Any terms used in this paragraph (c)(4) that are defined in the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) shall have the meanings specified in such Act.

(d) Exemptive authority. Upon written application or upon its own motion, the Commission may grant an exemption from the provisions of this section, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

§ 242.102 Activities by issuers and selling security holders during a distribution.

(a) Unlawful Activity. In connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period; Except That if an affiliated purchaser is a distribution participant, such affiliated purchaser may comply with §242.101, rather than this section.

(b) Excepted Activity. The following activities shall not be prohibited by paragraph (a) of this section:

(1) Odd-lot transactions. Transactions in odd-lots, or transactions to offset odd-lots in connection with an odd-lot tender offer conducted pursuant to §240.13e–4(h)(5) of this chapter; or

(2) Transactions by closed-end investment companies. (i) Transactions complying with §270.23c–3 of this chapter; or

(ii) Periodic tender offers of securities, at net asset value, conducted pursuant to §240.13e–4 of this chapter by a closed-end investment company that engages in a continuous offering of its securities pursuant to §230.415 of this chapter; Provided, however, That such securities are not traded on a securities exchange or through an inter-dealer quotation system or electronic communications network; or

(3) Redemptions by commodity pools or limited partnerships. Redemptions by commodity pools or limited partner-
§ 242.103 Nasdaq passive market making.

(a) Scope of section. This section permits broker-dealers to engage in market making transactions in covered securities that are Nasdaq securities without violating the provisions of §242.101; Except That this section shall not apply to any security for which a stabilizing bid subject to §242.104 is in effect, or during any at-the-market offering or best efforts offering.

(b) Conditions to be met—(1) General limitations. A passive market maker must effect all transactions in the capacity of a registered market maker on Nasdaq. A passive market maker shall not bid for or purchase a covered security at a price that exceeds the highest independent bid for the covered security at the time of the transaction, except as permitted by paragraph (b)(3) of this section or required by a rule promulgated by the Commission or the NASD governing the handling of customer orders.

(2) Purchase limitation. On each day of the restricted period, a passive market maker’s net purchases shall not exceed the greater of its 30% ADTV limitation or 200 shares (together, “purchase limitation”); Provided, however, That a passive market maker may purchase all of the securities that are part of a single order that, when executed, results in its purchase limitation being equalled or exceeded. If a passive market maker’s net purchases equal or exceed its purchase limitation, it shall withdraw promptly its quotations from Nasdaq. If a passive market maker withdraws its quotations pursuant to this paragraph, it may not effect any bid or purchase in the covered security for the remainder of that day, irrespective of any later sales during that day, unless otherwise permitted by §242.101.

(3) Requirement to lower the bid. If all independent bids for a covered security are reduced to a price below the passive market maker’s bid, the passive market maker must lower its bid promptly to a level not higher than the then highest independent bid; Provided, however, That a passive market maker may continue to bid and effect purchases at its bid at a price exceeding the then