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(3) The jurisdiction that is the primary trading market for your voting securities, if different than your jurisdiction of incorporation.

B. If, after reasonable inquiry, you are unable to obtain information about the amount of shares represented by accounts of customers resident in the United States, you may assume, for purposes of this definition, that the customers are residents of the jurisdiction in which the nominee has its principal place of business.

C. Count shares of voting securities beneficially owned by residents of the United States as reported on reports of beneficial ownership provided to you or filed publicly and based on information otherwise provided to you.

(d) Notwithstanding paragraph (c) of this section, in the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer will be made as of a date within 30 days prior to the issuer's filing of an initial registration statement under either the Act or the Securities Act of 1933.

(e) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer's determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

[32 FR 7848, May 30, 1967, as amended at 48 FR 46739, Oct. 14, 1983; 64 FR 53912, Oct. 5, 1999; 73 FR 58323, Oct. 6, 2008]

**§ 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, § 249.308a of this

chapter, or in an annual report to security holders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) (§ 240.14a-3(b) and (c) or § 240.14c-3(a) and (b)), a statement reaffirming such forward-looking statement after the date the document was filed or the annual report was made publicly available, or a forward-looking statement made before 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, 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 Act 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, 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 Act, 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 that is disclosed in a document filed with the Commission in Part I of a quarterly report on Form 10-Q (§ 249.308a of this chapter) or in an annual report to security holders meeting the requirements of Rules 14a-3(b) and (c) or 14c-3(a) and (b) under the Act (§ 240.14a-3(b) and (c) or § 240.14c-3(a) and (b) of this chapter) and that 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," Item 5 of Form 20-F (§ 240.220(f) of this chapter), "Op-

erating and Financial Review and Prospects," 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 FASB ASC paragraphs 932-235-50-29 through 932-235-50-36 (Extractive Activities—Oil and Gas Topic)), 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 5 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

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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; 64 FR 53912, Oct. 5, 1999; 73 FR 973, Jan. 4, 2008; 76 FR 50122, Aug. 12, 2011]

#### § 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

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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