§ 240.14e–5

subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

(3) The term subject security means a security that is the subject of any tender offer or request or invitation for tenders.

(4) For purposes of this rule, a person shall be deemed to “tender” a security if he:
   (i) Delivers a subject security pursuant to an offer,
   (ii) Causes such delivery to be made,
   (iii) Guarantees delivery of a subject security pursuant to a tender offer,
   (iv) Causes a guarantee of such delivery to be given by another person, or
   (v) Uses any other method by which acceptance of a tender offer may be made.

(5) The term partial tender offer means a tender offer or request or invitation for tenders for less than all of the outstanding securities subject to the offer in which tenders are accepted either by lot or on a pro rata basis for a specified period, or a tender offer for all of the outstanding shares that offers a choice of consideration in which tenders for different forms of consideration may be accepted either by lot or on a pro rata basis for a specified period.

(6) The term standardized call option means any call option that is traded on an exchange, or for which quotation information is disseminated in an electronic interdealer quotation system of a registered national securities association.

(b) It shall be unlawful for any person acting alone or in concert with others, directly or indirectly, to tender any subject security in a partial tender offer:
   (1) For his own account unless at the time of tender, and at the end of the proration period or period during which securities are accepted by lot (including any extensions thereof), he has a net long position equal to or greater than the amount tendered in:
      (i) The subject security and will deliver or cause to be delivered such security for the purpose of tender to the person making the offer within the period specified in the offer; or
      (ii) An equivalent security and, upon the acceptance of his tender will acquire the subject security by conversion, exchange, or exercise of such equivalent security to the extent required by the terms of the offer, and will deliver or cause to be delivered the subject security so acquired for the purpose of tender to the person making the offer within the period specified in the offer; or
   (2) For the account of another person unless the person making the tender:
      (i) Possesses the subject security or an equivalent security, or
      (ii) Has a reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

(c) This rule shall not prohibit any transaction or transactions which the Commission, upon written request or upon its own motion, exempts, either unconditionally or on specified terms and conditions.


§ 240.14e–5 Prohibiting purchases outside of a tender offer.

(a) Unlawful activity. As a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in connection with a tender offer for equity securities, no covered person may directly or indirectly purchase or arrange to purchase any subject securities or any related securities except as part of the tender offer. This prohibition applies from the time of public announcement of the tender offer until the tender offer expires. This prohibition does not apply to any purchases or arrangements to purchase made during the time of any subsequent offering period as provided for in § 240.14d–11 if the consideration paid or to be paid for the purchases or arrangements to purchase is the same in form and amount as the consideration offered in the tender offer.
(b) Excepted activity. The following transactions in subject securities or related securities are not prohibited by paragraph (a) of this section:

(1) Exercises of securities. Transactions by covered persons to convert, exchange, or exercise related securities into subject securities, if the covered person owned the related securities before public announcement;

(2) Purchases for plans. Purchases or arrangements to purchase by or for a plan that are made by an agent independent of the issuer;

(3) Purchases during odd-lot offers. Purchases or arrangements to purchase if the tender offer is excepted under §240.13e–4(h)(5);

(4) Purchases as intermediary. Purchases by or through a dealer-manager or its affiliates that are made in the ordinary course of business and made either:
   (i) On an agency basis not for a covered person; or
   (ii) As principal for its own account if the dealer-manager or its affiliate is not a market maker, and the purchase is made to offset a contemporaneous sale after having received an unsolicited order to buy from a customer who is not a covered person;

(5) Basket transactions. Purchases or arrangements to purchase a basket of securities containing a subject security or a related security if the following conditions are satisfied:
   (i) The purchase or arrangement to purchase is made in the ordinary course of business and not to facilitate the tender offer;
   (ii) The basket contains 20 or more securities; and
   (iii) Covered securities and related securities do not comprise more than 5% of the value of the basket;

(6) Covering transactions. Purchases or arrangements to purchase that are made to satisfy an obligation to deliver a subject security or a related security arising from a short sale or from the exercise of an option by a non-covered person if:
   (i) The short sale or option transaction was made in the ordinary course of business and not to facilitate the offer;
   (ii) In the case of a short sale, the short sale was entered into before public announcement of the tender offer; and
   (iii) In the case of an exercise of an option, the covered person wrote the option before public announcement of the tender offer;

(7) Purchases pursuant to contractual obligations. Purchases or arrangements to purchase pursuant to a contract if the following conditions are satisfied:
   (i) The contract was entered into before public announcement of the tender offer;
   (ii) The contract is unconditional and binding on both parties; and
   (iii) The existence of the contract and all material terms including quantity, price and parties are disclosed in the offering materials;

(8) Purchases or arrangements to purchase by an affiliate of the dealer-manager. Purchases or arrangements to purchase by an affiliate of a dealer-manager if the following conditions are satisfied:
   (i) The dealer-manager maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of the federal securities laws and regulations;
   (ii) The dealer-manager is registered as a broker or dealer under Section 15(a) of the Act;
   (iii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the dealer-manager that direct, effect, or recommend transactions in securities; and
   (iv) The purchases or arrangements to purchase are not made to facilitate the tender offer;

(9) Purchases by connected exempt market makers or connected exempt principal traders. Purchases or arrangements to purchase if the following conditions are satisfied:
   (i) The issuer of the subject security is a foreign private issuer, as defined in §240.3b–4(c);
   (ii) The tender offer is subject to the United Kingdom’s City Code on Takeovers and Mergers;
(iii) The purchase or arrangement to purchase is effected by a connected exempt market maker or a connected exempt principal trader, as those terms are used in the United Kingdom’s City Code on Takeovers and Mergers;

(iv) The connected exempt market maker or the connected exempt principal trader complies with the applicable provisions of the United Kingdom’s City Code on Takeovers and Mergers; and

(v) The tender offer documents disclose the identity of the connected exempt market maker or the connected exempt principal trader and disclose, or describe how U.S. security holders can obtain, information regarding market making or principal purchases by such market maker or principal trader to the extent that this information is required to be made public in the United Kingdom;

(10) Purchases during cross-border tender offers. Purchases or arrangements to purchase if the following conditions are satisfied:

(i) The tender offer is excepted under §240.13e-4(h)(8) or §240.14d-1(c);

(ii) The offering documents furnished to U.S. holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases;

(iii) The offering documents disclose the manner in which any information about any such purchases or arrangements to purchase will be disclosed;

(iv) The offeror discloses information in the United States about any such purchases or arrangements to purchase in a manner comparable to the disclosure made in the home jurisdiction, as defined in §240.13e-4(i)(3); and

(v) The purchases comply with the applicable tender offer laws and regulations of the home jurisdiction; and

(11) Purchases or arrangements to purchase pursuant to a foreign tender offer(s). Purchases or arrangements to purchase pursuant to a foreign offer(s) where the offeror seeks to acquire subject securities through a U.S. tender offer and a concurrent or substantially concurrent foreign offer(s), if the following conditions are satisfied:

(i) The U.S. and foreign tender offer(s) meet the conditions for reliance on the Tier II cross-border exemptions set forth in §240.14d-1(d); 

(ii) The economic terms and consideration in the U.S. tender offer and foreign tender offer(s) are the same, provided that any cash consideration to be paid to U.S. security holders may be converted from the currency to be paid in the foreign tender offer(s) to U.S. dollars at an exchange rate disclosed in the U.S. offering documents;

(iii) The procedural terms of the U.S. tender offer are at least as favorable as the terms of the foreign tender offer(s); 

(iv) The intention of the offeror to make purchases pursuant to the foreign tender offer(s) is disclosed in the U.S. offering documents; and

(v) Purchases by the offeror in the foreign tender offer(s) are made solely pursuant to the foreign tender offer(s) and not pursuant to an open market transaction(s), a private transaction(s), or other transaction(s); and

(12) Purchases or arrangements to purchase by an affiliate of the financial advisor and an offeror and its affiliates. (i) Purchases or arrangements to purchase by an affiliate of a financial advisor and an offeror and its affiliates that are permissible under and will be conducted in accordance with the applicable laws of the subject company’s home jurisdiction, if the following conditions are satisfied:

(A) The subject company is a foreign private issuer as defined in §240.3b-4(c);

(B) The covered person reasonably expects that the tender offer meets the conditions for reliance on the Tier II cross-border exemptions set forth in §240.14d-1(d);

(C) No purchases or arrangements to purchase otherwise than pursuant to the tender offer are made in the United States;

(D) The United States offering materials disclose prominently the possibility of, or the intention to make, purchases or arrangements to purchase subject securities or related securities outside of the tender offer, and if there will be public disclosure of purchases of subject or related securities, the manner in which information regarding such purchases will be disseminated;

(E) There is public disclosure in the United States, to the extent that such
§ 240.14e–6  Repurchase offers by certain closed-end registered investment companies.

Sections 240.14e–1 and 240.14e–2 shall not apply to any offer by a closed-end management investment company to repurchase equity securities of which it is the issuer pursuant to § 270.23c–3 of this chapter.

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