§ 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)(6) 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...
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§ 242.103 Nasdaq passive market making.

(a) Scope of Section. This section permits broker-dealers to engage in market making transactions in covered securities that are Nasdaq securities without violating the provisions of §242.101; Except That this section shall not apply to any security for which a stabilizing bid subject to §242.104 is in effect, or during any at-the-market offering or best efforts offering.

(b) Conditions to be Met—(1) General limitations. A passive market maker must effect all transactions in the capacity of a registered market maker on Nasdaq. A passive market maker shall not bid for or purchase a covered security at a price that exceeds the highest independent bid for the covered security at the time of the transaction, except as permitted by paragraph (b)(3) of this section or required by a rule promulgated by the Commission or the NASD governing the handling of customer orders.

(2) Purchase limitation. On each day of the restricted period, a passive market maker’s net purchases shall not exceed the greater of its 30% ADTV limitation

(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 (d)(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.