(b) The closing of a derivative security position as a result of its exercise or conversion shall be exempt from the operation of section 16(b) of the Act, and the acquisition of underlying securities at a fixed exercise price due to the exercise or conversion of a call equivalent position or the disposition of underlying securities at a fixed exercise price due to the exercise of a put equivalent position shall be exempt from the operation of section 16(b) of the Act: Provided, however, That the acquisition of underlying securities from the exercise of an out-of-the-money option, warrant, or right shall not be exempt unless the exercise is necessary to comport with the sequential exercise provisions of the Internal Revenue Code (26 U.S.C. 422A).

NOTE TO PARAGRAPH (b): The exercise or conversion of a derivative security that does not satisfy the conditions of this section is eligible for exemption from section 16(b) of the Act to the extent that the conditions of §240.16b-3 are satisfied.

§ 240.16b–7 Mergers, reclassifications, and consolidations.

(a) The following transactions shall be exempt from the provisions of section 16(b) of the Act:

1. The acquisition of a security of a company, pursuant to a merger, reclassification or consolidation, in exchange for a security of a company that before the merger, reclassification or consolidation, owned 85 percent or more of either:
   (i) The equity securities of all other companies involved in the merger, reclassification or consolidation; or in the case of a consolidation, the resulting company; or
   (ii) The combined assets of all the companies involved in the merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger, reclassification or consolidation, or such shorter time as the company has been in existence.

Such profits may be measured by calculating the short-swing profits that would have been realized had the subject transactions involved purchases and sales solely of the derivative security that was purchased or solely of the derivative security that was sold, valued as of the time of the matching purchase or sale, and calculated for the lesser of the number of underlying securities actually purchased or sold.

(d) Upon cancellation or expiration of an option within six months of the writing of the option, any profit derived from writing the option shall be recoverable under section 16(b) of the Act. The profit shall not exceed the premium received for writing the option. The disposition or closing of a long derivative security position, as a result of cancellation or expiration, shall be exempt from section 16(b) of the Act where no value is received from the cancellation or expiration.

§ 240.16b–7 PROVISIONS APPLICABLE TO SHORT-SWING PROFIT RECOVERABLE UNDER SECTION 16(b) OF THE ACT.

§ 240.16b–7 Mergers, reclassifications, and consolidations.

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§ 240.16b–8  Consolidation, owned 85 percent or more of either:

(i) The equity securities of all other companies involved in the merger, reclassification or consolidation or, in the case of a consolidation, the resulting company; or

(ii) The combined assets of all the companies undergoing merger, reclassification or consolidation, computed according to their book values before the merger, reclassification or consolidation as determined by reference to their most recent available financial statements for a 12 month period before the merger, reclassification or consolidation.

(b) A merger within the meaning of this section shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets.

(c) The exemption provided by this section applies to any securities transaction that satisfies the conditions specified in this section and is not conditioned on the transaction satisfying any other conditions.

(d) Notwithstanding the foregoing, if a person subject to section 16 of the Act makes any non-exempt purchase of a security in any company involved in the merger, reclassification or consolidation and any non-exempt sale of a security in any company involved in the merger, reclassification or consolidation within any period of less than six months during which the merger, reclassification or consolidation took place, the exemption provided by this section shall be unavailable to the extent of such purchase and sale.

§ 240.16c–1  Brokers.

Any transaction shall be exempt from section 16(c) of the Act to the extent necessary to render lawful the execution by a broker of an order for an account in which the broker has no direct or indirect interest.

§ 240.16c–2  Transactions effected in connection with a distribution.

Any transaction shall be exempt from section 16(c) of the Act to the extent necessary to render lawful any sale made by or on behalf of a dealer in connection with a distribution of a substantial block of securities, where the sale is represented by an over-allotment in which the dealer is participating as a member of an underwriting group, or the dealer or a person acting on the dealer's behalf intends in good faith to offset such sale with a security to be acquired by or on behalf of the dealer as a participant in an underwriting, selling, or soliciting-dealer group of which the dealer is a member at the time of the sale, whether or not the security to be acquired is subject to a prior offering to existing security holders or some other class of persons.

§ 240.16c–3  Exemption of sales of securities to be acquired.

(a) Whenever any person is entitled, incident to ownership of an issued security and without the payment of consideration, to receive another security "when issued" or "when distributed," the sale of the security to be acquired shall be exempt from the operation of section 16(c) of the Act: Provided, That: