

**§ 244.101 Definitions.**

This section defines certain terms as used in Regulation G (§§ 244.100 through 244.102).

(a)(1) *Non-GAAP financial measure.* A non-GAAP financial measure is a numerical measure of a registrant's historical or future financial performance, financial position or cash flows that:

(i) Excludes amounts, or is subject to adjustments that have the effect of excluding amounts, that are included in the most directly comparable measure calculated and presented in accordance with GAAP in the statement of income, balance sheet or statement of cash flows (or equivalent statements) of the issuer; or

(ii) Includes amounts, or is subject to adjustments that have the effect of including amounts, that are excluded from the most directly comparable measure so calculated and presented.

(2) A non-GAAP financial measure does not include operating and other financial measures and ratios or statistical measures calculated using exclusively one or both of:

(i) Financial measures calculated in accordance with GAAP; and

(ii) Operating measures or other measures that are not non-GAAP financial measures.

(3) A non-GAAP financial measure does not include financial measures required to be disclosed by GAAP, Commission rules, or a system of regulation of a government or governmental authority or self-regulatory organization that is applicable to the registrant.

(b) *GAAP.* GAAP refers to generally accepted accounting principles in the United States, except that:

(1) In the case of foreign private issuers whose primary financial statements are prepared in accordance with non-U.S. generally accepted accounting principles, GAAP refers to the principles under which those primary financial statements are prepared; and

(2) In the case of foreign private issuers that include a non-GAAP financial measure derived from a measure calculated in accordance with U.S. generally accepted accounting principles, GAAP refers to U.S. generally accepted accounting principles for purposes of the application of the requirements of

Regulation G to the disclosure of that measure.

(c) *Registrant.* A registrant subject to this regulation is one that has a class of securities registered under Section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or is required to file reports under Section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)), excluding any investment company registered under Section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

(d) *United States.* United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

**§ 244.102 No effect on antifraud liability.**

Neither the requirements of this Regulation G (17 CFR 244.100 through 244.102) nor a person's compliance or non-compliance with the requirements of this Regulation shall in itself affect any person's liability under Section 10(b) (15 U.S.C. 78j(b)) of the Securities Exchange Act of 1934 or § 240.10b-5 of this chapter.

**PART 245—REGULATION BLACKOUT TRADING RESTRICTION (Regulation BTR—Blackout Trading Restriction)**

Sec.

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245.102 Exceptions to definition of blackout period.

245.103 Issuer right of recovery; right of action by equity security owner.

245.104 Notice.

AUTHORITY: 15 U.S.C. 78w(a), unless otherwise noted.

Sections 245.100-245.104 are also issued under secs. 3(a) and 306(a), Pub. L. 107-204, 116 Stat. 745.

SOURCE: 68 FR 4355, Jan. 28, 2003, unless otherwise noted.

**§ 245.100 Definitions.**

As used in Regulation BTR (§§ 245.100 through 245.104), unless the context otherwise requires:

(a) The term *acquired in connection with service or employment as a director*

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*or executive officer*, when applied to a director or executive officer, means that he or she acquired, directly or indirectly, an equity security:

(1) At a time when he or she was a director or executive officer, under a compensatory plan, contract, authorization or arrangement, including, but not limited to, an option, warrants or rights plan, a pension, retirement or deferred compensation plan or a bonus, incentive or profit-sharing plan (whether or not set forth in any formal plan document), including a compensatory plan, contract, authorization or arrangement with a parent, subsidiary or affiliate;

(2) At a time when he or she was a director or executive officer, as a result of any transaction or business relationship described in paragraph (a) of Item 404 of Regulation S-K (§229.404 of this chapter) or, in the case of a foreign private issuer, Item 7.B of Form 20-F (§249.220f of this chapter) (but without application of the disclosure thresholds of such provisions), to the extent that he or she has a pecuniary interest (as defined in paragraph (l) of this section) in the equity securities;

(3) At a time when he or she was a director or executive officer, as directors' qualifying shares or other securities that he or she must hold to satisfy minimum ownership requirements or guidelines for directors or executive officers;

(4) Prior to becoming, or while, a director or executive officer where the equity security was acquired as a direct or indirect inducement to service or employment as a director or executive officer; or

(5) Prior to becoming, or while, a director or executive officer where the equity security was received as a result of a business combination in respect of an equity security of an entity involved in the business combination that he or she had acquired in connection with service or employment as a director or executive officer of such entity.

(b) Except as provided in §245.102, the term *blackout period*:

(1) With respect to the equity securities of any issuer (other than a foreign private issuer), means any period of more than three consecutive business

days during which the ability to purchase, sell or otherwise acquire or transfer an interest in any equity security of such issuer held in an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan with respect to not fewer than 50% of the participants or beneficiaries located in the United States and its territories and possessions under all individual account plans (as defined in paragraph (j) of this section) maintained by the issuer that permit participants or beneficiaries to acquire or hold equity securities of the issuer;

(2) With respect to the equity securities of any foreign private issuer (as defined in §240.3b-4(c) of this chapter), means any period of more than three consecutive business days during which both:

(i) The conditions of paragraph (b)(1) of this section are met; and

(ii)(A) The number of participants and beneficiaries located in the United States and its territories and possessions subject to the temporary suspension exceeds 15% of the total number of employees of the issuer and its consolidated subsidiaries; or

(B) More than 50,000 participants and beneficiaries located in the United States and its territories and possessions are subject to the temporary suspension.

(3) In determining the individual account plans (as defined in paragraph (j) of this section) maintained by an issuer for purposes of this paragraph (b):

(i) The rules under section 414(b), (c), (m) and (o) of the Internal Revenue Code (26 U.S.C. 414(b), (c), (m) and (o)) are to be applied; and

(ii) An individual account plan that is maintained outside of the United States primarily for the benefit of persons substantially all of whom are non-resident aliens (within the meaning of section 104(b)(4) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1003(b)(4))) is not to be considered.

(4) In determining the number of participants and beneficiaries in an individual account plan (as defined in paragraph (j) of this section) maintained by an issuer:

(i) The determination may be made as of any date within the 12-month period preceding the beginning date of the temporary suspension in question; provided that if there has been a significant change in the number of participants or beneficiaries in an individual account plan since the date selected, the determination for such plan must be made as of the most recent practicable date that reflects such change; and

(ii) The determination may be made without regard to overlapping plan participation.

(c)(1) The term *director* has, except as provided in paragraph (c)(2) of this section, the meaning set forth in section 3(a)(7) of the Exchange Act (15 U.S.C. 78c(a)(7)).

(2) In the case of a foreign private issuer (as defined in § 240.3b-4(c) of this chapter), the term *director* means an individual within the definition set forth in section 3(a)(7) of the Exchange Act who is a management employee of the issuer.

(d) The term *derivative security* has the meaning set forth in § 240.16a-1(c) of this chapter.

(e) The term *equity security* has the meaning set forth in section 3(a)(11) of the Exchange Act (15 U.S.C. 78c(a)(11)) and § 240.3a11-1 of this chapter.

(f) The term *equity security of the issuer* means any equity security or derivative security relating to an issuer, whether or not issued by that issuer.

(g) The term *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(h)(1) The term *executive officer* has, except as provided in paragraph (h)(2) of this section, the meaning set forth in § 240.16a-1(f) of this chapter.

(2) In the case of a foreign private issuer (as defined in § 240.3b-4(c) of this chapter), the term *executive officer* means the principal executive officer or officers, the principal financial officer or officers and the principal accounting officer or officers of the issuer.

(i) The term *exempt security* has the meaning set forth in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)).

(j) The term *individual account plan* means a pension plan which provides for an individual account for each par-

ticipant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account, except that such term does not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(i)(8)(B))), nor does it include a pension plan in which participation is limited to directors of the issuer.

(k) The term *issuer* means an issuer (as defined in section 3(a)(8) of the Exchange Act (15 U.S.C. 78c(a)(8))), the securities of which are registered under section 12 of the Exchange Act (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Exchange Act (15 U.S.C. 78o(d)) or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.) and that it has not withdrawn.

(l) The term *pecuniary interest* has the meaning set forth in § 240.16a-1(a)(2)(i) of this chapter and the term *indirect pecuniary interest* has the meaning set forth in § 240.16a-1(a)(2)(ii) of this chapter. Section 240.16a-1(a)(2)(iii) of this chapter also shall apply to determine pecuniary interest for purposes of this regulation.

[68 FR 4355, Jan. 28, 2003, as amended at 71 FR 53263, Sept. 8, 2006]

#### § 245.101 Prohibition of insider trading during pension fund blackout periods.

(a) Except to the extent otherwise provided in paragraph (c) of this section, it is unlawful under section 306(a)(1) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(1)) for any director or executive officer of an issuer of any equity security (other than an exempt security), directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer (other than an exempt security) during any blackout period with respect to such equity security, if such director or executive officer acquires or previously acquired such equity security in connection with his or her