

PART 245—REGULATION BLACKOUT TRADING RESTRICTION

[Regulation BTR—Blackout Trading Restriction]

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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.

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§ 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 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

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(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 participant 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

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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 service or employment as a director or executive officer.

(b) For purposes of section 306(a)(1) of the Sarbanes-Oxley Act of 2002, any sale or other transfer of an equity security of the issuer during a blackout period will be treated as a transaction involving an equity security “acquired in connection with service or employment as a director or executive officer” (as defined in § 245.100(a)) to the extent that the director or executive officer has a pecuniary interest (as defined in § 245.100(1)) in such equity security, unless the director or executive officer establishes by specific identification of securities that the transaction did not involve an equity security “acquired in connection with service or employment as a director or executive officer.” To establish that the equity security was not so acquired, a director or executive officer must identify the source of the equity securities and demonstrate that he or she has utilized the same specific identification for any purpose related to the transaction (such as tax reporting and any applicable disclosure and reporting requirements).

(c) The following transactions are exempt from section 306(a)(1) of the Sarbanes-Oxley Act of 2002:

(1) Any acquisition of equity securities resulting from the reinvestment of dividends in, or interest on, equity securities of the same issuer 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;

(2) Any purchase or sale of equity securities of the issuer pursuant to a contract, instruction or written plan entered into by the director or executive officer that satisfies the affirmative defense conditions of § 240.10b5–1(c) of this chapter; provided that the director or executive officer did not enter into or modify the contract, instruction or written plan during the blackout period (as defined in § 245.100(b)) in question, or while aware of the actual or approximate beginning or ending dates of that blackout period (whether or not the director or executive officer received notice of the blackout period as required by Section 306(a)(6) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7244(a)(6)));

(3) Any purchase or sale of equity securities, other than a Discretionary Transaction (as defined in § 240.16b–3(b)(1) of this chapter), pursuant to a Qualified Plan (as defined in § 240.16b–3(b)(4) of this chapter), an Excess Benefit Plan (as defined in § 240.16b–3(b)(2) of this chapter) or a Stock Purchase Plan (as defined in § 240.16b–3(b)(5) of this chapter) (or, in the case of a foreign private issuer, pursuant to an employee benefit plan that either (i) has been approved by the taxing authority of a foreign jurisdiction, or (ii) is eligible for preferential treatment under the tax laws of a foreign jurisdiction because the plan provides for broad-based employee participation); provided that a Discretionary Transaction that meets the conditions of paragraph (c)(2) of this section also shall be exempt;

(4) Any grant or award of an option, stock appreciation right or other equity compensation pursuant to a plan that, by its terms:

(i) Permits directors or executive officers to receive grants or awards; and