

§§ 240.3b-9—240.3b-10

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 could not be sold to or purchased from others on equivalent or better terms, and (iii) he sells the shares comprising the block as rapidly as possible commensurate with the circumstances.

(15 U.S.C. 78a et seq., as amended by Pub. L. 94-29 (June 4, 1975), particularly secs. 2, 3, 11, 15, 17 and 23 thereof (15 U.S.C. 78b, 78c, 78k, 78o, 78q and 78w))

[48 FR 39606, Sept. 1, 1983]

17 CFR Ch. II (4-1-10 Edition)

§§ 240.3b-9—240.3b-10 [Reserved]

§ 240.3b-11 Definitions relating to limited partnership roll-up transactions for purposes of sections 6(b)(9), 14(h) and 15A(b)(12)–(13).

For purposes of sections 6(b)(9), 14(h) and 15A(b)(12)–(13) of the Act (15 U.S.C. 78f(b)(9), 78n(h) and 78o-3(b)(12)–(13)):

(a) The term *limited partnership roll-up transaction* does not include a transaction involving only entities that are not “finite-life” as defined in Item 901(b)(2) of Regulation S-K (§229.901(b)(2) of this chapter).

(b) The term *limited partnership roll-up transaction* does not include a transaction involving only entities registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) or any Business Development Company as defined in section 2(a)(48) of that Act (15 U.S.C. 80a-2(a)(48)).

(c) The term *regularly traded* shall be defined as in Item 901(c)(2)(v)(C) of Regulation S-K (§229.901(c)(2)(v)(C) of this chapter).

[59 FR 63684, Dec. 8, 1994]

§ 240.3b-12 Definition of OTC derivatives dealer.

The term *OTC derivatives dealer* means any dealer that is affiliated with a registered broker or dealer (other than an OTC derivatives dealer), and whose securities activities:

- (a) Are limited to:
 - (1) Engaging in dealer activities in eligible OTC derivative instruments that are securities;
 - (2) Issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes;
 - (3) Engaging in cash management securities activities;
 - (4) Engaging in ancillary portfolio management securities activities; and
 - (5) Engaging in such other securities activities that the Commission designates by order pursuant to §240.15a-1(b)(1); and
- (b) Consist primarily of the activities described in paragraphs (a)(1), (a)(2), and (a)(3) of this section; and
- (c) Do not consist of any other securities activities, including engaging in any transaction in any security that is

not an eligible OTC derivative instrument, except as permitted under paragraphs (a)(3), (a)(4), and (a)(5) of this section.

(d) For purposes of this section, the term *hybrid security* means a security that incorporates payment features economically similar to options, forwards, futures, swap agreements, or collars involving currencies, interest or other rates, commodities, securities, indices, quantitative measures, or other financial or economic interests or property of any kind, or any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence (or any combination, permutation, or derivative of such contract or underlying interest).

[63 FR 59394, Nov. 3, 1998]

§ 240.3b-13 Definition of eligible OTC derivative instrument.

(a) Except as otherwise provided in paragraph (b) of this section, the term *eligible OTC derivative instrument* means any contract, agreement, or transaction that:

(1) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, one or more commodities, securities, currencies, interest or other rates, indices, quantitative measures, or other financial or economic interests or property of any kind; or

(2) Involves any payment or delivery that is dependent on the occurrence or nonoccurrence of any event associated with a potential financial, economic, or commercial consequence; or

(3) Involves any combination or permutation of any contract, agreement, or transaction or underlying interest, property, or event described in paragraphs (a)(1) or (a)(2) of this section.

(b) The term *eligible OTC derivative instrument* does not include any contract, agreement, or transaction that:

(1) Provides for the purchase or sale of a security, on a firm basis, unless:

(i) The settlement date for such purchase or sale occurs at least one year following the trade date or, in the case of an eligible forward contract, at least

four months following the trade date; or

(ii) The material economic features of the contract, agreement, or transaction consist primarily of features of a type described in paragraph (a) of this section other than the provision for the purchase or sale of a security on a firm basis; or

(2) Provides, in whole or in part, on a firm or contingent basis, for the purchase or sale of, or is based on the value of, or any interest in, any security (or group or index of securities), and is:

(i) Listed on, or traded on or through, a national securities exchange or registered national securities association, or facility or market thereof; or

(ii) Except as otherwise determined by the Commission by order pursuant to § 240.15a-1(b)(2), one of a class of fungible instruments that are standardized as to their material economic terms.

(c) The Commission may issue an order pursuant to § 240.15a-1(b)(3) clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.

(d) For purposes of this section, the term *eligible forward contract* means a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 221), such contract either:

(1) Provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or

(2) Provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in § 240.36a1-1.

[63 FR 59395, Nov. 3, 1998]