

§ 248.102

registered broker or dealer, to any investment company, and to any investment adviser or transfer agent registered with the Commission. These entities are referred to in this subpart as “you.”

§ 248.102 Examples.

The examples in this subpart are not exclusive. The examples in this subpart provide guidance concerning the rules’ application in ordinary circumstances. The facts and circumstances of each individual situation, however, will determine whether compliance with an example, to the extent applicable, constitutes compliance with this subpart. Examples in a paragraph illustrate only the issue described in the paragraph and do not illustrate any other issue that may arise under this subpart. Similarly, the examples do not illustrate any issues that may arise under other laws or regulations.

§§ 248.103–248.119 [Reserved]

§ 248.120 Definitions.

As used in this subpart, unless the context requires otherwise:

(a) *Affiliate* of a broker, dealer, or investment company, or an investment adviser or transfer agent registered with the Commission means any person that is related by common ownership or common control with the broker, dealer, or investment company, or the investment adviser or transfer agent registered with the Commission. In addition, a broker, dealer, or investment company, or an investment adviser or transfer agent registered with the Commission will be deemed an affiliate of a company for purposes of this subpart if:

(1) That company is regulated under section 214 of the FACT Act, Public Law 108–159, 117 Stat. 1952 (2003), by a government regulator other than the Commission; and

(2) Rules adopted by the other government regulator under section 214 of the FACT Act treat the broker, dealer, or investment company, or investment adviser or transfer agent registered with the Commission as an affiliate of that company.

(b) *Broker* has the same meaning as in section 3(a)(4) of the Securities Ex-

17 CFR Ch. II (4–1–11 Edition)

change Act of 1934 (15 U.S.C. 78c(a)(4)). A “broker” does not include a broker registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(c) *Clear and conspicuous* means reasonably understandable and designed to call attention to the nature and significance of the information presented.

(d) *Commission* means the Securities and Exchange Commission.

(e) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(f) *Concise*—(1) *In general*. The term “concise” means a reasonably brief expression or statement.

(2) *Combination with other required disclosures*. A notice required by this subpart may be concise even if it is combined with other disclosures required or authorized by Federal or State law.

(g) *Consumer* means an individual.

(h) *Control* of a company means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of any company will be presumed not to control the company. Any presumption regarding control may be rebutted by evidence, but, in the case of an investment company, will continue until the Commission makes a decision to the contrary according to the procedures described in section 2(a)(9) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(9)).

(i) *Dealer* has the same meaning as in section 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(5)). A “dealer” does not include a dealer registered by notice with the Commission under section 15(b)(11) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(11)).

(j) *Eligibility information* means any information the communication of which would be a consumer report if the exclusions from the definition of