;

(ii) Was found to have been involved in a violation of an investment-related statute or regulation; or

(iii) Was the subject of any order, judgment, or decree permanently or temporarily enjoining the person from,

or otherwise limiting the person from, engaging in any investment-related activity.

(2) Administrative proceedings before the Securities and Exchange Commission, and other federal regulatory agency or any state agency (any of the foregoing being referred to hereafter as ''agency'') in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of an investment-related statute or regulation and was the subject of an order by the agency denying, suspending, or revoking the authorization of the person to act in, or barring or suspending the person's association with, an investment-related business; or otherwise significantly limiting the person's investment-related activities.

(3) Self-Regulatory Organization (SRO) proceedings in which the person—

(i) Was found to have caused an investment-related business to lose its authorization to do business; or

(ii) Was found to have been involved in a violation of the SRO's rules and was the subject of an order by the SRO barring or suspending the person from membership or from association with other members, or expelling the person from membership; fining the person more than $2,500; or otherwise significantly limiting the person's investment-related activities.

(c) The information required to be disclosed by paragraph (a) of this section shall be disclosed to clients promptly, and to prospective clients not less than 48 hours prior to entering into any written or oral investment advisory contract, or no later than the time of entering into such contract if the client has the right to terminate the contract without penalty within five business days after entering into the contract.

(d) For purposes of this rule:

(1) *Management person* means a person with power to exercise, directly or indirectly, a controlling influence over the management or policies of an adviser which is a company or to determine the general investment advice given to clients.

(2) *Found* means determined or ascertained by adjudication or consent in a final SRO proceeding, administrative proceeding, or court action.

(3) *Investment-related* means pertaining to securities commodities, banking, insurance, or real estate (including, but not limited to, action as or being associated with a broker, dealer, investment company, investment adviser, government securities broker or dealer, municipal securities dealer, bank, savings and loan association, entity or person required to be registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or fiduciary).

(4) *Involved* means acting or aiding, abetting, causing, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

(5) *Self-Regulatory Organization* or *SRO* means any national securities or commodities exchange, registered association, or registered clearing agency.

(e) For purposes of calculating the 10-year period during which events are presumed to be material under paragraph (b), the date of a reportable event shall be the date on which the final order, judgment, or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments, or decrees lapsed.

(f) Compliance with paragraph (b) of this rule shall not relieve any investment adviser from the disclosure obligations of paragraph (a) of the rule; compliance with paragraph (a) of the rule shall not relieve any investment adviser from any other disclosure requirement under the Act, the rules and regulations thereunder, or under any other federal or state law.

NOTE: Registered investment advisers may disclose this information to clients and pospective clients in their ''brochure,'' the written disclosure statement to clients under Rule 204–3 (17 CFR 275.204–3); *Provided,* That the delivery of the brochure satisfies the timing of disclosure requirements described in paragraph (c) of this rule.

[52 FR 36918, Oct, 2, 1987, as amended at 62 FR 28135, May 22, 1997]

§ 275.222–1 Definitions.

For purposes of section 222 (15 U.S.C. 80b–18a) of the Act:

(a) *Place of business*. ''Place of business'' of an investment adviser means:

(1) An office at which the investment adviser regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients; and

(2) Any other location that is held out to the general public as a location at which the investment adviser provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

(b) *Principal place of business*. ''Principal place of business'' of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

[62 FR 28135, May 22, 1997]

§ 275.222–2 Definiton of "client" for purposes of the national de minimis standard.

For purposes of section 222(d)(2) of the Act (15 U.S.C. 80b–18a(d)(2)), an investment adviser may rely upon the definition of ''client'' provided by § 275.203(b)(3)–1.

[62 FR 28136, May 22, 1997]

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Opinion of General Counsel relating to section 202(a)(11)(C) of the Investment Advisers Act of 1940.	2	Oct. 28, 1940	11 FR 10996.
Opinion of the General Counsel relating to the use of the name "investment counsel" under section 208(c) of the Investment Advisers Act of 1940.	8	Dec. 12, 1940	Do.
Opinion of Director of Trading and Exchange Division, relating to section 206 of the Investment Advisers Act of 1940, section 17(a) of the Securities Act of 1933, and sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934.	40	Feb. 5, 1945	11 FR 10997.
Opinion of the General Counsel relating to the use of "hedge clauses" by brokers, dealers, investment advisers, and others.	58	Apr. 10, 1951	16 FR 3387.
Statement of the Commission to clarify the meaning of "beneficial ownership of securities" as relates to beneficial ownership of securities held by family members.	194	Jan. 25, 1966	31 FR 1005.
Statement of the Commission setting the date of May 1, 1966 after which filings must reflect beneficial ownership of securities held by family members.	196	Feb. 14, 1966	31 FR 3175.
Statement of the Commission describing nature of examination required to be made of all funds and securities held by an investment adviser and the content of related accountant's certificate.	201	June 1, 1966	31 FR 7821.
Publication of the Commission's procedure to be followed if requests are to be met for no action or interpretative letters and responses thereto to be made available for public use.	281	Jan. 25, 1971	36 FR 2600.
Commission's statement of factors to be considered in connection with investment company advisory contracts containing incentive arrangements.	315	Apr. 19, 1972	37 FR 7690.
Applicability of Commission's policy statement on the future structure of securities markets to selection of brokers and payment of commissions by institutional managers.	318	May 18, 1972	37 FR 9988.
Commission's decisions on advisory committee recommendations regarding commencement of enforcement proceedings and termination of staff investigations.	336	Mar. 1, 1973	38 FR 5457.
Commission's statement on obligations of underwriters with respect to discretionary accounts.	377	June 29, 1973	38 FR 17201.
Applicability of investment advisers act to certain publications	563	Jan. 10, 1977	42 FR 2953; 42 FR 8140.
Contingent advisory compensation arrangements	721	May 16, 1980	45 FR 34876.
Applicability of investment advisers act to financial planners, pension consultants, and other persons who provide investment advisory services as an integral component of other financially related services.	770	Aug. 13, 1981	46 FR 41771.
Statement of position of Commission's Division of Investment Management	969	Apr. 30, 1985	50 FR 19341.
Statement of staff interpretive position regarding certain rules and forms; uniform registration, disclolsure, and reporting requirements.	1000	Dec. 3, 1985	50 FR 49835.
Applicability of the investment Advisers Act to financial planners, pension consultants, and other persons who provide investment advisory services as a component of other financial services.	1092	Oct. 8, 1987	52 FR 38400.
Registration of Successors to Broker–Dealers and Investment Advisors	1357	Jan. 4, 1993	58 FR 11.
Use of electronic media for delivery purposes	1562	May 9, 1996	61 FR 24651.

PART 276—INTERPRETATIVE RELEASES RELATING TO THE INVESTMENT ADVISERS ACT OF 1940 AND GENERAL RULES AND REGULATIONS THEREUNDER—Continued

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions or Advertise Investment Services Offshore.	1710	March 23, 1998	63 FR 14814

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

Sec.

279.0–1 Availability of forms.
279.1 Form ADV, for application for registration of investment adviser and for amendments to such registration statement.
279.2 Form ADV–W, notice of withdrawal from registration as investment adviser.
279.3 Form ADV–T, transition form for determining eligibility for Commission registration.
279.4 Form 4–R, irrevocable appointment of agent for service of process, pleadings and other papers by individual nonresident investment adviser.
279.5 Form 5–R, irrevocable appointment of agent for service of process, pleadings and other papers by corporation nonresident investment adviser.
279.6 Form 6–R, irrevocable appointment of agent for service of process, pleadings and other papers by partnership nonresident investment adviser.
279.7 Form 7–R, irrevocable appointment of agent for service of process, pleadings and other papers by nonresident general partner of investment adviser.
279.8 Form ADV–E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

AUTHORITY: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq*.

SOURCE: 33 FR 19005, Dec. 20, 1968, unless otherwise noted.

§279.0–1 Availability of forms.

(a) This part identifies and describes the forms prescribed for use under the Investment Advisers Act of 1940.

(b) Any person may obtain a copy of any form prescribed for use in this part by written request to the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Any person may inspect the forms at this address and at the Commission's regional and district offices. (See §200.11 of this chapter for the addresses of SEC regional and district offices.)

[46 FR 17757, Mar. 20, 1981, as amended at 47 FR 26820, June 22, 1982; 59 FR 5946, Feb. 9, 1994]

§279.1 Form ADV, for application for registration of investment adviser and for amendments to such registration statement.

This form shall be filed pursuant to Rule 203–1 (§275.203–1 of this chapter) as an application for registration of an investment adviser pursuant to sections 203(c) or 203(g) of the Investment Advisers Act of 1940, and also as an amendment to registration pursuant to Rule 204–1 (§275.204–1 of this chapter).

[44 FR 21008, Apr. 9, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§279.2 Form ADV–W, notice of withdrawal from registration as investment adviser.

This form shall be filed pursuant to Rule 203–2 (§275.203–2 of this chapter) by a registered investment adviser as a notice of withdrawal from registration as such under the Investment Advisers Act of 1940.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV–W, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§279.3 Form ADV–T, transition form for determining eligibility for Commission registration.

This form shall be filed pursuant to §275.203A–5(a) of this chapter by every

investment adviser registered with the Commission on July 8, 1997.

[62 FR 28136, May 22, 1997]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV–T, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV–S, see the List of CFR Sections Affected in the Finding Aids section of this volume.

EFFECTIVE DATE NOTE: At 61 FR 68503, Dec. 27, 1996, § 279.3 was stayed indefinitely.

§ 279.4 Form 4–R, irrevocable appointment of agent for service of process, pleadings and other papers by individual nonresident investment adviser.

This form shall be filed pursuant to Rule 0–2 (§ 275.0–2 of this chapter) by each individual nonresident investment adviser who is registered or applying for registration with the Commission as an investment adviser.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 4–R, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 279.5 Form 5–R, irrevocable appointment of agent for service of process, pleadings and other papers by corporation nonresident investment adviser.

This form shall be filed pursuant to Rule 0–2 (§ 275.0–2 of this chapter) by each corporation nonresident investment adviser, and by each unincorporated nonresident investment adviser not organized as a partnership, which is registered or applying for registration with the Commission as an investment adviser.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 5–R, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 279.6 Form 6–R, irrevocable appointment of agent for service of process, pleadings and other papers by partnership nonresident investment adviser.

This form shall be filed pursuant to Rule 0–2 (§ 275.0–2 of this chapter) by each partnership nonresident investment adviser which is registered or applying for registration with the Commission as an investment adviser.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 6–R, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 279.7 Form 7–R, irrevocable appointment of agent for service of process, pleadings and other papers by nonresident general partner of investment adviser.

This form shall be filed pursuant to Rule 0–2 (§ 275.0–2 of this chapter) by each nonresident general partner of an investment adviser, and by each nonresident ''managing agent'' of an unincorporated investment adviser as defined in said Rule 0–2, which is registered or applying for registration with the Commission as investment adviser.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 7–R, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 279.8 Form ADV–E, cover page for certificate of accounting of securities and funds in possession or custody of an investment adviser.

[54 FR 32049, Aug. 4, 1989]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form ADV–E, see the List of CFR Sections Affected in the Finding Aids section of this volume.

PART 281—INTERPRETATIVE RELEASES RELATING TO CORPORATE REORGANIZATIONS UNDER CHAPTER X OF THE BANKRUPTCY ACT

Subject	Release No.	Date	Fed. Reg. Vol. and Page
Letter of the Commission with respect to transmission to the Commission of all petitions, answers, orders, applications, reports and other papers filed under Chapter X of the Bankruptcy Act.	1	Sept. 26, 1938 ..	11 FR 10997.
Statement by the Commission summarizing Chapter X of the Bankruptcy Act.	2	.....do	11 FR 10998.

PART 285—RULES AND REGULATIONS PURSUANT TO SECTION 15(a) OF THE BRETTON WOODS AGREEMENTS ACT

Sec.
285.1 Applicability of part.
285.2 Periodic reports.
285.3 Reports with respect to proposed distribution of primary obligations.
285.4 Preparation and filing of reports.

SCHEDULE A TO PART 285

AUTHORITY: Secs. 19, 23, 48 Stat. 85, as amended, 901, as amended, sec. 15, 63 Stat. 298; 15 U.S.C. 77s, 78w 22 U.S.C. 286k–1.

§ 285.1 Applicability of part.

This part (Regulation BW), prescribes the reports to be filed with the Securities and Exchange Commission by the International Bank for Reconstruction and Development pursuant to section 15(a) of the Bretton Woods Agreements Act.

[Reg. BW, 15 FR 281, Jan. 17, 1950]

§ 285.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter.

(2) Copies of the Bank's regular quarterly financial statements.

(3) Copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank and (ii) loan and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

[20 FR 588, Jan. 27, 1955]

§ 285.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A below. The term ''sell'' as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

[46 FR 48179, Oct. 1, 1981]

§ 285.4 Preparation and filing of reports.

(a) Every report required by this part shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 285.3 (Rule 3) may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A.

[Reg. BW, 15 FR 281, Jan. 17, 1950]

SCHEDULE A TO PART 285

This schedule specifies the information and documents to be furnished in a report pursuant to § 285.3 (Rule 3) with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

ITEM 1. *Description of obligations.* As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (1) any redemption provisions and (2) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

ITEM 2. *Distribution of obligations.* (a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

ITEM 3. *Distribution spread.* The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the Bank
Per			
Total			

ITEM 4. *Discounts and commissions to sub-underwriters and dealers.* State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts so paid or to be so paid.

ITEM 5. *Other expenses of distribution.* Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instructions: Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

ITEM 6. *Application of proceeds.* Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

ITEM 7. *Exhibits to be furnished.* The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distribution of the obligations to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

[Reg. BW, 15 FR 281, Jan. 17, 1950, as amended at 20 FR 588, Jan. 27, 1955]

PART 286—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 11(a) OF THE INTER-AMERICAN DEVELOPMENT BANK ACT

Sec.

286.1 Applicability of this part.
286.2 Periodic reports.
286.3 Reports with respect to proposed distribution of primary obligations.
286.4 Preparation and filing of reports.

SCHEDULE A

AUTHORITY: Secs. 3–9, 11, 12, 73 Stat. 299–301; 22 U.S.C. 283a–283i.

SOURCE: 25 FR 10452, Nov. 1, 1960, unless otherwise noted.

§ 286.1 Applicability of this part.

This part (Regulation IA) prescribes the reports to be filed with the Securities and Exchange Commission by the Inter-American Development Bank pursuant to section 11(a) of the Inter-American Development Bank Act.

§ 286.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter.

(2) Copies of the Bank's regular quarterly financial statement.

(3) Copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 286.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A below. The term ''sell'' as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

[46 FR 48179, Oct. 2, 1981]

§ 286.4 Preparation and filing of reports.

(a) Every report required by this part shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 286.3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A.

SCHEDULE A

This schedule specifies the information and documents to be furnished in a report pursuant to § 286.3 with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1. Description of obligations

As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (1) any redemption provisions and (2) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of obligations

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution spread

The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the bank
Per unit			
Total			

Item 4. Discounts and commissions to sub-underwriters and dealers

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other expenses of distribution

Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be furnished

The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

PART 287—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 11(a) OF THE ASIAN DEVELOPMENT BANK ACT

Sec.
287.1 Applicability of this part.
287.2 Periodic reports.
287.3 Reports with respect to proposed distribution of primary obligations.
287.4 Preparation and filing of reports.
287.101 Schedule A—Information required in reports pursuant to § 287.3.

AUTHORITY: Sec. 11, 80 Stat. 73; 22 U.S.C. 285h.

SOURCE: AD1, 33 FR 259, Jan. 9, 1968, unless otherwise noted.

§ 287.1 Applicability of this part.

This part (Regulation AD) prescribes the reports to be filed with the Securities and Exchange Commission by the Asian Development Bank pursuant to section 11(a) of the Asian Development Bank Act.

§ 287.2 Periodic reports.

(a) Within 60 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter.

(2) Copies of the Bank's regular quarterly financial statement.

(3) Copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 287.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A below. The term ''sell'' as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

[46 FR 48179, Oct. 1, 1981]

§ 287.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to Rule 3 (17 CFR 287.3) may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A (17 CFR 287.101).

§ 287.101 Schedule A—Information required in reports pursuant to § 287.3.

This schedule specifies the information and documents to be furnished in a report pursuant to Rule 3 (17 CFR 287.3) with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1. Description of obligations. As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (1) any redemption provisions and (2) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of obligations. (a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution spread. The following information shall be given, in substantially the tabular form indicated, as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the bank
Per unit			
Total			

Item 4. Discounts and commissions to subunderwriters and dealers. State briefly the discounts and commission to be allowed or paid to dealers. If any dealers are to act in the capacity of subunderwriters and are to be allowed or paid any additional discounts or commissions for action in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other expenses of distribution. Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds. Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be furnished. The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

PART 288—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 9(a) OF THE AFRICAN DEVELOPMENT BANK ACT

Sec.
288.1 Applicability of this part.
288.2 Periodic reports.
288.3 Reports with respect to proposed distribution of primary obligations.
288.4 Preparation and filing of reports.
288.101 Schedule A. Information required in reports pursuant to § 288.3

AUTHORITY: Sec. 9(a), 95 Stat. 743, 22 U.S.C. 290i–9a; sec. 19(a), 48 Stat. 85, 15 U.S.C. 77s(a).

SOURCE: 50 FR 26191, June 25, 1985, unless otherwise noted.

§ 288.1 Applicability of this part.

This part (Regulation AFDB) prescribes the reports to be filed with the Securities and Exchange Commission by the African Development Bank pursuant to section 9(a) of the African Development Bank Act.

§ 288.2 Periodic reports.

(a) Within 60 days after the end of each of its fiscal quarters, the Bank shall file with the Commission the following information:

(1) Information as to any purchases or sales by the Bank of its primary obligations during such quarter;

(2) Two copies of the Bank's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than (i) constituent documents defining the rights of holders of securities of other issuers guaranteed by the Bank, and (ii) loans and guaranty agreements to which the Bank is a party) previously filed with the Commission under any statute.

(b) Two copies of each annual report of the Bank to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 288.3 Reports with respect to proposed distribution of primary obligations.

The Bank shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A (17 CFR 288.101). The term ''sell' as used in this section and in Schedule A means the making of a completed sale or a firm commitment to sell.

§ 288.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the Bank by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to Rule 3 (17 CFR 288.3) may be filed in the form of prospectus to the extent that such prospectus contains the information specified in Schedule A (17 CFR 288.101).

§ 288.101 Schedule A. Information required in reports pursuant to § 288.3.

This schedule specifies the information and documents to be furnished in a report pursuant to Rule 3 (17 CFR 288.3) with respect to a proposed distribution of primary obligations of the Bank. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the Bank which is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of (i) any redemption provisions and (ii) any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the Bank will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the Bank will, as to the payment of interest or principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the Bank with respect thereto.

(i) The name and address of the fiscal or paying agent of the Bank, if any.

Item 2. Distribution of obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the Bank or to any principal underwriter named above designed to stabilize the market for the obligations for the acount of the Bank or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3. Distribution spread.

The following information shall be given, in substantially the tabular form indicated,

as to all obligations which are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts and commissions	Proceeds to the bank
Per Unit			
Total			

Item 4. Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5. Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the Bank in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions.

Instruction. Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6. Application of proceeds.

Make a reasonable itemized statement of the purposes, so far as determinable, for which the net proceeds to the Bank from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7. Exhibits to be furnished.

The following documents shall be attached to or otherwise furnished as a part of the report:

(a) Copies of the constituent instruments defining the rights evidenced by the obligations.

(b) Copies of an opinion of counsel, in the English language, as to the legality of the obligations.

(c) Copies of all material contracts pertaining to the issuance or distributions of the obligations, to which the Bank or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Copies of any prospectus or other sales literature to be provided by the Bank or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

PART 289—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 13(a) OF THE INTERNATIONAL FINANCE CORPORATION ACT

Sec.
289.1 Applicability of this part.
289.2 Periodic reports.
289.3 Reports with respect to proposed distribution of primary obligations.
289.4 Preparation and filing of reports.
289.101 Schedule A. Information required in reports pursuant to § 289.3.

AUTHORITY: 15 U.S.C. 77s(a); 22 U.S.C. 282m.

SOURCE: 56 FR 32079, July 15, 1991, unless otherwise noted.

§ 289.1 Applicability of this part.

This part (Regulation IFC) prescribes the reports to be filed with the Securities and Exchange Commission by the International Finance Corporation (''IFC'') pursuant to section 13(a) of the International Finance Corporation Act.

§ 289.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters the IFC shall file with the Commission the following information:

(1) Two copies of information as to any purchases or sales by the IFC of its primary obligations during such quarter;

(2) Two copies of the IFC's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than constituent documents defining the rights of holders of securities of other issuers guaranteed by the IFC, and loan and guaranty agreements to which the IFC is a party) previously filed with the Commission under any statute.

(b) Each annual report of the IFC to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 289.3 Reports with respect to proposed distribution of primary obligations.

The IFC shall file with the Commission, on or prior to the date on which it sells any of its primary obligations

in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A of this part. The term ''sell'' as used in this section and in Schedule A of this Part means a completed sale, or a firm commitment to sell to an underwriter.

§ 289.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the IFC by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 289.3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A of this Part.

§ 289.101 Schedule A. Information required in reports pursuant to § 289.3.

This schedule specifies the information and documents to be furnished in a report pursuant to § 289.3 with respect to a proposed distribution of primary obligations of the IFC. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the IFC that is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payments dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of:

(i) Any redemption provisions, and

(ii) Any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the IFC will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the IFC will, as to the payment of interest and principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority, to the extent known.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holder thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the IFC with respect thereto.

(i) The name and address of the fiscal or paying agent of the IFC, if any.

Item 2: Distribution of obligations.

(a) Outline briefly the plan of distribution of the obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the IFC or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the IFC or the principal underwriters as a group and indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3: Distribution spread.

The following information shall be given, in substantially the tabular

form indicated, as to all primary obligations that are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts & commissions	Proceeds to the IFC
Per Unit	____	____	____
Total	____	____	____

Item 4: Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5: Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the IFC in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions that are provided in Items 2, 3 and 4.

Instruction

Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject to future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6: Application of proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the IFC from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7: Exhibits to be furnished.

A copy of each of the following documents shall be attached to or otherwise furnished as a part of the report:

(a) Each constituent instrument defining the rights evidenced by the obligations.

(b) An opinion of counsel, written in the English language, as to the legality of the obligations.

(c) Each material contract pertaining to the issuance or distribution of the obligations, to which the IFC or any principal underwriter of the obligations is or is to be party, except selling group agreements.

(d) Each prospectus or other sales literature to be provided by the IFC or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

PART 290—GENERAL RULES AND REGULATIONS PURSUANT TO SECTION 9(a) OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT ACT

Sec.
290.1 Applicability of this part.
290.2 Periodic reports.
290.3 Reports with respect to proposed distribution of obligations.
290.4 Preparation and filing of reports.
290.101 Schedule A. Information required in reports pursuant to § 290.3.

AUTHORITY: 15 U.S.C. 77s(a); 22 U.S.C. 290*l*–9.

SOURCE: 56 FR 32082, July 15, 1991, unless otherwise noted.

§ 290.1 Applicability of this part.

This part (Regulation EBRD) prescribes the reports to be filed with the Securities and Exchange Commission by the European Bank for Reconstruction and Development (''EBRD'') pursuant to section 9(a) of the European Bank for Reconstruction and Development Act.

§ 290.2 Periodic reports.

(a) Within 45 days after the end of each of its fiscal quarters the EBRD shall file with the Commission the following information:

(1) Two copies of information as to any purchases or sales by the EBRD of its primary obligations during such quarter;

(2) Two copies of the EBRD's regular quarterly financial statement; and

(3) Two copies of any material modifications or amendments during such quarter of any exhibits (other than constituent documents defining the rights of holders of securities of other issuers guaranteed by the EBRD, and loan guaranty agreements to which the EBRD is a party) previously filed with the Commission under any statute.

(b) Each annual report of the EBRD to its Board of Governors shall be filed with the Commission within 10 days after the submission of such report to the Board of Governors.

§ 290.3 Reports with respect to proposed distribution of obligations.

The EBRD shall file with the Commission, on or prior to the date on which it sells any of its primary obligations in connection with a distribution of such obligations in the United States, a report containing the information and documents specified in Schedule A of this Part. The term ''sell'' as used in this section and in Schedule A of this Part means a completed sale, or a firm committment to sell to an underwriter.

§ 290.4 Preparation and filing of reports.

(a) Every report required by this regulation shall be filed under cover of a letter of transmittal which shall state the nature of the report and indicate the particular rule and subdivision thereof pursuant to which the report is filed. At least the original of every such letter shall be signed on behalf of the EBRD by a duly authorized officer thereof.

(b) Two copies of every report, including the letter of transmittal, exhibits and other papers and documents comprising a part of the report, shall be filed with the Commission.

(c) The report shall be in the English language. If any exhibit or other paper or document filed with the report is in a foreign language, it shall be accompanied by a translation into the English language.

(d) Reports pursuant to § 290.3 may be filed in the form of a prospectus to the extent that such prospectus contains the information specified in Schedule A of this Part.

§ 290.101 Schedule A. Information required in reports pursuant to § 290.3.

This schedule specifies the information and documents to be furnished in a report pursuant to § 290.3 with respect to a proposed distribution of primary obligations of the EBRD. Information not available at the time of filing the report shall be filed as promptly thereafter as possible.

Item 1: Description of obligations.

As to each issue of primary obligations of the EBRD that is to be distributed, furnish the following information:

(a) The title and date of the issue.

(b) The interest rate and interest payment dates.

(c) The maturity date or, if serial, the plan of serial maturities. If the maturity of the obligation may be accelerated, state the circumstances under which it may be so accelerated.

(d) A brief outline of:

(i) Any redemption provisions and

(ii) Any amortization, sinking fund or retirement provisions, stating the annual amount, if any, which the EBRD will be under obligation to apply for the satisfaction of such provisions.

(e) If secured by any lien, the kind and priority thereof, and the nature of the property subject to the lien; if any other indebtedness is secured by an equal or prior lien on the same property, state the nature of such other liens.

(f) If any obligations issued or to be issued by the EBRD will, as to the payment of interest and principal, rank prior to the obligations to be distributed, describe the nature and extent of such priority, to the extent known.

(g) Outline briefly any provisions of the governing instruments under which the terms of the obligations to be distributed may be amended or modified by the holders thereof or otherwise.

(h) Outline briefly any other material provisions of the governing instruments pertaining to the rights of the holders of the obligations to be distributed or pertaining to the duties of the EBRD with respect thereto.

(i) The name and address of the fiscal or paying agent of the EBRD, if any.

Item 2: Distribution of obligations.

(a) Outline briefly the plan of distribution of obligations and state the amount of the participation of each principal underwriter, if any.

(b) Describe any arrangements known to the EBRD or to any principal underwriter named above designed to stabilize the market for the obligations for the account of the EBRD or the principal underwriters as a group and

indicate whether any transactions have already been effected to accomplish that purpose.

(c) Describe any arrangements for withholding commissions, or otherwise, to hold each underwriter or dealer responsible for the distribution of his participation.

Item 3: Distribution spread.

The following information shall be given, in substantially the tabular form indicated, as to all primary obligations that are to be offered for cash (estimate, if necessary):

	Price to the public	Selling discounts & commissions	Proceeds to the EBRD
Per Unit	____	____	____
Total	____	____	____

Item 4: Discounts and commissions to sub-underwriters and dealers.

State briefly the discounts and commissions to be allowed or paid to dealers. If any dealers are to act in the capacity of sub-underwriters and are to be allowed or paid any additional discounts or commissions for acting in such capacity, a general statement to that effect will suffice, without giving the additional amounts to be so paid.

Item 5: Other expenses of the distribution.

Furnish a reasonably itemized statement of all expenses of the EBRD in connection with the issuance and distribution of the obligations, except underwriters' or dealers' discounts and commissions that are provided in Items 2, 3 and 4.

Instruction

Insofar as practicable, the itemization shall include transfer agents' fees, cost of printing and engraving, and legal and accounting fees. The information may be given as subject future contingencies. If the amounts of any items are not known, estimates, designated as such, shall be given.

Item 6: Application of proceeds.

Make a reasonably itemized statement of the purposes, so far as determinable, for which the net proceeds to the EBRD from the obligations are to be used, and state the approximate amount to be used for each such purpose.

Item 7: Exhibits to be furnished.

A copy of each of the following documents shall be attached to or otherwise furnished as a part of the report:

(a) Each constituent instrument defining the rights evidenced by the obligations.

(b) An opinion of counsel, written in the English language, as to the legality of the obligations.

(c) Each material contract pertaining to the issuance or distribution of the obligations, to which the EBRD or any principal underwriter of the obligations is or is to be a party, except selling group agreements.

(d) Any prospectus or other sales literature to be provided by the EBRD or any of the principal underwriters for general use in connection with the initial distribution of the obligations to the public.

PART 300—RULES OF THE SECURITIES INVESTOR PROTECTION CORPORATION

ACCOUNTS OF ''SEPARATE'' CUSTOMERS OF SIPC MEMBERS

Sec.
300.100 General.
300.101 Individual accounts.
300.102 Accounts held by executors, administrators, guardians, etc.
300.103 Accounts held by a corporation, partnership or unincorporated association.
300.104 Trust accounts.
300.105 Joint accounts.

ACCOUNTS INTRODUCED BY OTHER BROKERS OR DEALERS

300.200 General.
300.201 Accounts introduced by same or different broker or dealer.

CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

300.300 Definitions.
300.301 Contracts to be closed out or completed.
300.302 Mechanics of closeout or completion.
300.303 Report to trustee.
300.304 Retained rights of brokers or dealers.
300.305 Excluded contracts.
300.306 Completion or closeout pursuant to SIPC direction.
300.307 Completion with cash or securities of customer.
300.400 Satisfaction of customer claims for standardized options.

RULES RELATING TO SATISFACTION OF A ''CLAIM FOR CASH'' OR A ''CLAIM FOR SECURITIES''

300.500 General.
300.501 Claim for cash.
300.502 Claim for securities.
300.503 Voidable securities transactions.

AUTHORITY: Sec. 3, 84 Stat. 1636, as amended; 15 U.S.C. 78ccc.

SOURCE: 44 FR 5077, Jan. 25, 1979, unless otherwise noted, unless otherwise noted.

NOTE: The numbers to the right of the decimal points correspond with the respective rule numbers of the rules of the Securities Investor Protection Corporation (hereinafter referred to as ''SIPC'').

EXPLANATORY NOTE: Pursuant to section 3(e)(2)(D) of the Securities Investor Protection Act of 1970 (hereinafter referred to as ''the Act''), the Securities and Exchange Commission (hereinafter referred to as ''the Commission'') shall approve a proposed rule change submitted by the Securities Investor Protection Corporation if it finds that such proposed rule change is in the public interest and is consistent with the purposes of the Act, and any proposed rule change so approved shall be given force and effect as if promulgated by the Commission. The rules of this part 300 have been so approved.

ACCOUNTS OF ''SEPARATE'' CUSTOMERS OF SIPC MEMBERS

§ 300.100 General.

(a) For the purpose of sections 9(a)(2) and 16(12) of the Securities Investor Protection Act (hereinafter referred to as ''the Act''), these rules will be applied in determining what accounts held by a person with a member of SIPC (hereinafter called a ''member'') are to be deemed accounts held in a capacity other than his individual capacity.

(b) Accounts held by a customer in different capacities, as specified by these rules, shall be deemed to be accounts of ''separate'' customers.

(c) A ''person'' as used in these rules includes, but is not limited to, an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or a government or political subdivision thereof.

(d) The burden shall be upon the customer to establish each capacity in which he claims to hold accounts separate from his individual capacity.

§ 300.101 Individual accounts.

(a) Except as otherwise provided in these rules, all accounts held with a member by a person in his own name, and those which under these rules are deemed his individual accounts, shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by an agent or nominee for another person as a principal or beneficial owner shall, except as otherwise provided in these rules, be deemed to be an individual account of such principal or beneficial owner.

§ 300.102 Accounts held by executors, administrators, guardians, etc.

(a) Accounts held with a member in the name of a decedent or in the name of his estate or in the name of the executor or administrator of the estate of the decedent shall be combined so as to constitute a single account of a separate customer.

(b) An account held with a member by a guardian, custodian, or conservator for the benefit of a ward or for the benefit of a minor under the Uniform Gifts to Minors Act or in a similar capacity shall be deemed to be held by such guardian, custodian, or conservator in a different capacity from any account or accounts maintained by such person in his individual capacity.

§ 300.103 Accounts held by a corporation, partnership or unincorporated association.

A corporation, partnership or unincorporated association holding an account with a member shall be deemed to be a separate customer distinct from the person or persons owning such corporation or comprising such partnership or unincorporated association if on the filing date it existed for a purpose other than primarily to obtain or increase protection under the Act.

§ 300.104 Trust accounts.

(a) A trust account held with a member shall be deemed a ''qualifying trust account'' if it is held on behalf of a valid and subsisting express trust created by a written instrument. No account held on behalf of a trust that on the filing date existed primarily to obtain or increase protection under the

Act shall be deemed to be a qualifying trust account.

(b) A qualifying trust account held with a member shall be deemed held by a separate customer of the member, distinct from the trustee, the testator or his estate, the settlor, or any beneficiary of the trust.

(c) Any account held with a member on behalf of a trust which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual account of the settlor of the trust on behalf of which the account is held.

§ 300.105 Joint accounts.

(a) A joint account shall be deemed to be a ''qualifying joint account'' if it is owned jointly, whether by the owners thereof as joint tenants with the right of survivorship, as tenants by the entirety or as tenants in common, or by husband and wife as community property, but only if each co-owner possesses authority to act with respect to the entire account.

(b) Subject to paragraph (c) of this rule, each qualifying joint account with a member shall be deemed held by one separate customer of the member.

(c) All qualifying joint accounts with a member owned by the same persons shall be deemed held by the same customer so that the maximum protection afforded to such accounts in the aggregate shall be the protection afforded to one separate customer of the member

(d) A joint account with a member which does not meet the requirements of paragraph (a) of this rule shall be deemed to be an individual or qualifying joint account of the co-owner or co-owners having the exclusive power to act with respect to it.

ACCOUNTS INTRODUCED BY OTHER BROKERS OR DEALERS

§ 300.200 General.

A person having one or more accounts cleared by the member on a fully disclosed basis for one or more introducing brokers or dealers is a customer of the member and shall be protected with respect to such account or accounts without regard to the protection available for any other account or accounts he may have with the member.

§ 300.201 Accounts introduced by same or different broker or dealer.

All accounts of a person which are introduced by the same broker or dealer shall be combined and protected as the single account of a separate customer, unless such accounts are maintained in different capacities as specified in §§ 300.100 through 300.105; accounts introduced by different brokers or dealers shall be protected separately.

CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

AUTHORITY Sec. 3, 6(d), Pub. L. 91–598, 84 Stat. 1636 (15 U.S.C. 78ccc, 78fff(d)), as amended by secs. 3, 5, 9, Pub. L. 95–283, 92 Stat. 249.

SOURCE: Sections 300.300 through 300.307 appear at 44 FR 21211, Apr. 9, 1979, unless otherwise noted.

§ 300.300 Definitions.

For the purpose of these rules, adopted pursuant to section 8(e) of the Securities Investor Protection Act of 1970, as amended (hereinafter referred to as ''the Act''):

(a) The term *failed to receive* shall mean a contractual commitment of the debtor made in the ordinary course of business to pay to another broker or dealer the contract price in cash upon receipt from such broker or dealer of securities purchased: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date as defined in section 16(7) of the Act (hereinafter referred to as the ''filing date'').

(b) The term *failed to deliver* shall mean a contractual commitment of the debtor, made in the ordinary course of business, to deliver securities to another broker or dealer against receipt from such broker or dealer of the contract price in cash: *Provided*, That the respective obligations of the parties remained outstanding until the close of business on the filing date.

(c) The term *open contractual commitment* shall mean a failed to receive or a failed to deliver which had a settlement date prior to the filing date and the respective obligations of the parties remained outstanding on the filing

date or had a settlement date which occurs on or within three business days subsequent to the filing date: *Provided, however*, That the term ''open contractual commitment'' shall not include any contractual commitment for which the security which is the subject of the trade had not been issued by the issuer as of the trade date.

(d) The term *customer* shall mean a person (other than a broker or dealer) in whose behalf a broker or dealer has executed a transaction out of which arose an open contractual commitment with the debtor, but shall not include any person to the extent that such person at the filing date (1) had a claim for property which by contract, agreement of understanding, or by operation of law, was a part of the capital of the broker or dealer who executed such transaction or was subordinated to the claims of creditors of such broker or dealer, or (2) had a relationship with the debtor which is specified in section 9(a)(4) of the Act.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

§ 300.301 Contracts to be closed out or completed.

An open contractual commitment shall be closed out or completed if:

(a) The open contractual commitment:

(1) Arises from a transaction in which a customer (as defined in § 300.300) of the other broker or dealer had an interest. For the purposes of this rule a customer is deemed to have an interest in a transaction if (i) the other broker was acting as agent for the customer or (ii) the other dealer was not a market maker in the security involved, to the extent such other dealer held a firm order from the customer and in connection therewith: In the case of a buy order, prior to executing such customer's order purchased as principal the same number of shares or purchased shares to accumulate the number of shares necessary to complete the order; or in the case of a sell order, prior to executing such customer's order sold the same number of shares or a portion thereof; and

(2)(i) Had a settlement date on or within 30 calendar days prior to the filing date and the respective obligations of the parties remained outstanding on the filing date or had a settlement date which occurs on or within three business days subsequent to the filing date; and

(ii) Had a trade date on or within three business days prior to such settlement date; and

(b) The other broker or dealer can establish to the satisfaction of the trustee through appropriate documentation that:

(1) In the case of a broker or dealer who maintains his records on a specific identification basis:

(i) The open contractual commitment arose out of a transaction in which his customer had such an interest, and

(ii) In the case of a failed to deliver of the debtor, as of the filing date such broker's or dealer's customer's interest had not been sold to such broker or dealer; or

(2) In the case of a broker or dealer who maintains his records other than on a specific identification basis, he has determined that a customer had such an interest in a manner consistent with that used by such broker or dealer prior to the filing date to allocate fails to receive and fails to deliver in computing the special reserve bank account requirement pursuant to the provisions of Rule 15c3–3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3–3); or

(3) In the case of a broker or dealer not described in paragraph (b)(1) or (2) of this section, he has made the determination in a manner which the trustee finds to be fair and equitable.

[44 FR 21211, Apr. 9, 1979, as amended at 62 FR 10451, Mar. 7, 1997]

§ 300.302 Mechanics of closeout or completion.

(a) The closeout or completion of an open contractual commitment meeting the requirements of § 300.301 shall be effected only:

(1) By the buy-in or sell-out of the commitment by the other broker or dealer in accordance with the usual trade practices initiated by the other broker or dealer within or promptly upon the expiration of a period of 30 calendar days after settlement date; or

(2) At the option of the trustee by the delivery of securities against receipt of the contract price or payment of the contract price against the receipt of the securities at any time within 30 calendar days after settlement date unless the commitment previously has been bought-in or sold-out in accordance with paragraph (a)(1) of this section; or

(3) In the event of the refusal of the other broker or dealer to accept completion of an open contractual commitment in accordance with paragraph (a)(2) of this section, or the failure of the other broker or dealer to promptly buy-in or sell-out a commitment in accordance with paragraph (a)(1) of this section, or in the event of the failure of the other broker or dealer to provide the trustee with appropriate documentation as required by § 300.303, by delivery of securities against receipt of the contract price or payment of the contract price against receipt of securities, or the buy-in or sell-out of the commitment or cancellation of the commitment or otherwise, as may be appropriate, as the trustee in his discretion will most benefit the estate of the debtor.

(b) In the event of a close-out of an open contractual commitment pursuant to paragraph (a)(1) of this section, the money differences resulting from such close-out shall be payable by the other broker or dealer to the trustee or by the trustee to the other broker or dealer, whichever would be entitled to receive such difference under the usual trade practices: *Provided, however,* (1) That prior to the payment of any such money difference by the trustee to such other broker or dealer with respect to transactions executed by such other broker or dealer for any separate customer account, all open contractual commitments with respect to such account which meet the requirements of § 300.301 must have been completed by delivery of securities against receipt of the contract price or by payment of the contract price against receipt of the securities in conformity with paragraph (a)(2) of this section, or by buy-in or sell-out in conformity with paragraph (a)(1) of this section, and (2) that the net amount so payable by the trustee to the other broker or dealer shall not exceed $40,000 with respect to any separate customer account.

§ 300.303 Report to trustee.

Promptly upon the expiration of 30 calendar days after the filing date, or if by the expiration of such 30-day period notice pursuant to section 8(a) of the Act of the commencement of proceedings has not been published, then as soon as practicable after publication of such notice, a broker or dealer who had executed transactions in securities out of which arose open contractual commitments with the debtor shall furnish to the trustee such information with respect to the buy-in, sell-out or other status of open contractual commitments as called for by Forms 300–A, B and C (§§ 301.300a–301.300c of this chapter) including appropriate supporting documentation and schedules.

§ 300.304 Retained rights of brokers or dealers.

(a) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to any claim against the debtor's estate, or the right of the trustee to make any claim against a broker or dealer, with respect to a commitment of the debtor which was outstanding on the filing date, but (1) which is not described in § 300.300(c), or (2) which, although described in § 300.300(c), does not meet the requirements specified in § 300.301 or was not closed out of completed in accordance with § 300.302 or was not reported to the trustee in conformity with § 300.303 or was not supported by appropriate documentation.

(b) Nothing stated in these rules shall be construed to prejudice the right of a broker or dealer to a claim against the debtor's estate for the amount by which the money difference due the broker or dealer upon a buy-in or sell-out may exceed the amount paid by the trustee to such broker or dealer.

§ 300.305 Excluded contracts.

Notwithstanding the fact that an open contractual commitment described in § 300.300(c) meets the requirements of § 300.301 and the other requirements of these rules, a court shall not

be precluded from canceling such commitment, awarding damages, or granting such other remedy as it shall deem fair and equitable if, on application of the trustee or SIPC, it determines that such commitment was not entered into in the ordinary course of business or was entered into by the debtor, or the broker or dealer or his customer, for the purposes of creating a commitment in contemplation of a liquidation proceeding under the Act. Such a determination shall be made after notice and opportunity for hearing by the debtor, such broker or dealer, or such customer, and may be made before or after the delivery of securities or payment of the contract price or before or after any buy-in or sell-out of the open contractual commitment, or otherwise.

§ 300.306 Completion or closeout pursuant to SIPC direction.

In its discretion SIPC may, in order to prevent a substantial detrimental impact upon the finanical condition of one or more brokers or dealers, direct the closeout or completion of an open contractual commitment, irrespective of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported in conformity with § 300.303 or is supported by appropriate documentation. SIPC shall consult with the Securities and Exchange Commission before SIPC makes any determinations under this section.

§ 300.307 Completion with cash or securities of customer.

The trustee may, if authorized by the court, complete an open contractual commitment of the debtor, regardless of whether it is described in § 300.300(c) or meets the requirements of § 300.301 or has been reported to the trustee in conformity with § 300.303, to the extent that such commitment is completed with customer name securities of the customer of the debtor for whose account the commitment was made, or with cash or securities paid or delivered by or for the account of such customer to the debtor or trustee after the filing date.

§ 300.400 Satisfaction of customer claims for standardized options.

(a) For the purpose of sections 7(b)(1), 8 (b) and (d), and 16(11) of the Securities Investor Protection Act (hereinafter referred to as ''the Act''), this rule will be applied in determining what a customer will receive in either (1) a liquidation proceeding pursuant to the Act or (2) a direct payment procedure pursuant to section 10 of the Act, in satisfaction of a claim based upon Standardized Options positions.

(b) As promptly as practicable after the initiation of a liquidation proceeding or a direct payment procedure under the Act, the trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall liquidate or cause to be liquidated, by sale or purchase, all Standardized Options positions held for the accounts of customers.

(c) A trustee in a liquidation proceeding, or SIPC in a direct payment procedure, shall calculate the dollar amount of all Standardized Options positions held for the account of a customer in accordance with section 16(11) of the Act, and credit or debit, as appropriate, the dollar amount so calculated to the account of such customer.

(d) Notwithstanding paragraph (b) of this section, neither the trustee in a liquidation proceeding nor SIPC in a direct payment procedure shall be required under this rule to liquidate any short position in Standardized Options covered by the deposit of (1) the underlying securities, in the case of a call option, or (2) treasury bills, in the case of a put option, by or on behalf of a customer with a bank or other depository. Any such positions that are not liquidated shall be excluded from the calculation provided for in paragraph (c) of this section.

(e) In no event will Standardized Options positions be delivered to or on behalf of customers in satisfaction of claims pursuant to section 7(b)(1) of the Act.

(f) In no event will Standardized Options be purchased for delivery to customers pursuant to section 8(d) of the Act.

(g) This rule shall not be construed as limiting or restricting in any way the exercise of any right of a broker or registered clearing agency to liquidate or cause the liquidation of Standardized Options Positions.

(h) As used in this rule the term *Standardized Options* means options traded on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange.

[48 FR 49840, Oct. 28, 1983]

RULES RELATING TO SATISFACTION OF A ''CLAIM FOR CASH'' OR A ''CLAIM FOR SECURITIES''

SOURCE: Sections 300.500 through 300.503 appear at 53 FR 10369, Mar. 31, 1988, unless otherwise noted.

§ 300.500 General.

These rules will be applied in determining whether a securities transaction gives rise to a ''claim for cash'' or a ''claim for securities'' on the filing date of either a liquidation proceeding pursuant to the Securities Investor Protection Act (hereinafter referred to as ''the Act'') or a direct payment procedure pursuant to section 10 of the Act.

§ 300.501 Claim for cash.

(a) Where a SIPC member (''Debtor'') held securities in an account for a customer, the customer has a ''claim for cash'' with respect to any authorized securities sale:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held cash in an account for a customer, the customer has a ''claim for cash'', notwithstanding the fact that the customer has ordered securities purchased for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of a completed or executory contract for purchase for or sale to the account.

§ 300.502 Claim for securities.

(a) Where the Debtor held cash in an account for a customer, the customer has a ''claim for securities'' with respect to any authorized securities purchase:

(1) If the Debtor has sent written confirmation to the customer that the securities in question have been purchased for or sold to the customer's account; or

(2) Whether or not such a written confirmation has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase from the account.

(b) Where the Debtor held securities in an account for a customer, the customer has a ''claim for securities'', notwithstanding the fact that the customer has ordered the securities sold for the account, unless:

(1) The Debtor has sent written confirmation to the customer that the securities in question have been sold for or purchased from the customer's account; or

(2) Whether or not written confirmation of the purchase has been sent, if the securities in question have become the subject of completed or executory contract for sale for or purchase form the account.

§ 300.503 Voidable securities transactions.

(a) Nothing in these Series 500 Rules shall be construed as limiting the rights of a trustee in a liquidation proceeding under the Act to avoid any securities transaction as fraudulent, preferential, or otherwise voidable under applicable law.

(b) Nothing in these Series 500 Rules shall be construed as limiting the right of the Securities Investor Protection Corporation, in a direct payment procedure under section 10 of the Act, to

reject a claim for cash or a claim for securities if such claim arose out of a securities transaction which could have been avoided in a liquidation proceeding under the Act.

PART 301—FORMS, SECURITIES INVESTOR PROTECTION CORPORATION

Sec.

301.0–1 Availability of forms.

FORMS FOR CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

301.300a Form 300–A, for summary of buy-ins or sell-outs of all open contractual commitments.

301.300b Form 300–B, for report of all fails to deliver.

301.300c Form 300–C, for report of all fails to receive.

AUTHORITY: Sec. 3, 84 Stat. 1636 (15 U.S.C. 78ccc), as amended by sec. 3, Pub. L. 95–283, 92 Stat. 249.

SOURCE: 44 FR 21213, Apr. 9, 1979, unless otherwise noted.

NOTE: Pursuant to section 3(e)(2)(D) of the Securities Investor Protection Act of 1970 (the ''Act''), the Securities and Exchange Commission (''Commission'') shall approve a proposed rule change submitted by the Securities Investor Protection Corporation (''SIPC'') if the Commission finds the rule change is in the public interest and is consistent with the purposes of the Act. Any rule change so approved shall be given force and effect as if promulgated by the Commission. The forms described in this part have been so approved.

§301.0–1 Availability of forms.

The forms prescribed for use under the Securities Investor Protection Act of 1970, as amended, (the ''Act'') and under part 300 of this chapter are identified and described in this part. Copies of these forms may be obtained upon request to, as appropriate, the Securities Investor Protection Corporation (''SIPC'') at 900 Seventeenth Street, NW., Washington, DC 20006, or the trustee appointed in a liquidation proceeding under section 5 of the Act.

FORMS FOR CLOSEOUT OR COMPLETION OF OPEN CONTRACTUAL COMMITMENTS

§301.300a Form 300–A, for summary of buy-ins or sell-outs of all open contractual commitments.

This form shall be filed as required by §300.303 of this chapter with the trustee in a proceeding under section 5 of the Act by a broker-dealer who executed transactions out of which arose open contractual commitments, as defined by §300.300(c) of this chapter, with the debtor in the proceeding. The form shall be used to summarize the buy-ins and sell-outs of those open contractual commitments and shall be accompanied by the forms described in §§301.300b and 301.300c.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 300–A, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§301.300b Form 300–B, for report of all fails to deliver.

This form shall be filed as required by §300.303 of this chapter with the trustee in a proceeding under section 5 of the Act by a broker-dealer who executed transactions out of which arose open contractual commitments, as defined by §300.300(c) of this chapter, with the debtor in the proceeding. The form shall be used to report all the fails to deliver, as defined by §300.300(b) of this chapter, that were open on the filing date, as well as any subsequent closeouts. This form shall accompany the form described in §300.300a.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 300–B, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§301.300c Form 300–C, for report of all fails to receive.

This form shall be filed as required by §300.303 of this chapter with the trustee in a proceeding under section 5 of the Act by a broker-dealer who executed transactions out of which arose open contractual commitments, as defined by §300.300(c) of this chapter, with the debtor in the proceeding. The form shall be used to report all the

fails to receive, as defied by § 300.300(a) of this chapter, that were open on the filing date, as well as any subsequent closeouts. This form shall accompany the form described in § 300.300a.

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting Form 300–C, see the List of CFR Sections Affected in the Finding Aids section of this volume.