

Securities and Exchange Commission

§ 240.10a-1

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 section.

(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) A discussion of the mechanics of exercising the options;
- (3) A discussion of the risks of being a holder or writer of the options;
- (4) The identification of the market or markets in which the options are traded;
- (5) A brief reference to the transaction costs, margin requirements and tax consequences of options trading;
- (6) The identification of the issuer of the options;
- (7) A general identification of the type of instrument or instruments underlying the options class or classes covered by the document;
- (8) If the options are not exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the registration of the options on form S-20 (17 CFR 239.20) 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 a definitive 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 a copy of the definitive options disclosure document.

(2) If a definitive options disclosure document relating to an options class is amended or supplemented, each broker and dealer shall promptly send a copy of the definitive amendment or supplement or a copy of the definitive options disclosure document as amended to each customer whose account is approved for trading the options class

or classes to which the amendment or supplement relates.

[47 FR 41956, Sept. 23, 1982, as amended at 51 FR 14982, Apr. 22, 1986; 65 FR 64139, Oct. 26, 2000; 68 FR 192, Jan. 2, 2003]

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 securities are reported pursuant to an "effective transaction reporting plan" as defined in §242.600 of this chapter 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 preceding 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 §242.600 of this chapter, 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 §240.17a-15 (subsequently amended and redesignated as §240.11Aa3-1 and subsequently redesignated as §242.601 of this chapter), 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)—(d) [Reserved]

(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 § 242.602 of this chapter, 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 account 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 equal to the most recent offer communicated by such broker or dealer to an exchange or association pursuant to § 242.602 of this chapter 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.

(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.

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.

[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; 69 FR 48029, Aug. 6, 2004; 70 FR 37617, June 29, 2005]

§ 240.10a-2 [Reserved]

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. 78l(a)) pursuant to any section in this