

(g) The fact that securities carried for the accounts of customers and securities carried for the accounts of others are represented by one or more certificates in the custody of a clearing corporation or other subsidiary organization of either a national securities exchange or of a registered national securities association, or of a custodian bank, in accordance with a system for the central handling of securities established by a national securities exchange or a registered national securities association, pursuant to which system the hypothecation of such securities is effected by bookkeeping entries without physical delivery of such securities, shall not, in and of itself, result in a commingling of securities prohibited by paragraph (a)(1) or (a)(2) of this section, whenever a participating member, broker or dealer hypothecates securities in accordance with such system: *Provided, however,* That (1) any such custodian of any securities held by or for such system shall agree that it will not for any reason, including the assertion of any claim, right or lien of any kind, refuse to refrain from promptly delivering any such securities (other than securities then hypothecated in accordance with such system) to such clearing corporation or other subsidiary organization or as directed by it, except that nothing in such agreement shall be deemed to require the custodian to deliver any securities in contravention of any notice of levy, seizure or similar notice, or order or judgment, issued or directed by a governmental agency or court, or officer thereof, having jurisdiction over such custodian, which on its face affects such securities; (2) such systems shall have safeguards in the handling, transfer and delivery of securities and provisions for fidelity bond coverage of the employees and agents of the clearing corporation or other subsidiary organization and for periodic examinations by independent public accountants; and (3) the provisions of this paragraph shall not be effective with respect to any particular system unless the agreement required by paragraph (g)(1) of this section and the safeguards and provisions required by paragraph (g)(2) of this section shall have been deemed adequate by the Commission for the

protection of investors, and unless any subsequent amendments to such agreement, safeguards or provisions shall have been deemed adequate by the Commission for the protection of investors.

(Secs. 3, 8, 15, 48 Stat. 882, 888, 895; 15 U.S.C. 78c, 78h, 78o)

CROSS REFERENCE: For interpretative releases applicable to §240.8c-1, see Nos. 2690 and 2822 in tabulation, part 241 of this chapter.

[13 FR 8180, Dec. 22, 1948, as amended at 31 FR 7740, June 1, 1966; 37 FR 73, Jan. 5, 1973; 63 FR 59395, Nov. 3, 1998]

**§ 240.9b-1 Options disclosure document.**

(a) *Definitions.* The following definitions shall apply for the purpose of this rule.

(1) *Options market* means a national securities exchange, an automated quotation system of a registered securities association or a foreign securities exchange on which standardized options are traded.

(2) *Options class* means all options contracts covering the same underlying instrument.

(3) *Options disclosure document* means a document, including all amendments and supplements thereto, prepared by one or more options markets which has been filed with the Commission or distributed in accordance with paragraph (b) of this section. *Definitive options disclosure document* or *document* means an options disclosure document furnished to customers in accordance with paragraph (b) of this section.

(4) *Standardized options* are options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

(b)(1) Five preliminary copies of an options disclosure document containing the information specified in paragraph (c) of this section shall be filed with the Commission by an options market at least 60 days prior to the date definitive copies are furnished to customers, unless the commission

determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document shall be filed with the Commission not later than the date the options disclosure document is furnished to customers. Notwithstanding the above, the use of an options disclosure document shall not be permitted unless the options class to which such document relates is the subject of an effective registration statement on Form S-20 under the Securities Act of 1933, or is exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

(2)(i) If the information contained in the options disclosure document becomes or will become materially inaccurate or incomplete or there is or will be an omission of material information necessary to make the options disclosure document not misleading, the options market shall amend or supplement its options disclosure document by filing five copies of an amendment or supplement to such options disclosure document with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise having due regard to the adequacy of the information disclosed and the public interest and protection of investors. Five copies of the definitive options disclosure document, as amended or supplemented, shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, an options market may distribute an amendment or supplement to an options disclosure document prior to such 30 day period if it determines, in good faith, that such delivery is necessary to ensure timely and accurate disclosure with respect to one or more of the options classes covered by the document. Five copies of any amendment or supplement distributed pursuant to this paragraph shall be filed with the Commission at the time of distribution. In that instance, if the Commission determines, having

given due regard to the adequacy of the information disclosed and the public interest and the protection of investors, it may require refile of the amendment pursuant to paragraph (b)(2)(i) of this section.

(c) *Information required in an options disclosure document.* An options disclosure document shall contain the following information, unless otherwise provided by the Commission, with respect to the options classes covered by the document:

- (1) A glossary of terms;
- (2) A discussion of the mechanics of exercising the options;
- (3) A discussion of the risks of being a holder or writer of the options;
- (4) The identification of the market or markets in which the options are traded;
- (5) A brief reference to the transaction costs, margin requirements and tax consequences of options trading;
- (6) The identification of the issuer of the options;
- (7) A general identification of the type of instrument or instruments underlying the options class or classes covered by the document;
- (8) If the options are not exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the registration of the options on form S-20 (17 CFR 239.20) and the availability of the prospectus and the information in part II of the registration statement; and
- (9) Such other information as the Commission may specify.

(d) *Broker-dealer obligations.* (1) No broker or dealer shall accept an order from a customer to purchase or sell an option contract relating to an options class that is the subject of a definitive options disclosure document, or approve the customer's account for the trading of such option, unless the broker or dealer furnishes or has furnished to the customer a copy of the definitive options disclosure document.

(2) If a definitive options disclosure document relating to an options class is amended or supplemented, each broker and dealer shall promptly send a copy of the definitive amendment or supplement or a copy of the definitive options disclosure document as amended to each customer whose account is

## Securities and Exchange Commission

## § 240.10b-5

approved for trading the options class or classes to which the amendment or supplement relates.

[47 FR 41956, Sept. 23, 1982, as amended at 51 FR 14982, Apr. 22, 1986; 65 FR 64139, Oct. 26, 2000; 68 FR 192, Jan. 2, 2003]

### §§ 240.10a-1—240.10a-2 [Reserved]

#### MANIPULATIVE AND DECEPTIVE DEVICES AND CONTRIVANCES

### § 240.10b-1 Prohibition of use of manipulative or deceptive devices or contrivances with respect to certain securities exempted from registration.

The term *manipulative or deceptive device or contrivance*, as used in section 10(b) (48 Stat. 891; 15 U.S.C. 78j(b)), is hereby defined to include any act or omission to act with respect to any security exempted from the operation of section 12(a) (48 Stat. 892; 15 U.S.C. 78l(a)) pursuant to any section in this part which specifically provides that this section shall be applicable to such security if such act or omission to act would have been unlawful under section 9(a) (48 Stat. 889; 15 U.S.C. 78i(a)), or any rule or regulation heretofore or hereafter prescribed thereunder, if done or omitted to be done with respect to a security registered on a national securities exchange, and the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to use or employ any such device or contrivance in connection with the purchase or sale of any such security is hereby prohibited.

(Secs. 10, 12, 48 Stat. 891, 892; 15 U.S.C. 78j, 78l)

CROSS REFERENCES: For applicability of this section, see §§ 240.12a-4 and 240.12a-5. For regulations relating to employment of manipulative and deceptive devices, see §§ 240.10b-3 and 240.10b-5.

[13 FR 8183, Dec. 22, 1948]

### § 240.10b-2 [Reserved]

### § 240.10b-3 Employment of manipulative and deceptive devices by brokers or dealers.

(a) It shall be unlawful for any broker or dealer, directly or indirectly, by the use of any means or instrumen-

tality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive, or other fraudulent device or contrivance", as such term is used in section 15(c)(1) of the act.

(b) It shall be unlawful for any municipal securities dealer directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any municipal security, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive, or other fraudulent device or contrivance," as such term is used in section 15(c)(1) of the act.

(Secs. 10, 12, 48 Stat. 891, 892, as amended; 15 U.S.C. 78j, 78l)

CROSS REFERENCES: See also § 240.10b-5. For regulation relating to prohibition of manipulative or deceptive devices, see § 240.10b-1. For the term "manipulative, deceptive, or other fraudulent device or contrivance", as used in section 15(c)(1) of the act, see §§ 240.15c1-2 to 240.15c1-9.

[13 FR 8183, Dec. 22, 1948, as amended at 19 FR 8017, Dec. 4, 1954; 41 FR 22824, June 7, 1976]

### § 240.10b-4 [Reserved]

### § 240.10b-5 Employment of manipulative and deceptive devices.

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or