

(3) To manage or supervise a distribution of securities for or on behalf of such issuer or selling security holder.

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§ 242.101 Activities by distribution participants.

(a) *Unlawful Activity.* In connection with a distribution of securities, it shall be unlawful for a distribution participant or an affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Provided, however,* That if a distribution participant or affiliated purchaser is the issuer or selling security holder of the securities subject to the distribution, such person shall be subject to the provisions of § 242.102, rather than this section.

(b) *Excepted Activity.* The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Research.* The publication or dissemination of any information, opinion, or recommendation, if the conditions of §§ 230.138 or 230.139 of this chapter are met; or

(2) *Transactions complying with certain other sections.* Transactions complying with §§ 242.103 or 242.104; or

(3) *Odd-lot transactions.* Transactions in odd-lots; or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e-4(h)(5) of this chapter; or

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Unsolicited transactions.* Unsolicited brokerage transactions; or unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(6) *Basket transactions.* (i) Bids or purchases, in the ordinary course of business, in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased; or

(ii) Adjustments to such a basket in the ordinary course of business as a result of a change in the composition of a standardized index; or

(7) *De minimis transactions.* Purchases during the restricted period, other than by a passive market maker, that total less than 2% of the ADTV of the security being purchased, or unaccepted bids; *Provided, however,* That the person making such bid or purchase has maintained and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section; or

(8) *Transactions in connection with a distribution.* Transactions among distribution participants in connection with a distribution, and purchases of securities from an issuer or selling security holder in connection with a distribution, that are not effected on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(9) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer or solicitation; or

(10) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or 230.501 through 230.508 of this chapter; or

(ii) Persons not deemed to be "U.S. persons" for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(10)(i) of this section.

(c) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded securities.* Securities that have an ADTV value of at least \$1 million and are issued by an

§ 242.102

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

issuer whose common equity securities have a public float value of at least \$150 million; *Provided, however,* That such securities are not issued by the distribution participant or an affiliate of the distribution participant; or

(2) *Investment grade nonconvertible and asset-backed securities.* Nonconvertible debt securities, nonconvertible preferred securities, and asset-backed securities, that are rated by at least one nationally recognized statistical rating organization, as that term is used in § 240.15c3-1 of this chapter, in one of its generic rating categories that signifies investment grade; or

(3) *Exempted securities.* “Exempted securities” as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (c)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) shall have the meanings specified in such Act.

(d) *Exemptive Authority.* Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.102 Activities by issuers and selling security holders during a distribution.

(a) *Unlawful Activity.* In connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; *Except That* if an affiliated purchaser is a distribution participant, such affiliated purchaser may comply with § 242.101, rather than this section.

(b) *Excepted Activity.* The following activities shall not be prohibited by paragraph (a) of this section:

(1) *Odd-lot transactions.* Transactions in odd-lots, or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to § 240.13e-4(h)(5) of this chapter; or

(2) *Transactions by closed-end investment companies.* (i) Transactions complying with § 270.23c-3 of this chapter; or

(ii) Periodic tender offers of securities, at net asset value, conducted pursuant to § 240.13e-4 of this chapter by a closed-end investment company that engages in a continuous offering of its securities pursuant to § 230.415 of this chapter; *Provided, however,* That such securities are not traded on a securities exchange or through an inter-dealer quotation system or electronic communications network; or

(3) *Redemptions by commodity pools or limited partnerships.* Redemptions by commodity pools or limited partnerships, at a price based on net asset value, which are effected in accordance with the terms and conditions of the instruments governing the securities; *Provided, however,* That such securities are not traded on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed; or

(6) *Unsolicited purchases.* Unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(7) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are offered or sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to offerees or purchasers that