§ 240.3a51–1 Definition of “penny stock”.

For purposes of section 3(a)(51) of the Act, the term “penny stock” shall mean any equity security other than a security:

(a) That is an NMS stock, as defined in $240.600(b)(7), provided that:

(1) The security is registered, or approved for registration upon notice of issue, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

(i) Has established initial listing standards that meet or exceed the following criteria:

(A) The issuer shall have:

(1) Stockholders’ equity of $5,000,000;

(2) Market value of listed securities of $50 million for 90 consecutive days prior to applying for the listing (market value means the closing bid price multiplied by the number of securities listed); or

(B) The issuer shall have an operating history of at least one year or a market value of listed securities of $50 million (market value means the closing bid price multiplied by the number of securities listed);

(2) Net income of $750,000 (excluding extraordinary or non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

(E) The issuer shall have a principal amount outstanding of at least $10 million;

(G) In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security

(2) The security is registered, or approved for registration upon notice of issuance, on a national securities exchange, or is listed, or approved for listing upon notice of issuance on, an automated quotation system sponsored by a registered national securities association, that:

(1) Has established initial listing standards that meet or exceed the following criteria:

(A) The issuer shall have:

(1) Stockholders’ equity of $5,000,000;

(2) Market value of listed securities of $50 million for 90 consecutive days prior to applying for the listing (market value means the closing bid price multiplied by the number of securities listed); or

(3) Net income of $750,000 (excluding extraordinary or non-recurring items) in the most recently completed fiscal year or in two of the last three most recently completed fiscal years;

(E) The issuer shall have a principal amount outstanding of at least $10 million;

(G) In the case of rights and warrants, there shall be at least 100,000 issued and the underlying security

shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section;

(H) In the case of put warrants (that is, instruments that grant the holder the right to sell to the issuing company a specified number of shares of the company’s common stock, at a specified price until a specified period of time), there shall be at least 100,000 issued and the underlying security shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section;

(I) In the case of units (that is, two or more securities traded together), all component parts shall be registered on a national securities exchange or listed on an automated quotation system sponsored by a registered national securities association and shall satisfy the requirements of paragraph (a) or (e) of this section; and

(J) In the case of equity securities (other than common and preferred stock, convertible debt securities, rights and warrants, put warrants, or units), including hybrid products and derivative securities products, the national securities exchange or registered national securities association shall establish quantitative listing standards that are substantially similar to those found in paragraphs (a)(2)(i)(A) through (a)(2)(i)(I) of this section; and

(ii) Has established quantitative continued listing standards that are reasonably related to the initial listing standards set forth in paragraph (a)(2)(i) of this section, and that are consistent with the maintenance of fair and orderly markets;

(b) That is issued by an investment company registered under the Investment Company Act of 1940;

(c) That is a put or call option issued by the Options Clearing Corporation;

(d) Except for purposes of section 7(b) of the Securities Act and Rule 419 (17 CFR 230.419), that has a price of five dollars or more;

(e)(1) That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to §242.601, provided that:

(i) A security has a price of five dollars or more for a particular transaction if the security is purchased or sold in that transaction at a price of five dollars or more, excluding any broker or dealer commission, commission equivalent, mark-up, or markdown; and

(ii) Other than in connection with a particular transaction, a security has a price of five dollars or more at a given time if the inside bid quotation is five dollars or more; provided, however, that if there is no such inside bid quotation, a security has a price of five dollars or more at a given time if the average of three or more interdealer bid quotations at specified prices displayed at that time in an interdealer quotation system, as defined in 17 CFR 240.15c2-7(c)(1), by three or more market makers in the security, is five dollars or more.

(iii) The term “inside bid quotation” shall mean the highest bid quotation for the security displayed by a market maker in the security on an automated interdealer quotation system that has the characteristics set forth in section 17B(b)(2) of the Act, or such other automated interdealer quotation system designated by the Commission for purposes of this section, at any time in which at least two market makers are contemporaneously displaying on such system bid and offer quotations for the security at specified prices.

(2) If a security is a unit composed of one or more securities, the unit price divided by the number of shares of the unit that are not warrants, options, rights, or similar securities must be five dollars or more, as determined in accordance with paragraph (d)(1) of this section, and any share of the unit that is a warrant, option, right, or similar security, or a convertible security, must have an exercise price or conversion price of five dollars or more;

(e)(1) That is registered, or approved for registration upon notice of issuance, on a national securities exchange that makes transaction reports available pursuant to §242.601, provided that:

(i) Price and volume information with respect to transactions in that security is required to be reported on a
§ 240.3a55–1 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.


(1) On a particular day, a security shall be 1 of 750 securities with the largest market capitalization as of the preceding 6 full calendar months when it is included on a list of such securities designated by the Commission and the CFTC as applicable for that day.

(2) In the event that the Commission and the CFTC have not designated a list under paragraph (a)(1) of this section:

(i) The method to be used to determine market capitalization of a security as of the preceding 6 full calendar months is to sum the values of the market capitalization of such security for each U.S. trading day of the preceding 6 full calendar months, and to divide this sum by the total number of such trading days.

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in §242.600 of this chapter that are common stock or depositary shares.

(b) Dollar value of ADTV. (1) For purposes of Section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)):

(2) The broker or dealer shall preserve, as part of its records, copies of the financial statements required by paragraph (g)(3) of this section for the period specified in 17 CFR 240.17a–4(b).