Securities and Exchange Commission

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together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,” as those terms are used in section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons:

(1) Brings together the orders for securities of multiple buyers and sellers; and
(2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

(b) An organization, association, or group of persons shall not be considered to constitute, maintain, or provide “a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,” solely because such organization, association, or group of persons engages in one or more of the following activities:

(1) Routes orders to a national securities exchange, a market operated by a national securities association, or a broker-dealer for execution; or
(2) Allows persons to enter orders for execution against the bids and offers of a single dealer; and
(i) As an incidental part of these activities, matches orders that are not displayed to any person other than the dealer and its employees; or
(ii) In the course of acting as a market maker registered with a self-regulatory organization, displays the limit orders of such market maker’s, or other broker-dealer’s, customers; and
(A) Matches customer orders with such displayed limit orders; and
(B) As an incidental part of its market making activities, crosses or matches orders that are not displayed to any person other than the market maker and its employees.

(c) For purposes of this section the term order means any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.

(d) For the purposes of this section, the terms bid and offer shall have the same meaning as under §242.600 of this chapter.

(e) The Commission may conditionally or unconditionally exempt any organization, association, or group of persons from the definition in paragraph (a) of this section.


§ 240.3b–17 [Reserved]

§ 240.3b–18 Definitions of terms used in Section 3(a)(5) of the Act.

For the purposes of section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C):

(a) The term affiliate means any company that controls, is controlled by, or is under common control with another company.

(b) The term consumer-related receivable means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term member as it relates to the term “syndicate of banks” means a bank that is a participant in a syndicate of banks and together with its affiliates, other than its broker or dealer affiliates, originates no less than 10% of the value of the obligations in a pool of obligations used to back the securities issued through a grantor trust or other separate entity.

(d) The term obligation means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term originated means:

(1) Funding an obligation at the time that the obligation is created; or
(2) Initially approving and underwriting the obligation, or initially agreeing to purchase the obligation, provided that:

(i) The obligation conforms to the underwriting standards or is evidenced by the loan documents of the bank or its affiliates, other than its broker or dealer affiliates; and

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(i) The bank or its affiliates, other than its broker or dealer affiliates, fund the obligation in a timely manner, not to exceed six months after the obligation is created.

(f) The term pool means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term predominantly originated means that no less than 85% of the value of the obligations in any pool were originated by:

(1) The bank or its affiliates, other than its broker or dealer affiliates; or

(2) Banks that are members of a syndicate of banks and affiliates of such banks, other than their broker or dealer affiliates, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.

(3) For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term syndicate of banks means a group of banks that acts jointly, on a temporary basis, to issue through a grantor trust or other separate entity, securities backed by obligations originated by each of the individual banks or their affiliates, other than their broker or dealer affiliates.

[68 FR 8700, Feb. 24, 2003]

§ 240.3b–19 Definition of “issuer” in section 3(a)(8) of the Act in relation to asset-backed securities.

The following applies with respect to asset-backed securities under the Act. Terms used in this section have the same meaning as in Item 1101 of Regulation AB (§ 229.1101 of this chapter).

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the “issuer” for purposes of the asset-backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) of this section is a different “issuer” from that same person acting as a depositor for another issuing entity or for purposes of that person’s own securities.

[70 FR 1629, Jan. 7, 2005]

-registration and exemption of exchanges-

§ 240.6a–1 Application for registration as a national securities exchange or exemption from registration based on limited volume.

(a) An application for registration as a national securities exchange, or for exemption from such registration based on limited volume, shall be filed on Form 1 (§ 249.1 of this chapter), in accordance with the instructions contained therein.

(b) Promptly after the discovery that any information filed on Form 1 was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(c) Promptly after the discovery that any information in the statement, any exhibit, or any amendment was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(d) Whenever the number of changes to be reported in an amendment, or the number of amendments filed, are so great that the purpose of clarity will be promoted by the filing of a new complete statement and exhibits, an exchange may, at its election, or shall, upon request of the Commission, file as an amendment a complete new statement together with all exhibits which are prescribed to be filed in connection with Form 1.

[Secs. 5, 6, 17, 48 Stat. 885, 897, as amended; 15 U.S.C. 78e, 78f, 78q]

§ 240.6a–2 Amendments to application.

(a) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall file an amendment to Form 1, (§ 249.1 of this chapter), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1, (§ 249.1 of this chapter), within 10