Securities and Exchange Commission

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(ix) The appropriate response by management when internal risk management guidelines have been exceeded;

(x) The procedures to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

(xi) The procedures requiring the documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

(xii) The procedures authorizing specified employees to commit the OTC derivatives dealer to particular types of transactions;

(xiii) The procedures to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a–1; and

(xiv) The procedures to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including procedures to determine whether a counterparty is acting in the capacity of principal or agent.

(d) Management must periodically review, in accordance with written procedures, the OTC derivatives dealer’s business activities for consistency with risk management guidelines including that:

1. Risks arising from the OTC derivatives dealer’s OTC derivatives activities are consistent with prescribed guidelines;

2. Risk exposure guidelines for each business unit are appropriate for the business unit;

3. The data necessary to conduct the risk monitoring and risk management function as well as the valuation process over the OTC derivatives dealer’s portfolio of products is accessible on a timely basis and information systems are available to capture, monitor, analyze, and report relevant data;

4. Procedures are in place to enable management to take action when internal risk management guidelines have been exceeded;

5. Procedures are in place to monitor and address the risk that an OTC derivatives transaction contract will be unenforceable;

6. Procedures are in place to identify and address any deficiencies in the operating systems and to contain the extent of losses arising from unidentified deficiencies;

7. Procedures are in place to authorize specified employees to commit the OTC derivatives dealer to particular types of transactions, to specify any quantitative limits on such authority, and to provide for the oversight of their exercise of such authority;

8. Procedures are in place to prevent the OTC derivatives dealer from engaging in any securities transaction that is not permitted under § 240.15a–1;

9. Procedures are in place to prevent the OTC derivatives dealer from improperly relying on the exceptions to § 240.15a–1(c) and § 240.15a–1(d), including procedures to determine whether a counterparty is acting in the capacity of principal or agent;

10. Procedures are in place to provide for adequate documentation of the principal terms of OTC derivatives transactions and other relevant information regarding such transactions;

11. Personnel resources with appropriate expertise are committed to implementing the risk monitoring and risk management systems and processes; and

12. Procedures are in place for the periodic internal and external review of the risk monitoring and risk management functions.

[63 FR 59400, Nov. 3, 1998]

§ 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
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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.