

§ 240.11a-1

occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms *listed* and *listing* refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

INSTRUCTIONS TO § 240.10A-3

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

17 CFR Ch. II (4-1-12 Edition)

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d-3.

[68 FR 18818, Apr. 16, 2003, as amended at 70 FR 1620, Jan. 7, 2005; 73 FR 973, Jan. 4, 2008]

ADOPTION OF FLOOR TRADING REGULATION (RULE 11A-1)

§ 240.11a-1 Regulation of floor trading.

(a) No member of a national securities exchange, while on the floor of such exchange, shall initiate, directly or indirectly, any transaction in any security admitted to trading on such exchange, for any account in which such member has an interest, or for any such account with respect to which such member has discretion as to the time of execution, the choice of security to be bought or sold, the total amount of any security to be bought or sold, or whether any such transaction shall be one of purchase or sale.

(b) The provisions of paragraph (a) of this section shall not apply to:

(1) Any transaction by a registered specialist in a security in which he is so registered on such exchange;

(2) Any transaction for the account of an odd-lot dealer in a security in which he is so registered on such exchange;

(3) Any stabilizing transaction effected in compliance with § 242.104 of this chapter to facilitate a distribution of such security in which such member is participating;

(4) Any bona fide arbitrage transaction;

(5) Any transaction made with the prior approval of a floor official of such exchange to permit such member to contribute to the maintenance of a fair and orderly market in such security, or any purchase or sale to reverse any such transaction;

(6) Any transaction to offset a transaction made in error; or

(7) Any transaction effected in conformity with a plan designed to eliminate floor trading activities which are not beneficial to the market and which plan has been adopted by an exchange and declared effective by the Commission. For the purpose of this rule, a plan filed with the Commission by a national securities exchange shall not

Securities and Exchange Commission

§ 240.11a1-1(T)

become effective unless the Commission, having due regard for the maintenance of fair and orderly markets, for the public interest, and for the protection of investors, declares the plan to be effective.

(c) For the purpose of this rule the term "on the floor of such exchange" shall include the trading floor; the rooms, lobbies, and other premises immediately adjacent thereto for use of members generally; other rooms, lobbies and premises made available primarily for use by members generally; and the telephone and other facilities in any such place.

(d) Any national securities exchange may apply for an exemption from the provisions of this rule in compliance with the provisions of section 11(c) of the Act.

(Sec. 11, 48 Stat. 891; 15 U.S.C. 78k)

[29 FR 7381, June 6, 1964, as amended at 62 FR 544, Jan. 3, 1997]

NOTE 1: The Commission finding that the floor trading plan of the New York Stock Exchange filed on May 25, 1964 is designed to eliminate floor trading activities not beneficial to the market hereby declares such plan effective August 3, 1964 subject to suspension or termination on sixty days written notice from the Commission, 29 FR 7381, June 6, 1964.

NOTE 2: The text of the Commission's action declaring effective the amendments to the Floor Trading Plan of the American Stock Exchange (33 FR 1073, Jan. 27, 1968) is as follows:

The Securities and Exchange Commission acting pursuant to the Securities Exchange Act of 1934, particularly sections 11(a) and 23(a) thereof, and Rule 11a-1 (17 CFR 240.11a-1) under the Act, deeming it necessary for the exercise of the functions vested in it, and having due regard for the maintenance of fair and orderly markets, for the public interest, and for the protection of investors, hereby declares the Floor Trading Plan of the American Stock Exchange, as amended by amendments filed on May 11, 1967, effective January 31, 1968. If at any time it appears to the Commission to be necessary or appropriate in the public interest, for the protection of investors, or for the maintenance of fair and orderly markets, or that floor trading activities which are not beneficial to the market have not been eliminated by the Floor Trading Plan of the American Stock Exchange, the Commission may suspend or terminate the effectiveness of the plan by sending at least 60 days written notice to the American Stock Exchange.

The American Stock Exchange shall have the opportunity to submit any written data, facts, arguments, or modifications in its plan within such 60-day period in such form as the Commission deems appropriate under the circumstances. The Commission has been informed that all persons subject to the Floor Trading Plan of the American Stock Exchange, as amended, have had actual notice thereof, and the Commission finds that notice and procedure pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. section 553) are impracticable and unnecessary and that such Plan, as amended, may be, and is hereby, declared effective on January 31, 1968.

§ 240.11a1-1(T) Transactions yielding priority, parity, and precedence.

(a) A transaction effected on a national securities exchange for the account of a member which meets the requirements of section 11(a)(1)(G)(i) of the Act shall be deemed, in accordance with the requirements of section 11(a)(1)(G)(ii), to be not inconsistent with the maintenance of fair and orderly markets and to yield priority, parity, and precedence in execution to orders for the account of persons who are not members or associated with members of the exchange if such transaction is effected in compliance with each of the following requirements:

(1) A member shall disclose that a bid or offer for its account is for its account to any member with whom such bid or offer is placed or to whom it is communicated, and any such member through whom that bid or offer is communicated shall disclose to others participating in effecting the order that it is for the account of a member.

(2) Immediately before executing the order, a member (other than the specialist in such security) presenting any order for the account of a member on the exchange shall clearly announce or otherwise indicate to the specialist and to other members then present for the trading in such security on the exchange that he is presenting an order for the account of a member.

(3) Notwithstanding rules of priority, parity, and precedence otherwise applicable, any member presenting for execution a bid or offer for its own account or for the account of another member shall grant priority to any bid or offer at the same price for the account of a person who is not, or is not