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Interpretation of the SEC's Whistleblower Rules under Section 21F of the Securities Exchange Act of 1934.	34-75592	Aug. 4, 2015	80 FR 47831
Interpretation Regarding Automated Quotations Under Regulation NMS .....	34-78102	June 17, 2016	81 FR 40793
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Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice.	34-86721	Aug. 21, 2019	84 FR 47419.
Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations.	34-88094	Jan. 30, 2020	85 FR 10571

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**AUTHORITY:** 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78c-4, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, 80a-37, and 8343.

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SOURCE: 62 FR 544, Jan. 3, 1997, unless otherwise noted.

### REGULATION M

#### § 242.100 Preliminary note; definitions.

(a) *Preliminary note:* Any transaction or series of transactions, whether or not effected pursuant to the provisions of Regulation M (§§ 242.100–242.105 of this chapter), remain subject to the antifraud and antimanipulation provisions of the securities laws, including, without limitation, Section 17(a) of the Securities Act of 1933 [15 U.S.C. 77q(a)] and Sections 9, 10(b), and 15(c) of the Securities Exchange Act of 1934 [15 U.S.C. 78i, 78j(b), and 78o(c)].

(b) For purposes of regulation M (§§ 242.100 through 242.105 of this chapter) the following definitions shall apply:

*ADTV* means the worldwide average daily trading volume during the two full calendar months immediately preceding, or any 60 consecutive calendar days ending within the 10 calendar days preceding, the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to § 230.415 of this chapter, two full calendar months immediately preceding, or any consecutive 60 calendar days ending within the 10 calendar days preceding, the determination of the offering price.

*Affiliated purchaser* means:

(1) A person acting, directly or indirectly, in concert with a distribution participant, issuer, or selling security holder in connection with the acquisition or distribution of any covered security; or

(2) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that, directly or indirectly, controls the purchases of any covered security by a distribution participant, issuer, or selling security holder, whose purchases are controlled by any such person, or whose purchases are under common control with any such person; or

(3) An affiliate, which may be a separately identifiable department or division of a distribution participant, issuer, or selling security holder, that regularly purchases securities for its

own account or for the account of others, or that recommends or exercises investment discretion with respect to the purchase or sale of securities; *Provided, however,* That this paragraph (3) shall not apply to such affiliate if the following conditions are satisfied:

(i) The distribution participant, issuer, or selling security holder:

(A) Maintains and enforces written policies and procedures reasonably designed to prevent the flow of information to or from the affiliate that might result in a violation of §§ 242.101, 242.102, and 242.104; and

(B) Obtains an annual, independent assessment of the operation of such policies and procedures; and

(ii) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the distribution participant, issuer, or selling security holder that direct, effect, or recommend transactions in securities; and

(iii) The affiliate does not, during the applicable restricted period, act as a market maker (other than as a specialist in compliance with the rules of a national securities exchange), or engage, as a broker or a dealer, in solicited transactions or proprietary trading, in covered securities.

*Agent independent of the issuer* means a trustee or other person who is independent of the issuer. The agent shall be deemed to be independent of the issuer only if:

(1) The agent is not an affiliate of the issuer; and

(2) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the prices or amounts of the securities to be purchased, the timing of, or the manner in which, the securities are to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed; *Provided, however,* That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the source of the shares to fund the plan the basis for determining the amount of its contributions to a plan, or the basis for determining

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the frequency of its allocations to a plan, or any formula specified in a plan that determines the amount or timing of securities to be purchased by the agent.

*Asset-backed security* has the meaning contained in §229.1101 of this chapter.

*At-the-market offering* means an offering of securities at other than a fixed price.

*Business day* refers to a 24 hour period determined with reference to the principal market for the securities to be distributed, and that includes a complete trading session for that market.

*Completion of participation in a distribution.* Securities acquired in the distribution for investment by any person participating in a distribution, or any affiliated purchaser of such person, shall be deemed to be distributed. A person shall be deemed to have completed its participation in a distribution as follows:

- (1) An issuer or selling security holder, when the distribution is completed;
- (2) An underwriter, when such person's participation has been distributed, including all other securities of the same class that are acquired in connection with the distribution, and any stabilization arrangements and trading restrictions in connection with the distribution have been terminated; *Provided, however,* That an underwriter's participation will not be deemed to have been completed if a syndicate overallocation option is exercised in an amount that exceeds the net syndicate short position at the time of such exercise; and
- (3) Any other person participating in the distribution, when such person's participation has been distributed.

*Covered security* means any security that is the subject of a distribution, or any reference security.

*Current exchange rate* means the current rate of exchange between two currencies, which is obtained from at least one independent entity that provides or disseminates foreign exchange quotations in the ordinary course of its business.

*Distribution* means an offering of securities, whether or not subject to registration under the Securities Act, that is distinguished from ordinary trading transactions by the magnitude of the

offering and the presence of special selling efforts and selling methods.

*Distribution participant* means an underwriter, prospective underwriter, broker, dealer, or other person who has agreed to participate or is participating in a distribution.

*Electronic communications network* has the meaning provided in §242.600.

*Employee* has the meaning contained in Form S-8 (§239.16b of this chapter) relating to employee benefit plans.

*Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

*Independent bid* means a bid by a person who is not a distribution participant, issuer, selling security holder, or affiliated purchaser.

*NASD* means the National Association of Securities Dealers, Inc. or any of its subsidiaries.

*Nasdaq* means the electronic dealer quotation system owned and operated by The Nasdaq Stock Market, Inc.

*Nasdaq security* means a security that is authorized for quotation on Nasdaq, and such authorization is not suspended, terminated, or prohibited.

*Net purchases* means the amount by which a passive market maker's purchases exceed its sales.

*Offering price* means the price at which the security is to be or is being distributed.

*Passive market maker* means a market maker that effects bids or purchases in accordance with the provisions of §242.103.

*Penalty bid* means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

*Plan* means any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock option, stock ownership, stock appreciation, dividend reinvestment, or similar plan; or any dividend or interest reinvestment plan or employee benefit plan as defined in §230.405 of this chapter.

*Principal market* means the single securities market with the largest aggregate reported trading volume for the

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class of securities during the 12 full calendar months immediately preceding the filing of the registration statement; or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to §230.415 of this chapter, during the 12 full calendar months immediately preceding the determination of the offering price. For the purpose of determining the aggregate trading volume in a security, the trading volume of depositary shares representing such security shall be included, and shall be multiplied by the multiple or fraction of the security represented by the depositary share. For purposes of this paragraph, depositary share means a security, evidenced by a depositary receipt, that represents another security, or a multiple or fraction thereof, deposited with a depositary.

*Prospective underwriter* means a person:

(1) Who has submitted a bid to the issuer or selling security holder, and who knows or is reasonably certain that such bid will be accepted, whether or not the terms and conditions of the underwriting have been agreed upon; or

(2) Who has reached, or is reasonably certain to reach, an understanding with the issuer or selling security holder, or managing underwriter that such person will become an underwriter, whether or not the terms and conditions of the underwriting have been agreed upon.

*Public float value* shall be determined in the manner set forth on the front page of Form 10-K (§249.310 of this chapter), even if the issuer of such securities is not required to file Form 10-K, relating to the aggregate market value of common equity securities held by non-affiliates of the issuer.

*Reference period* means the two full calendar months immediately preceding the filing of the registration statement or, if there is no registration statement or if the distribution involves the sale of securities on a delayed basis pursuant to §230.415 of this chapter, the two full calendar months immediately preceding the determination of the offering price.

*Reference security* means a security into which a security that is the sub-

ject of a distribution (“subject security”) may be converted, exchanged, or exercised or which, under the terms of the subject security, may in whole or in significant part determine the value of the subject security.

*Restricted period* means:

(1) For any security with an ADTV value of \$100,000 or more of an issuer whose common equity securities have a public float value of \$25 million or more, the period beginning on the later of one business day prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person’s completion of participation in the distribution; and

(2) For all other securities, the period beginning on the later of five business days prior to the determination of the offering price or such time that a person becomes a distribution participant, and ending upon such person’s completion of participation in the distribution.

(3) In the case of a distribution involving a merger, acquisition, or exchange offer, the period beginning on the day proxy solicitation or offering materials are first disseminated to security holders, and ending upon the completion of the distribution.

*Securities Act* means the Securities Act of 1933 (15 U.S.C. 77a *et seq.*).

*Selling security holder* means any person on whose behalf a distribution is made, other than an issuer.

*Stabilize or stabilizing* means the placing of any bid, or the effecting of any purchase, for the purpose of pegging, fixing, or maintaining the price of a security.

*Structural credit risk model* means any commercially or publicly available model that calculates, based on an issuer’s balance sheet, the probability that the value of the issuer will fall below the threshold at which the issuer would fail to make scheduled debt payments, at or by the expiration of a defined period.

*Syndicate covering transaction* means the placing of any bid or the effecting of any purchase on behalf of the sole distributor or the underwriting syndicate or group to reduce a short position created in connection with the offering.

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*30% ADTV limitation* means 30 percent of the market maker's ADTV in a covered security during the reference period, as obtained from the NASD.

*Underwriter* means a person who has agreed with an issuer or selling security holder:

(1) To purchase securities for distribution; or

(2) To distribute securities for or on behalf of such issuer or selling security holder; or

(3) To manage or supervise a distribution of securities for or on behalf of such issuer or selling security holder.

[62 FR 544, Jan. 3, 1997, as amended at 62 FR 11323, Mar. 12, 1997; 70 FR 1623, Jan. 7, 2005; 70 FR 37619, June 29, 2005; 88 FR 39994, June 20, 2023]

### § 242.101 Activities by distribution participants.

(a) *Unlawful Activity.* In connection with a distribution of securities, it shall be unlawful for a distribution participant or an 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; *Provided, however,* That if a distribution participant or affiliated purchaser is the issuer or selling security holder of the securities subject to the distribution, such person shall be subject to the provisions of § 242.102, rather than this section.

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

(1) *Research.* The publication or dissemination of any information, opinion, or recommendation, if the conditions of § 230.138, § 230.139, or § 230.139b of this chapter are met; or

(2) *Transactions complying with certain other sections.* Transactions complying with §§ 242.103 or 242.104; or

(3) *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

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Unsolicited transactions.* Unsolicited brokerage transactions; or unsolic-

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ited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(6) *Basket transactions.* (i) Bids or purchases, in the ordinary course of business, in connection with a basket of 20 or more securities in which a covered security does not comprise more than 5% of the value of the basket purchased; or

(ii) Adjustments to such a basket in the ordinary course of business as a result of a change in the composition of a standardized index; or

(7) *De minimis transactions.* Purchases during the restricted period, other than by a passive market maker, that total less than 2% of the ADTV of the security being purchased, or unaccepted bids; *Provided, however,* That the person making such bid or purchase has maintained and enforces written policies and procedures reasonably designed to achieve compliance with the other provisions of this section; or

(8) *Transactions in connection with a distribution.* Transactions among distribution participants in connection with a distribution, and purchases of securities from an issuer or selling security holder in connection with a distribution, that are not effected on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(9) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed (including securities acquired in stabilizing), or securities offered as principal by the person making such offer or solicitation; or

(10) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C.

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77d(2)) or §§ 230.144A or § 230.500 *et seq* of this chapter; or

(ii) Persons not deemed to be “U.S. persons” for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(10)(i) of this section.

(c) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded securities.* Securities that have an ADTV value of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million; *Provided, however,* That such securities are not issued by the distribution participant or an affiliate of the distribution participant; or

(2) *Certain nonconvertible and asset-backed securities.* (i) Nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model; or

(ii) Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF-3 (§ 239.45 of this chapter); or

(3) *Exempted securities.* “Exempted securities” as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. 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 sec-

tion, either unconditionally or on specified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[62 FR 544, Jan. 3, 1997, as amended at 77 FR 18685, Mar. 28, 2012; 78 FR 44805, July 24, 2013; 83 FR 64222, Dec. 13, 2018; 88 FR 39994, June 20, 2023]

### § 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 partnerships, at a price based on net asset value, which are effected in accordance with the terms and conditions of the instruments governing the securities; *Provided, however,* That such securities are not traded on a securities exchange, or through an inter-dealer

quotation system or electronic communications network; or

(4) *Exercises of securities.* The exercise of any option, warrant, right, or any conversion privilege set forth in the instrument governing a security; or

(5) *Offers to sell or the solicitation of offers to buy.* Offers to sell or the solicitation of offers to buy the securities being distributed; or

(6) *Unsolicited purchases.* Unsolicited purchases that are not effected from or through a broker or dealer, on a securities exchange, or through an inter-dealer quotation system or electronic communications network; or

(7) *Transactions in Rule 144A securities.* Transactions in securities eligible for resale under § 230.144A(d)(3) of this chapter, or any reference security, if the Rule 144A securities are sold in the United States solely to:

(i) Qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter, or to purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in transactions exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§ 230.144A or § 230.500 *et seq.* of this chapter; or

(ii) Persons not deemed to be “U.S. persons” for purposes of §§ 230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (b)(7)(i) of this section.

(c) *Plans.* (1) Paragraph (a) of this section shall not apply to distributions of securities pursuant to a plan, which are made:

(i) Solely to employees or security holders of an issuer or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons; or

(ii) To persons other than employees or security holders, if bids for or purchases of securities pursuant to the plan are effected solely by an agent independent of the issuer and the securities are from a source other than the issuer or an affiliated purchaser of the issuer.

(2) Bids for or purchases of any security made or effected by or for a plan shall be deemed to be a purchase by the issuer unless the bid is made, or the

purchase is effected, by an agent independent of the issuer.

(d) *Excepted Securities.* The provisions of this section shall not apply to any of the following securities:

(1) *Actively-traded reference securities.* Reference securities with an ADTV value of at least \$1 million that are issued by an issuer whose common equity securities have a public float value of at least \$150 million; *Provided, however,* That such securities are not issued by the issuer, or any affiliate of the issuer, of the security in distribution.

(2) *Certain nonconvertible and asset-backed securities.* (i) Nonconvertible debt securities and nonconvertible preferred securities of issuers for which the probability of default, estimated as of the sixth business day immediately preceding the determination of the offering price and over the horizon of 12 full calendar months from such day, is 0.055% or less, as determined and documented, in writing, by the distribution participant acting as the lead manager (or in a similar capacity) of a distribution, as derived from a structural credit risk model, pursuant to § 242.101(c)(2)(i); or

(ii) Asset-backed securities that are offered pursuant to an effective shelf registration statement filed on Form SF-3 (§ 239.45 of this chapter); or

(3) *Exempted securities.* “Exempted securities” as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(4) *Face-amount certificates or securities issued by an open-end management investment company or unit investment trust.* Face-amount certificates issued by a face-amount certificate company, or redeemable securities issued by an open-end management investment company or a unit investment trust. Any terms used in this paragraph (d)(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.

(e) *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



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transaction or class of transactions, or to any security or class of securities.

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### § 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 highest independent bid until the passive market maker purchases an aggregate amount of the covered security that equals or, through the purchase of all securities that are part of a single order, exceeds the lesser of two times the minimum quotation size for the security, as determined by NASD rules, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section.

(4) *Limitation on displayed size.* At all times, the passive market maker's displayed bid size may not exceed the lesser of the minimum quotation size for the covered security, or the passive market maker's remaining purchasing capacity under paragraph (b)(2) of this section; *Provided, however,* That a passive market maker whose purchasing capacity at any time is between one and 99 shares may display a bid size of 100 shares.

(5) *Identification of a passive market making bid.* The bid displayed by a passive market maker shall be designated as such.

(6) *Notification and reporting to the NASD.* A passive market maker shall notify the NASD in advance of its intention to engage in passive market making, and shall submit to the NASD information regarding passive market making purchases, in such form as the NASD shall prescribe.

(7) *Prospectus disclosure.* The prospectus for any registered offering in which any passive market maker intends to effect transactions in any covered security shall contain the information required in §§ 228.502, 228.508, 229.502, and 229.508 of this chapter.

(c) *Transactions at prices resulting from unlawful activity.* No transaction shall be made at a price that the passive market maker knows or has reason to know is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

**§ 242.104 Stabilizing and other activities in connection with an offering.**

(a) *Unlawful activity.* It shall be unlawful for any person, directly or indirectly, to stabilize, to effect any syndicate covering transaction, or to impose a penalty bid, in connection with an offering of any security, in contravention of the provisions of this section. No stabilizing shall be effected at a price that the person stabilizing knows or has reason to know is in contravention of this section, or is the result of activity that is fraudulent, manipulative, or deceptive under the securities laws, or any rule or regulation thereunder.

(b) *Purpose.* Stabilizing is prohibited except for the purpose of preventing or retarding a decline in the market price of a security.

(c) *Priority.* To the extent permitted or required by the market where stabilizing occurs, any person stabilizing shall grant priority to any independent bid at the same price irrespective of the size of such independent bid at the time that it is entered.

(d) *Control of stabilizing.* No sole distributor or syndicate or group stabilizing the price of a security or any member or members of such syndicate or group shall maintain more than one stabilizing bid in any one market at the same price at the same time.

(e) *At-the-market offerings.* Stabilizing is prohibited in an at-the-market offering.

(f) *Stabilizing levels*—(1) *Maximum stabilizing bid.* Notwithstanding the other provisions of this paragraph (f), no stabilizing shall be made at a price higher than the lower of the offering price or the stabilizing bid for the security in the principal market (or, if the principal market is closed, the stabilizing bid in the principal market at its previous close).

(2) *Initiating stabilizing*—(i) *Initiating stabilizing when the principal market is open.* After the opening of quotations for the security in the principal market, stabilizing may be initiated in any market at a price no higher than the last independent transaction price for the security in the principal market if the security has traded in the principal market on the day stabilizing is initiated or on the most recent prior day of

trading in the principal market and the current asked price in the principal market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, stabilizing may be initiated in any market after the opening of quotations in the principal market at a price no higher than the highest current independent bid for the security in the principal market.

(ii) *Initiating stabilizing when the principal market is closed.* (A) When the principal market for the security is closed, but immediately before the opening of quotations for the security in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(1) The price at which stabilizing could have been initiated in the principal market for the security at its previous close; or

(2) The most recent price at which an independent transaction in the security has been effected in any market since the close of the principal market, if the person stabilizing knows or has reason to know of such transaction.

(B) When the principal market for the security is closed, but after the opening of quotations in the market where stabilizing will be initiated, stabilizing may be initiated at a price no higher than the lower of:

(1) The price at which stabilization could have been initiated in the principal market for the security at its previous close; or

(2) The last independent transaction price for the security in that market if the security has traded in that market on the day stabilizing is initiated or on the last preceding business day and the current asked price in that market is equal to or greater than the last independent transaction price. If both conditions of the preceding sentence are not satisfied, under this paragraph (f)(2)(ii)(B)(2), stabilizing may be initiated at a price no higher than the highest current independent bid for the security in that market.

(iii) *Initiating stabilizing when there is no market for the security or before the offering price is determined.* If no bona fide market for the security being distributed exists at the time stabilizing

is initiated, no stabilizing shall be initiated at a price in excess of the offering price. If stabilizing is initiated before the offering price is determined, then stabilizing may be continued after determination of the offering price at the price at which stabilizing then could be initiated.

(3) *Maintaining or carrying over a stabilizing bid.* A stabilizing bid initiated pursuant to paragraph (f)(2) of this section, which has not been discontinued, may be maintained, or carried over into another market, irrespective of changes in the independent bids or transaction prices for the security.

(4) *Increasing or reducing a stabilizing bid.* A stabilizing bid may be increased to a price no higher than the highest current independent bid for the security in the principal market if the principal market is open, or, if the principal market is closed, to a price no higher than the highest independent bid in the principal market at the previous close thereof. A stabilizing bid may be reduced, or carried over into another market at a reduced price, irrespective of changes in the independent bids or transaction prices for the security. If stabilizing is discontinued, it shall not be resumed at a price higher than the price at which stabilizing then could be initiated.

(5) *Initiating, maintaining, or adjusting a stabilizing bid to reflect the current exchange rate.* If a stabilizing bid is expressed in a currency other than the currency of the principal market for the security, such bid may be initiated, maintained, or adjusted to reflect the current exchange rate, consistent with the provisions of this section. If, in initiating, maintaining, or adjusting a stabilizing bid pursuant to this paragraph (f)(5), the bid would be at or below the midpoint between two trading differentials, such stabilizing bid shall be adjusted downward to the lower differential.

(6) *Adjustments to stabilizing bid.* If a security goes ex-dividend, ex-rights, or ex-distribution, the stabilizing bid shall be reduced by an amount equal to the value of the dividend, right, or distribution. If, in reducing a stabilizing bid pursuant to this paragraph (f)(6), the bid would be at or below the midpoint between two trading differen-

tials, such stabilizing bid shall be adjusted downward to the lower differential.

(7) *Stabilizing of components.* When two or more securities are being offered as a unit, the component securities shall not be stabilized at prices the sum of which exceeds the then permissible stabilizing price for the unit.

(8) *Special prices.* Any stabilizing price that otherwise meets the requirements of this section need not be adjusted to reflect special prices available to any group or class of persons (including employees or holders of warrants or rights).

(g) *Offerings with no U.S. stabilizing activities.* (1) Stabilizing to facilitate an offering of a security in the United States shall not be deemed to be in violation of this section if all of the following conditions are satisfied:

(i) No stabilizing is made in the United States;

(ii) Stabilizing outside the United States is made in a jurisdiction with statutory or regulatory provisions governing stabilizing that are comparable to the provisions of this section; and

(iii) No stabilizing is made at a price above the offering price in the United States, except as permitted by paragraph (f)(5) of this section.

(2) For purposes of this paragraph (g), the Commission by rule, regulation, or order may determine whether a foreign statute or regulation is comparable to this section considering, among other things, whether such foreign statute or regulation: specifies appropriate purposes for which stabilizing is permitted; provides for disclosure and control of stabilizing activities; places limitations on stabilizing levels; requires appropriate recordkeeping; provides other protections comparable to the provisions of this section; and whether procedures exist to enable the Commission to obtain information concerning any foreign stabilizing transactions.

(h) *Disclosure and notification.* (1) Any person displaying or transmitting a bid that such person knows is for the purpose of stabilizing shall provide prior notice to the market on which such stabilizing will be effected, and shall disclose its purpose to the person with whom the bid is entered.

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(2) Any person effecting a syndicate covering transaction or imposing a penalty bid shall provide prior notice to the self-regulatory organization with direct authority over the principal market in the United States for the security for which the syndicate covering transaction is effected or the penalty bid is imposed.

(3) Any person subject to this section who sells to, or purchases for the account of, any person any security where the price of such security may be or has been stabilized, shall send to the purchaser at or before the completion of the transaction, a prospectus, offering circular, confirmation, or other document containing a statement similar to that comprising the statement provided for in Item 502(d) of Regulation S-B (§228.502(d) of this chapter) or Item 502(d) of Regulation S-K (§229.502(d) of this chapter).

(i) *Recordkeeping requirements.* A person subject to this section shall keep the information and make the notification required by §240.17a-2 of this chapter.

(j) *Excepted securities.* The provisions of this section shall not apply to:

(1) *Exempted securities.* “Exempted securities,” as defined in section 3(a)(12) of the Exchange Act (15 U.S.C. 78c(a)(12)); or

(2) *Transactions of Rule 144A securities.* Transactions in securities eligible for resale under §230.144A(d)(3) of this chapter, if such securities are sold in the United States solely to:

(i) Qualified institutional buyers, as defined in §230.144A(a)(1) of this chapter, or to purchasers that the seller and any person acting on behalf of the seller reasonably believes are qualified institutional buyers, in a transaction exempt from registration under section 4(2) of the Securities Act (15 U.S.C. 77d(2)) or §§230.144A or §230.500 *et seq* of this chapter; or

(ii) Persons not deemed to be “U.S. persons” for purposes of §§230.902(o)(2) or 230.902(o)(7) of this chapter, during a distribution qualifying under paragraph (j)(2)(i) of this section.

(k) *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 spec-

ified terms and conditions, to any transaction or class of transactions, or to any security or class of securities.

[62 FR 544, Jan. 3, 1997, as amended at 62 FR 11323, Mar. 12, 1997; 62 FR 13213, Mar. 19, 1997; 77 FR 18685, Mar. 28, 2012; 78 FR 44805, July 24, 2013]

§ 242.105 Short selling in connection with a public offering.

(a) *Unlawful activity.* In connection with an offering of equity securities for cash pursuant to a registration statement or a notification on Form 1-A (§239.90 of this chapter) or Form 1-E (§239.200 of this chapter) filed under the Securities Act of 1933 (“offered securities”), it shall be unlawful for any person to sell short (as defined in §242.200(a)) the security that is the subject of the offering and purchase the offered securities from an underwriter or broker or dealer participating in the offering if such short sale was effected during the period (“Rule 105 restricted period”) that is the shorter of the period:

(1) Beginning five business days before the pricing of the offered securities and ending with such pricing; or

(2) Beginning with the initial filing of such registration statement or notification on Form 1-A or Form 1-E and ending with the pricing.

(b) *Excepted activity*—(1) *Bona fide purchase.* It shall not be prohibited for such person to purchase the offered securities as provided in paragraph (a) of this section if:

(i) Such person makes a bona fide purchase(s) of the security that is the subject of the offering that is:

(A) At least equivalent in quantity to the entire amount of the Rule 105 restricted period short sale(s);

(B) Effected during regular trading hours;

(C) Reported to an “effective transaction reporting plan” (as defined in §242.600(b)(30)); and

(D) Effected after the last Rule 105 restricted period short sale, and no later than the business day prior to the day of pricing; and

(ii) Such person did not effect a short sale, that is reported to an effective transaction reporting plan, within the 30 minutes prior to the close of regular trading hours (as defined in

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§ 242.600(b)(77)) on the business day prior to the day of pricing.

(2) *Separate accounts.* Paragraph (a) of this section shall not prohibit the purchase of the offered security in an account of a person where such person sold short during the Rule 105 restricted period in a separate account, if decisions regarding securities transactions for each account are made separately and without coordination of trading or cooperation among or between the accounts.

(3) *Investment companies.* Paragraph (a) of this section shall not prohibit an investment company (as defined by Section 3 of the Investment Company Act) that is registered under Section 8 of the Investment Company Act, or a series of such company (investment company) from purchasing an offered security where any of the following sold the offered security short during the Rule 105 restricted period:

(i) An affiliated investment company, or any series of such a company; or

(ii) A separate series of the investment company.

(c) *Excepted offerings.* This section shall not apply to offerings that are not conducted on a firm commitment basis.

(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.

[62 FR 544, Jan. 3, 1997, as amended at 69 FR 48029, Aug. 6, 2004; 72 FR 45107, Aug. 10, 2007; 83 FR 58427, Nov. 19, 2018; 86 FR 18809, Apr. 9, 2021]

### REGULATION SHO—REGULATION OF SHORT SALES

#### § 242.200 Definition of “short sale” and marking requirements.

(a) The term *short sale* shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(b) A person shall be deemed to own a security if:

(1) The person or his agent has title to it; or

(2) The person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or

(3) The person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or

(4) The person has an option to purchase or acquire it and has exercised such option; or

(5) The person has rights or warrants to subscribe to it and has exercised such rights or warrants; or

(6) The person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security.

(c) A person shall be deemed to own securities only to the extent that he has a net long position in such securities.

(d) A broker or dealer shall be deemed to own a security, even if it is not net long, if:

(1) The broker or dealer acquired that security while acting in the capacity of a block positioner; and

(2) If and to the extent that the broker or dealer's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(e) A broker-dealer shall be deemed to own a security even if it is not net long, if:

(1) The broker-dealer is unwinding index arbitrage position involving a long basket of stock and one or more short index futures traded on a board of trade or one or more standardized options contracts as defined in 17 CFR 240.9b-1(a)(4); and

(2) If and to the extent that the broker-dealer's short position in the security is the subject of offsetting positions created and maintained in the course of bona-fide arbitrage, risk arbitrage, or bona fide hedge activities; and

(3) The sale does not occur during a period commencing at the time that the NYSE Composite Index has declined by two percent or more from its closing value on the previous day and

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terminating upon the end of the trading day. The two percent shall be calculated at the beginning of each calendar quarter and shall be two percent, rounded down to the nearest 10 points, of the average closing value of the NYSE Composite Index for the last month of the previous quarter.

(f) In order to determine its net position, a broker or dealer shall aggregate all of its positions in a security unless it qualifies for independent trading unit aggregation, in which case each independent trading unit shall aggregate all of its positions in a security to determine its net position. Independent trading unit aggregation is available only if:

(1) The broker or dealer has a written plan of organization that identifies each aggregation unit, specifies its trading objective(s), and supports its independent identity;

(2) Each aggregation unit within the firm determines, at the time of each sale, its net position for every security that it trades;

(3) All traders in an aggregation unit pursue only the particular trading objective(s) or strategy(s) of that aggregation unit and do not coordinate that strategy with any other aggregation unit; and

(4) Individual traders are assigned to only one aggregation unit at any time.

(g) A broker or dealer must mark all sell orders of any equity security as “long,” “short,” or “short exempt.”

(1) An order to sell shall be marked “long” only if the seller is deemed to own the security being sold pursuant to paragraphs (a) through (f) of this section and either:

(i) The security to be delivered is in the physical possession or control of the broker or dealer; or

(ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.

(2) A sale order shall be marked “short exempt” only if the provisions of § 242.201(c) or (d) are met.

(h) 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 con-

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ditions, to any transaction or class of transactions, or to any security or class of securities, or to any person or class of persons.

[69 FR 48029, Aug. 6, 2004, as amended at 72 FR 36359, July 3, 2007; 72 FR 45557, Aug. 14, 2007; 75 FR 11323, Mar. 10, 2010]

### § 242.201 Circuit breaker.

(a) *Definitions.* For the purposes of this section:

(1) The term *covered security* shall mean any NMS stock as defined in § 242.600(b)(55).

(2) The term *effective transaction reporting plan for a covered security* shall have the same meaning as in § 242.600(b)(30).

(3) The term *listing market* shall have the same meaning as the term “primary listing exchange” as defined in § 242.600(b)(68).

(4) The term *national best bid* shall have the same meaning as in § 242.600(b)(50).

(5) The term *odd lot* shall have the same meaning as in § 242.600(b)(58).

(6) The term *plan processor* shall have the same meaning as in § 242.600(b)(67).

(7) The term *regular trading hours* shall have the same meaning as in § 242.600(b)(77).

(8) The term *riskless principal* shall mean a transaction in which a broker or dealer, after having received an order to buy a security, purchases the security as principal at the same price to satisfy the order to buy, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee, or, after having received an order to sell, sells the security as principal at the same price to satisfy the order to sell, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee.

(9) The term *trading center* shall have the same meaning as in § 242.600(b)(95).

(b)(1) A trading center shall establish, maintain, and enforce written policies and procedures reasonably designed to:

(i) Prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security’s closing price as determined by

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the listing market for the covered security as of the end of regular trading hours on the prior day; and

(ii) Impose the requirements of paragraph (b)(1)(i) of this section for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis pursuant to an effective national market system plan.

(iii) *Provided, however,* that the policies and procedures must be reasonably designed to permit:

(A) The execution of a displayed short sale order of a covered security by a trading center if, at the time of initial display of the short sale order, the order was at a price above the current national best bid; and

(B) The execution or display of a short sale order of a covered security marked “short exempt” without regard to whether the order is at a price that is less than or equal to the current national best bid.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (b)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(3) The determination regarding whether the price of a covered security has decreased by 10% or more from the covered security’s closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day shall be made by the listing market for the covered security and, if such decrease has occurred, the listing market shall immediately make such information available as provided in §242.603(b).

(c) Following any determination and notification pursuant to paragraph (b)(3) of this section with respect to a covered security, a broker or dealer submitting a short sale order of the covered security in question to a trading center may mark the order “short exempt” if the broker or dealer identifies the order as being at a price above the current national best bid at the time of submission; *provided, however:*

(1) The broker or dealer that identifies a short sale order of a covered se-

curity as “short exempt” in accordance with this paragraph (c) must establish, maintain, and enforce written policies and procedures reasonably designed to prevent incorrect identification of orders for purposes of this paragraph; and

(2) The broker or dealer shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (c)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(d) Following any determination and notification pursuant to paragraph (b)(3) of this section with respect to a covered security, a broker or dealer may mark a short sale order of a covered security “short exempt” if the broker or dealer has a reasonable basis to believe that:

(1) The short sale order of a covered security is by a person that is deemed to own the covered security pursuant to §242.200, provided that the person intends to deliver the security as soon as all restrictions on delivery have been removed.

(2) The short sale order of a covered security is by a market maker to offset customer odd-lot orders or to liquidate an odd-lot position that changes such broker’s or dealer’s position by no more than a unit of trading.

(3) The short sale order of a covered security is for a good faith account of a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such securities of the issuer.

(4) The short sale order of a covered security is for a good faith account and submitted to profit from a current price difference between a security on a foreign securities market and a security on a securities market subject to the jurisdiction of the United States, provided that the short seller has an

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offer to buy on a foreign market that allows the seller to immediately cover the short sale at the time it was made. For the purposes of this paragraph (d)(4), a depository receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(5)(i) The short sale order of a covered security is by an underwriter or member of a syndicate or group participating in the distribution of a security in connection with an over-allotment of securities; or

(ii) The short sale order of a covered security is for purposes of a lay-off sale by an underwriter or member of a syndicate or group in connection with a distribution of securities through a rights or standby underwriting commitment.

(6) The short sale order of a covered security is by a broker or dealer effecting the execution of a customer purchase or the execution of a customer "long" sale on a riskless principal basis. In addition, for purposes of this paragraph (d)(6), a broker or dealer must have written policies and procedures in place to assure that, at a minimum:

(i) The customer order was received prior to the offsetting transaction;

(ii) The offsetting transaction is allocated to a riskless principal or customer account within 60 seconds of execution; and

(iii) The broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders on which a broker or dealer relies pursuant to this exception.

(7) The short sale order is for the sale of a covered security at the volume weighted average price (VWAP) that meets the following criteria:

(i) The VWAP for the covered security is calculated by:

(A) Calculating the values for every regular way trade reported in the consolidated system for the security during the regular trading session, by multiplying each such price by the total number of shares traded at that price;

(B) Compiling an aggregate sum of all values; and

(C) Dividing the aggregate sum by the total number of reported shares for that day in the security.

(ii) The transactions are reported using a special VWAP trade modifier.

(iii) The VWAP matched security:

(A) Qualifies as an "actively-traded security" pursuant to §242.101 and §242.102; or

(B) The proposed short sale transaction is being conducted as part of a basket transaction of twenty or more securities in which the subject security does not comprise more than 5% of the value of the basket traded.

(iv) The transaction is not effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security.

(v) A broker or dealer shall be permitted to act as principal on the contra-side to fill customer short sale orders only if the broker's or dealer's position in the covered security, as committed by the broker or dealer during the pre-opening period of a trading day and aggregated across all of its customers who propose to sell short the same security on a VWAP basis, does not exceed 10% of the covered security's relevant average daily trading volume.

(e) No self-regulatory organization shall have any rule that is not in conformity with, or conflicts with, this section.

(f) 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 person or class of persons, to any transaction or class of transactions, or to any security or class of securities to the extent that such exemption is necessary or appropriate, in the public interest, and is consistent with the protection of investors.

[75 FR 11323, Mar. 10, 2010, as amended at 83 FR 58427, Nov. 19, 2018; 86 FR 18809, Apr. 9, 2021]

§ 242.203 Borrowing and delivery requirements.

(a) Long sales. (1) If a broker or dealer knows or has reasonable grounds to believe that the sale of an equity security was or will be effected pursuant to an



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order marked "long," such broker or dealer shall not lend or arrange for the loan of any security for delivery to the purchaser's broker after the sale, or fail to deliver a security on the date delivery is due.

(2) The provisions of paragraph (a)(1) of this section shall not apply:

(i) To the loan of any security by a broker or dealer through the medium of a loan to another broker or dealer;

(ii) If the broker or dealer knows, or has been reasonably informed by the seller, that the seller owns the security, and that the seller would deliver the security to the broker or dealer prior to the scheduled settlement of the transaction, but the seller failed to do so; or

(iii) If, prior to any loan or arrangement to loan any security for delivery, or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds:

(A) That such sale resulted from a mistake made in good faith;

(B) That due diligence was used to ascertain that the circumstances specified in § 242.200(g) existed; and

(C) Either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a permissible price under any applicable short sale price test.

(b) *Short sales.* (1) A broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has:

(i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or

(ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and

(iii) Documented compliance with this paragraph (b)(1).

(2) The provisions of paragraph (b)(1) of this section shall not apply to:

(i) A broker or dealer that has accepted a short sale order from another

registered broker or dealer that is required to comply with paragraph (b)(1) of this section, unless the broker or dealer relying on this exception contractually undertook responsibility for compliance with paragraph (b)(1) of this section;

(ii) Any sale of a security that a person is deemed to own pursuant to § 242.200, provided that the broker or dealer has been reasonably informed that the person intends to deliver such security as soon as all restrictions on delivery have been removed. If the person has not delivered such security within 35 days after the trade date, the broker-dealer that effected the sale must borrow securities or close out the short position by purchasing securities of like kind and quantity;

(iii) Short sales effected by a market maker in connection with bona-fide market making activities in the security for which this exception is claimed; and

(iv) Transactions in security futures.

(3) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position by purchasing securities of like kind and quantity:

(i) *Provided, however,* that a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment and which, prior to the effective date of this amendment, had been previously grandfathered from the close-out requirement in this paragraph (b)(3) (i.e., because the participant of a registered clearing agency had a fail to deliver position at a registered clearing agency on the settlement day preceding the day that the security became a threshold security), shall close out that fail to deliver position within thirty-five consecutive settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

(ii) *Provided, however,* that if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold

security that was sold pursuant to § 230.144 of this chapter for thirty-five consecutive settlement days, the participant shall immediately thereafter close out the fail to deliver position in the security by purchasing securities of like kind and quantity;

(iii) *Provided, however*, that a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment and which, prior to the effective date of this amendment, had been previously excepted from the close-out requirement in paragraph (b)(3) of this section (i.e., because the participant of a registered clearing agency had a fail to deliver position in the threshold security that is attributed to short sales effected by a registered options market maker to establish or maintain a hedge on options positions that were created before the security became a threshold security), shall immediately close out that fail to deliver position, including any adjustments to the fail to deliver position, within 35 consecutive settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

(iv) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in a threshold security for thirteen consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

(v) If a participant of a registered clearing agency entitled to rely on the 35 consecutive settlement day close-out requirement contained in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section has a fail to deliver position at a registered clearing agency in the

threshold security for 35 consecutive settlement days, the participant and any broker or dealer for which it clears transactions, including any market maker, that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(ii) of this section, may not accept a short sale order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

(vi) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or for which it is responsible for settlement, based on such broker or dealer's short position, then the provisions of this paragraph (b)(3) relating to such fail to deliver position shall apply to the portion of such registered broker or dealer that was allocated the fail to deliver position, and not to the participant; and

(vii) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this paragraph (b)(3) where the participant enters into an arrangement with another person to purchase securities as required by this paragraph (b)(3), and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase.

(c) *Definitions.* (1) For purposes of this section, the term *market maker* has the same meaning as in section 3(a)(38) of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78c(a)(38)).

(2) For purposes of this section, the term *participant* has the same meaning as in section 3(a)(24) of the Exchange Act (15 U.S.C. 78c(a)(24)).

(3) For purposes of this section, the term *registered clearing agency* means a clearing agency, as defined in section 3(a)(23)(A) of the Exchange Act (15 U.S.C. 78c(a)(23)(A)), that is registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1).

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(4) For purposes of this section, the term *security future* has the same meaning as in section 3(a)(55) of the Exchange Act (15 U.S.C. 78c(a)(55)).

(5) For purposes of this section, the term *settlement day* means any business day on which deliveries of securities and payments of money may be made through the facilities of a registered clearing agency.

(6) For purposes of this section, the term *threshold security* means any equity security of an issuer that is registered pursuant to section 12 of the Exchange Act (15 U.S.C. 78l) or for which the issuer is required to file reports pursuant to section 15(d) of the Exchange Act (15 U.S.C. 78o(d)):

(i) For which there is an aggregate fail to deliver position for five consecutive settlement days at a registered clearing agency of 10,000 shares or more, and that is equal to at least 0.5% of the issue's total shares outstanding;

(ii) Is included on a list disseminated to its members by a self-regulatory organization; and

(iii) *Provided, however*, that a security shall cease to be a threshold security if the aggregate fail to deliver position at a registered clearing agency does not exceed the level specified in paragraph (c)(6)(i) of this section for five consecutive settlement days.

(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, or to any person or class of persons.

[69 FR 48029, Aug. 6, 2004, as amended at 72 FR 45557, Aug. 14, 2007; 73 FR 61706, Oct. 17, 2008]

### § 242.204 Close-out requirement.

(a) A participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall,

by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out its fail to deliver position by borrowing or purchasing securities of like kind and quantity; *Provided, however*:

(1) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity;

(2) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security resulting from a sale of a security that a person is deemed to own pursuant to § 242.200 and that such person intends to deliver as soon as all restrictions on delivery have been removed, the participant shall, by no later than the beginning of regular trading hours on the thirty-fifth consecutive calendar day following the trade date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity; or

(3) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security that is attributable to bona fide market making activities by a registered market maker, options market maker, or other market maker obligated to quote in the over-the-counter market, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing or borrowing securities of like kind and quantity.

(b) If a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out such fail to deliver position in accordance with the requirements of

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paragraph (a) of this section, the participant and any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii), may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, to the extent that the broker or dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency; *Provided, however:* A broker or dealer shall not be subject to the requirements of this paragraph if the broker or dealer timely certifies to the participant of a registered clearing agency that it has not incurred a fail to deliver position on settlement date for a long or short sale in an equity security for which the participant has a fail to deliver position at a registered clearing agency or that the broker or dealer is in compliance with paragraph (e) of this section.

(c) The participant must notify any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii):

(1) That the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of paragraph (a) of this section; and

(2) When the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency.

(d) If a participant of a registered clearing agency reasonably allocates a portion of a fail to deliver position to another registered broker or dealer for which it clears trades or from which it receives trades for settlement, based on such broker's or dealer's short position, the provisions of paragraphs (a) and (b) of this section relating to such fail to deliver position shall apply to

such registered broker or dealer that was allocated the fail to deliver position, and not to the participant. A broker or dealer that has been allocated a portion of a fail to deliver position that does not comply with the provisions of paragraph (a) of this section must immediately notify the participant that it has become subject to the requirements of paragraph (b) of this section.

(e) Even if a participant of a registered clearing agency has not closed out a fail to deliver position at a registered clearing agency in accordance with paragraph (a) of this section, or has not allocated a fail to deliver position to a broker or dealer in accordance with paragraph (d) of this section, a broker or dealer shall not be subject to the requirements of paragraph (a) or (b) of this section if the broker or dealer purchases or borrows the securities, and if:

(1) The purchase or borrow is bona fide;

(2) The purchase or borrow is executed after trade date but by no later than the end of regular trading hours on settlement date for the transaction;

(3) The purchase or borrow is of a quantity of securities sufficient to cover the entire amount of that broker's or dealer's fail to deliver position at a registered clearing agency in that security; and

(4) The broker or dealer can demonstrate that it has a net flat or net long position on its books and records on the day of the purchase or borrow.

(f) A participant of a registered clearing agency shall not be deemed to have fulfilled the requirements of this section where the participant enters into an arrangement with another person to purchase or borrow securities as required by this section, and the participant knows or has reason to know that the other person will not deliver securities in settlement of the purchase or borrow.

(g) *Definitions.* (1) For purposes of this section, the term *settlement date* shall mean the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security.

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(2) For purposes of this section, the term *regular trading hours* has the same meaning as in §242.600(b)(77) (Rule 600(b)(77) of Regulation NMS).

[74 FR 38292, July 31, 2009, as amended at 83 FR 58427, Nov. 19, 2018; 86 FR 18809, Apr. 9, 2021]

### REGULATION ATS—ALTERNATIVE TRADING SYSTEMS

SOURCE: Sections 242.300 through 242.303 appear at 63 FR 70921, Dec. 22, 1998, unless otherwise noted.

#### PRELIMINARY NOTES

1. An alternative trading system is required to comply with the requirements in this Regulation ATS, unless such alternative trading system:

(a) Is registered as a national securities exchange;

(b) Is exempt from registration as a national securities exchange based on the limited volume of transactions effected on the alternative trading system; or

(c) Trades only government securities and certain other related instruments.

All alternative trading systems must comply with the antifraud, antimanipulation, and other applicable provisions of the federal securities laws.

2. The requirements imposed upon an alternative trading system by Regulation ATS are in addition to any requirements applicable to broker-dealers registered under section 15 of the Act, (15 U.S.C. 78o).

3. An alternative trading system must comply with any applicable state law relating to the offer or sale of securities or the registration or regulation of persons or entities effecting transactions in securities.

4. The disclosures made pursuant to the provisions of this section are in addition to any other disclosure requirements under the federal securities laws.

#### § 242.300 Definitions.

For purposes of this section, the following definitions shall apply:

(a) *Alternative trading system* means any organization, association, person, group of persons, or system:

(1) That constitutes, maintains, or provides 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 within the meaning of § 240.3b-16 of this chapter; and

(2) That does not:

(i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or

(ii) Discipline subscribers other than by exclusion from trading.

(b) *Subscriber* means any person that has entered into a contractual agreement with an alternative trading system to access such alternative trading system for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such alternative trading system, including a customer, member, user, or participant in an alternative trading system. A subscriber, however, shall not include a national securities exchange or national securities association.

(c) *Affiliate of a subscriber* means any person that, directly or indirectly, controls, is under common control with, or is controlled by, the subscriber, including any employee.

(d) *Debt security* shall mean any security other than an equity security, as defined in § 240.3a11-1 of this chapter, as well as non-participatory preferred stock.

(e) *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.

(f) *Control* means the power, directly or indirectly, to direct the management or policies of the broker-dealer of an alternative trading system, whether through ownership of securities, by contract, or otherwise. A person is presumed to *control* the broker-dealer of an alternative trading system, if that person:

(1) Is a director, general partner, or officer exercising executive responsibility (or having similar status or performing similar functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting security or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of the broker-dealer of the alternative trading system; or

(3) In the case of a partnership, has contributed, or has the right to receive

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upon dissolution, 25 percent or more of the capital of the broker-dealer of the alternative trading system.

(g) *NMS stock* shall have the meaning provided in §242.600; *provided, however*, that a debt or convertible debt security shall not be deemed an NMS stock for purposes of this Regulation ATS.

(h) *Effective transaction reporting plan* shall have the meaning provided in §242.600.

(i) *Corporate debt security* shall mean any security that:

- (1) Evidences a liability of the issuer of such security;
- (2) Has a fixed maturity date that is at least one year following the date of issuance; and
- (3) Is not an exempted security, as defined in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

(j) *Commercial paper* shall mean any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

(k) *NMS Stock ATS* means an alternative trading system, as defined in paragraph (a) of this section, that trades NMS stocks, as defined in paragraph (g) of this section.

[62 FR 544, Jan. 3, 1997, as amended at 70 FR 37619, June 29, 2005; 74 FR 52372, Oct. 9, 2009; 83 FR 38911, Aug. 7, 2018]

§ 242.301 Requirements for alternative trading systems.

(a) *Scope of section.* An alternative trading system shall comply with the requirements in paragraph (b) of this section, unless such alternative trading system:

- (1) Is registered as an exchange under section 6 of the Act, (15 U.S.C. 78f);
- (2) Is exempted by the Commission from registration as an exchange based on the limited volume of transactions effected;
- (3) Is operated by a national securities association;
- (4)(i) Is registered as a broker-dealer under sections 15(b) or 15C of the Act (15 U.S.C. 78o(b), and 78o-5), or is a bank, and

(ii) Limits its securities activities to the following instruments:

- (A) Government securities, as defined in section 3(a)(42) of the Act, (15 U.S.C. 78c(a)(42));
- (B) Repurchase and reverse repurchase agreements solely involving securities included within paragraph (a)(4)(ii)(A) of this section;
- (C) Any put, call, straddle, option, or privilege on a government security, other than a put, call, straddle, option, or privilege that:
  - (1) Is traded on one or more national securities exchanges; or
  - (2) For which quotations are disseminated through an automated quotation system operated by a registered securities association; and
- (D) Commercial paper.

(5) Is exempted, conditionally or unconditionally, by Commission order, after application by such alternative trading system, from one or more of the requirements of paragraph (b) of this section or §242.304. The Commission will grant such exemption only after determining that such an order is consistent with the public interest, the protection of investors, and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(b) *Requirements.* Every alternative trading system subject to this Regulation ATS, pursuant to paragraph (a) of this section, shall comply with the requirements in this paragraph (b).

(1) *Broker-dealer registration.* The alternative trading system shall register as a broker-dealer under section 15 of the Act, (15 U.S.C. 78o).

(2) *Notice.* (i) The alternative trading system shall file an initial operation report on Form ATS, §249.637 of this chapter, in accordance with the instructions therein, at least 20 days prior to commencing operation as an alternative trading system.

(ii) The alternative trading system shall file an amendment on Form ATS at least 20 calendar days prior to implementing a material change to the operation of the alternative trading system.

(iii) If any information contained in the initial operation report filed under paragraph (b)(2)(i) of this section becomes inaccurate for any reason and

has not been previously reported to the Commission as an amendment on Form ATS, the alternative trading system shall file an amendment on Form ATS correcting such information within 30 calendar days after the end of each calendar quarter in which the alternative trading system has operated.

(iv) The alternative trading system shall promptly file an amendment on Form ATS correcting information previously reported on Form ATS after discovery that any information filed under paragraphs (b)(2)(i), (ii) or (iii) of this section was inaccurate when filed.

(v) The alternative trading system shall promptly file a cessation of operations report on Form ATS in accordance with the instructions therein upon ceasing to operate as an alternative trading system.

(vi) Every notice or amendment filed pursuant to this paragraph (b)(2) shall constitute a “report” within the meaning of sections 11A, 17(a), 18(a), and 32(a), (15 U.S.C. 78k-1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(vii) The reports provided for in paragraph (b)(2) of this section shall be considered filed upon receipt by the Division of Trading and Markets, at the Commission’s principal office in Washington, DC. Duplicate originals of the reports provided for in paragraphs (b)(2)(i) through (v) of this section must be filed with surveillance personnel designated as such by any self-regulatory organization that is the designated examining authority for the alternative trading system pursuant to §240.17d-1 of this chapter simultaneously with filing with the Commission. Duplicates of the reports required by paragraph (b)(9) of this section shall be provided to surveillance personnel of such self-regulatory authority upon request. All reports filed pursuant to this paragraph (b)(2) and paragraph (b)(9) of this section shall be deemed confidential when filed.

(viii) An NMS Stock ATS that is operating pursuant to an initial operation report on Form ATS on file with the Commission as of January 7, 2019 (“Legacy NMS Stock ATS”) shall be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section until that ATS files an initial

Form ATS-N with the Commission pursuant to §242.304(a)(1)(iv)(A). Thereafter, the Legacy NMS Stock ATS shall file reports pursuant to §242.304. An alternative trading system that trades NMS stocks and securities other than NMS stocks shall be subject to the requirements of §242.304 of this chapter with respect to NMS stocks and paragraph (b)(2) of this section with respect to non-NMS stocks. As of January 7, 2019, an entity seeking to operate as an NMS Stock ATS shall not be subject to the requirements of paragraphs (b)(2)(i) through (vii) of this section and shall file reports pursuant to §242.304.

(3) *Order display and execution access.*

(i) An alternative trading system shall comply with the requirements set forth in paragraph (b)(3)(ii) of this section, with respect to any NMS stock in which the alternative trading system:

(A) Displays subscriber orders to any person (other than alternative trading system employees); and

(B) During at least 4 of the preceding 6 calendar months, had an average daily trading volume of 5 percent or more of the aggregate average daily share volume for such NMS stock as reported by an effective transaction reporting plan.

(ii) Such alternative trading system shall provide to a national securities exchange or national securities association the prices and sizes of the orders at the highest buy price and the lowest sell price for such NMS stock, displayed to more than one person in the alternative trading system, for inclusion in the quotation data made available by the national securities exchange or national securities association to vendors pursuant to §242.602.

(iii) With respect to any order displayed pursuant to paragraph (b)(3)(ii) of this section, an alternative trading system shall provide to any broker-dealer that has access to the national securities exchange or national securities association to which the alternative trading system provides the prices and sizes of displayed orders pursuant to paragraph (b)(3)(ii) of this section, the ability to effect a transaction with such orders that is:

(A) Equivalent to the ability of such broker-dealer to effect a transaction

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with other orders displayed on the exchange or by the association; and

(B) At the price of the highest priced buy order or lowest priced sell order displayed for the lesser of the cumulative size of such priced orders entered therein at such price, or the size of the execution sought by such broker-dealer.

(4) *Fees.* The alternative trading system shall not charge any fee to broker-dealers that access the alternative trading system through a national securities exchange or national securities association, that is inconsistent with equivalent access to the alternative trading system required by paragraph (b)(3)(iii) of this section. In addition, if the national securities exchange or national securities association to which an alternative trading system provides the prices and sizes of orders under paragraphs (b)(3)(i) and (b)(3)(iii) of this section establishes rules designed to assure consistency with standards for access to quotations displayed on such national securities exchange, or the market operated by such national securities association, the alternative trading system shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules.

(5) *Fair access.* (i) An alternative trading system shall comply with the requirements in paragraph (b)(5)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to any NMS stock, 5 percent or more of the average daily volume in that security reported by an effective transaction reporting plan;

(B) With respect to an equity security that is not an NMS stock and for which transactions are reported to a self-regulatory organization, 5 percent or more of the average daily trading volume in that security as calculated by the self-regulatory organization to which such transactions are reported;

(C) With respect to municipal securities, 5 percent or more of the average daily volume traded in the United States; or

(D) With respect to corporate debt securities, 5 percent or more of the aver-

age daily volume traded in the United States.

(ii) An alternative trading system shall:

(A) Establish written standards for granting access to trading on its system;

(B) Not unreasonably prohibit or limit any person in respect to access to services offered by such alternative trading system by applying the standards established under paragraph (b)(5)(i)(A) of this section in an unfair or discriminatory manner;

(C) Make and keep records of:

(1) All grants of access including, for all subscribers, the reasons for granting such access; and

(2) All denials or limitations of access and reasons, for each applicant, for denying or limiting access; and

(D) Report the information required on Form ATS-R (§249.638 of this chapter) regarding grants, denials, and limitations of access.

(iii) Notwithstanding paragraph (b)(5)(i) of this section, an alternative trading system shall not be required to comply with the requirements in paragraph (b)(5)(ii) of this section, if such alternative trading system:

(A) Matches customer orders for a security with other customer orders;

(B) Such customers' orders are not displayed to any person, other than employees of the alternative trading system; and

(C) Such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.

(6) *Capacity, integrity, and security of automated systems.* (i) The alternative trading system shall comply with the requirements in paragraph (b)(6)(ii) of this section, if during at least 4 of the preceding 6 calendar months, such alternative trading system had:

(A) With respect to municipal securities, 20 percent or more of the average daily volume traded in the United States; or

(B) With respect to corporate debt securities, 20 percent or more of the average daily volume traded in the United States.



(ii) With respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, the alternative trading system shall:

(A) Establish reasonable current and future capacity estimates;

(B) Conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner;

(C) Develop and implement reasonable procedures to review and keep current its system development and testing methodology;

(D) Review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters;

(E) Establish adequate contingency and disaster recovery plans;

(F) On an annual basis, perform an independent review, in accordance with established audit procedures and standards, of such alternative trading system's controls for ensuring that paragraphs (b)(6)(ii)(A) through (E) of this section are met, and conduct a review by senior management of a report containing the recommendations and conclusions of the independent review; and

(G) Promptly notify the Commission staff of material systems outages and significant systems changes.

(iii) Notwithstanding paragraph (b)(6)(i) of this section, an alternative trading system shall not be required to comply with the requirements in paragraph (b)(6)(ii) of this section, if such alternative trading system:

(A) Matches customer orders for a security with other customer orders;

(B) Such customers' orders are not displayed to any person, other than employees of the alternative trading system; and

(C) Such orders are executed at a price for such security disseminated by an effective transaction reporting plan, or derived from such prices.

(7) *Examinations, inspections, and investigations.* The alternative trading system shall permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examina-

tion is being conducted by the Commission or by a self-regulatory organization of which such subscriber is a member.

(8) *Recordkeeping.* The alternative trading system shall:

(i) Make and keep current the records specified in § 242.302; and

(ii) Preserve the records specified in § 242.303.

(9) *Reporting.* The alternative trading system shall:

(i) Separately file the information required by Form ATS-R (§ 249.638 of this chapter) for transactions in NMS stocks, as defined in paragraph (g) of this section, and transactions in securities other than NMS stocks within 30 calendar days after the end of each calendar quarter in which the market has operated after the effective date of this section; and

(ii) Separately file the information required by Form ATS-R for transactions in NMS stocks and transactions in securities other than NMS stocks within 10 calendar days after an alternative trading system ceases to operate.

(10) *Written procedures to ensure the confidential treatment of trading information.* (i) The alternative trading system shall establish adequate written safeguards and written procedures to protect subscribers' confidential trading information. Such written safeguards and written procedures shall include:

(A) Limiting access to the confidential trading information of subscribers to those employees of the alternative trading system who are operating the system or responsible for its compliance with these or any other applicable rules;

(B) Implementing standards controlling employees of the alternative trading system trading for their own accounts; and

(ii) The alternative trading system shall adopt and implement adequate written oversight procedures to ensure that the written safeguards and procedures established pursuant to paragraph (b)(10)(i) of this section are followed.

(11) *Name.* The alternative trading system shall not use in its name the word "exchange," or derivations of the

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word “exchange,” such as the term “stock market.”

[63 FR 70921, Dec. 22, 1998, as amended at 65 FR 13235, Mar. 13, 2000; 70 FR 37619, June 29, 2005; 74 FR 52372, Oct. 9, 2009; 79 FR 72436, Dec. 5, 2014; 83 FR 38911, Aug. 7, 2018]

**§ 242.302 Recordkeeping requirements for alternative trading systems.**

To comply with the condition set forth in paragraph (b)(8) of § 242.301, an alternative trading system shall make and keep current the following records:

(a) A record of subscribers to such alternative trading system (identifying any affiliations between the alternative trading system and subscribers to the alternative trading system, including common directors, officers, or owners);

(b) Daily summaries of trading in the alternative trading system including:

(1) Securities for which transactions have been executed;

(2) Transaction volume, expressed with respect to equity securities in:

- (i) Number of trades;
- (ii) Number of shares traded; and
- (iii) Total settlement value in terms of U.S. dollars; and

(3) Transaction volume, expressed with respect to debt securities in:

- (i) Number of trades; and
- (ii) Total U.S. dollar value; and

(c) Time-sequenced records of order information in the alternative trading system, including:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

(2) Identity of the security;

(3) The number of shares, or principal amount of bonds, to which the order applies;

(4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;

(5) The designation of the order as a buy or sell order;

(6) The designation of the order as a short sale order;

(7) The designation of the order as a market order, limit order, stop order, stop limit order, or other type or order;

(8) Any limit or stop price prescribed by the order;

(9) The date on which the order expires and, if the time in force is less

than one day, the time when the order expires;

(10) The time limit during which the order is in force;

(11) Any instructions to modify or cancel the order;

(12) The type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by the alternative trading system, for which the order is submitted;

(13) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;

(14) Price at which the order was executed;

(15) Size of the order executed (expressed in number of shares or units or principal amount); and

(16) Identity of the parties to the transaction.

**§ 242.303 Record preservation requirements for alternative trading systems.**

(a) To comply with the condition set forth in paragraph (b)(8) of § 242.301, an alternative trading system shall preserve the following records:

(1) For a period of not less than three years, the first two years in an easily accessible place, an alternative trading system shall preserve:

(i) All records required to be made pursuant to § 242.302;

(ii) All notices provided by such alternative trading system to subscribers generally, whether written or communicated through automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to the market and denials of, or limitations on, access to the alternative trading system;

(iii) If subject to paragraph (b)(5)(ii) of § 242.301, at least one copy of such alternative trading system’s standards for access to trading, all documents relevant to the alternative trading systems decision to grant, deny, or limit access to any person, and all other documents made or received by the alternative trading system in the course of complying with paragraph (b)(5) of § 242.301; and

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(iv) At least one copy of all documents made or received by the alternative trading system in the course of complying with paragraph (b)(6) of § 242.301, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records.

(v) At least one copy of the written safeguards and written procedures to protect subscribers' confidential trading information and the written oversight procedures created in the course of complying with paragraph (b)(10) of § 242.301.

(2) During the life of the enterprise and of any successor enterprise, an alternative trading system shall preserve:

(i) All partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books; and

(ii) Copies of reports filed pursuant to paragraph (b)(2) of § 242.301 or § 242.304 of this chapter and records made pursuant to paragraph (b)(5) of § 242.301 of this chapter.

(b) The records required to be maintained and preserved pursuant to paragraph (a) of this section must be produced, reproduced, and maintained in paper form or in any of the forms permitted under § 240.17a-4(f) of this chapter.

(c) Alternative trading systems must comply with any other applicable recordkeeping or reporting requirement in the Act, and the rules and regulations thereunder. If the information in a record required to be made pursuant to this section is preserved in a record made pursuant to § 240.17a-3 or § 240.17a-4 of this chapter, or otherwise preserved by the alternative trading system (whether in summary or some other form), this section shall not require the sponsor to maintain such information in a separate file, provided that the sponsor can promptly sort and retrieve the information as if it had been kept in a separate file as a record made pursuant to this section, and preserves the information in accordance with the time periods specified in paragraph (a) of this section.

(d) The records required to be maintained and preserved pursuant to this section may be prepared or maintained

by a service bureau, depository, or other recordkeeping service on behalf of the alternative trading system. An agreement with a service bureau, depository, or other recordkeeping service shall not relieve the alternative trading system from the responsibility to prepare and maintain records as specified in this section. The service bureau, depository, or other recordkeeping service shall file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the alternative trading system required to be maintained and preserved and will be surrendered promptly on request of the alternative trading system, and shall include the following provision: With respect to any books and records maintained or preserved on behalf of (name of alternative trading system), the undersigned hereby undertakes to permit examination of such books and records at any time, or from time to time, during business hours by the staff of the Securities and Exchange Commission, any self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system, and to promptly furnish to the Commission, self-regulatory organization of which the alternative trading system is a member, or any State securities regulator having jurisdiction over the alternative trading system a true, correct, complete and current hard copy of any, all, or any part of, such books and records.

(e) Every alternative trading system shall furnish to any representative of the Commission promptly upon request, legible, true, and complete copies of those records that are required to be preserved under this section.

[63 FR 70921, Dec. 22, 1998, as amended at 66 FR 55841, Nov. 2, 2001; 83 FR 38911, Aug. 7, 2018]

### § 242.304 NMS Stock ATSS.

(a) *Conditions to the exemption.* Unless not required to comply with Regulation ATS pursuant to § 242.301(a), an NMS Stock ATS must comply with §§ 242.300 through 242.304 (except

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§ 242.301(b)(2)(i) through (vii)) to be exempt pursuant to § 240.3a1-1(a)(2).

(1) *Initial Form ATS-N. (i) Filing and effectiveness requirement.* No exemption is available to an NMS Stock ATS pursuant to § 240.3a1-1(a)(2) unless the NMS Stock ATS files with the Commission an initial Form ATS-N, in accordance with the conditions of this section, and the initial Form ATS-N is effective pursuant to paragraph (a)(1)(iii) or (a)(1)(iv)(A) of this section.

(ii) *Commission review period.* (A) The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS-N filed by an NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS-N review period for:

(1) An additional 90 calendar days, if the Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(2) Any extended review period to which a duly authorized representative of the NMS Stock ATS agrees in writing.

(B) During review by the Commission of the initial Form ATS-N, the NMS Stock ATS shall amend its initial Form ATS-N pursuant to the requirements of paragraphs (a)(2)(i)(B) and (C) of this section. To make material changes to its initial Form ATS-N during the Commission review period, the NMS Stock ATS shall withdraw its filed initial Form ATS-N and may refile an initial Form ATS-N pursuant to paragraph (a)(1) of this section.

(iii) *Effectiveness; Ineffectiveness determination.* (A) An initial Form ATS-N, as amended, filed by an NMS Stock ATS will become effective, unless declared ineffective, upon the earlier of:

(1) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(2) The expiration of the review period, or, if applicable, the end of the ex-

tended review period, pursuant to paragraph (a)(1)(ii) of this section.

(B) The Commission will, by order, declare an initial Form ATS-N ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. If the Commission declares an initial Form ATS-N ineffective, the NMS Stock ATS shall be prohibited from operating as an NMS Stock ATS pursuant to § 240.3a1-1(a)(2). An initial Form ATS-N declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS-N.

(iv) *Transition for Legacy NMS Stock ATSs.* (A) *Initial Form ATS-N filing requirements.* A Legacy NMS Stock ATS shall file with the Commission an initial Form ATS-N, in accordance with the conditions of this section, no earlier than January 7, 2019, and no later than February 8, 2019. An initial Form ATS-N filed by a Legacy NMS Stock ATS shall supersede and replace for purposes of the exemption the previously filed Form ATS of the Legacy NMS Stock ATS. The Legacy NMS Stock ATS may operate, on a provisional basis, pursuant to the filed initial Form ATS-N, and any amendments thereto, during the review of the initial Form ATS-N by the Commission. An initial Form ATS-N filed by a Legacy NMS Stock ATS, as amended, will become effective, unless declared ineffective, upon the earlier of:

(1) The completion of review by the Commission and publication pursuant to paragraph (b)(2)(i) of this section; or

(2) The expiration of the review period, or, if applicable, the end of the extended review period, pursuant to paragraph (a)(1)(iv)(B) of this section.

(B) *Commission review period; Ineffectiveness determination.* The Commission may, by order, as provided in paragraph (a)(1)(iii) of this section, declare an initial Form ATS-N filed by a Legacy NMS Stock ATS ineffective no later than 120 calendar days from the date of filing with the Commission, or, if applicable, the end of the extended review period. The Commission may extend the initial Form ATS-N review period for a Legacy NMS Stock ATS for:

(1) An additional 120 calendar days if the initial Form ATS-N is unusually lengthy or raises novel or complex issues that require additional time for review, in which case the Commission will notify the Legacy NMS Stock ATS in writing within the initial 120-calendar day review period and will briefly describe the reason for the determination for which additional time for review is required; or

(2) Any extended review period to which a duly-authorized representative of the Legacy NMS Stock ATS agrees in writing.

(C) *Amendments to initial Form ATS-N.* During review by the Commission of the initial Form ATS-N filed by a Legacy NMS Stock ATS, the Legacy NMS Stock ATS shall amend its initial Form ATS-N pursuant to the requirements of paragraphs (a)(2)(i)(A) through (D) of this section.

(2) *Form ATS-N amendment.* (i) *Filing requirements.* An NMS Stock ATS shall amend a Form ATS-N, in accordance with the conditions of this section:

(A) At least 30 calendar days, except as provided by paragraph (a)(2)(i)(D) of this section, prior to the date of implementation of a material change to the operations of the NMS Stock ATS or to the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS-N (“Material Amendment”);

(B) No later than 30 calendar days after the end of each calendar quarter to correct information that has become inaccurate or incomplete for any reason and was not required to be reported to the Commission as a Form ATS-N amendment pursuant to paragraphs (a)(2)(i)(A), (C), or (D) of this section (“Updating Amendment”);

(C) Promptly, to correct information in any previous disclosure on Form ATS-N, after discovery that any information previously filed on Form ATS-N was materially inaccurate or incomplete when filed (“Correcting Amendment”); or

(D) No later than seven calendar days after information required to be disclosed in Part III, Items 24 and 25 on Form ATS-N has become inaccurate or incomplete (“Order Display and Fair Access Amendment”).

(ii) *Commission review period; Ineffectiveness determination.* The Commission will, by order, declare ineffective any Form ATS-N amendment filed pursuant to paragraphs (a)(2)(i)(A) through (D) of this section, no later than 30 calendar days from filing with the Commission, if the Commission finds that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. A Form ATS-N amendment declared ineffective shall prohibit the NMS Stock ATS from operating pursuant to the ineffective Form ATS-N amendment. A Form ATS-N amendment declared ineffective does not prevent the NMS Stock ATS from subsequently filing a new Form ATS-N amendment. During review by the Commission of a Material Amendment, the NMS Stock ATS shall amend the Material Amendment pursuant to the requirements of paragraphs (a)(2)(i)(B) through (C) of this section. To make material changes to a filed Material Amendment during the Commission review period, an NMS Stock ATS shall withdraw its filed Material Amendment and must file the new Material Amendment pursuant to (a)(2)(i)(A) of this section.

(3) *Notice of cessation.* An NMS Stock ATS shall notice its cessation of operations on Form ATS-N at least 10 business days prior to the date the NMS Stock ATS will cease to operate as an NMS Stock ATS. The notice of cessation shall cause the Form ATS-N to become ineffective on the date designated by the NMS Stock ATS.

(4) *Suspension, limitation, and revocation of the exemption from the definition of exchange.* (i) The Commission will, by order, if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors, suspend for a period not exceeding twelve months, limit, or revoke the exemption for an NMS Stock ATS pursuant to §240.3a1-1(a)(2) of this chapter.

(ii) If the exemption for an NMS Stock ATS is suspended or revoked pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating pursuant to the exemption pursuant to §240.3a1-1(a)(2) of this chapter. If the exemption

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for an NMS Stock ATS is limited pursuant to paragraph (a)(4)(i) of this section, the NMS Stock ATS shall be prohibited from operating in a manner otherwise inconsistent with the terms and conditions of the Commission order.

(b) *Public disclosures.* (1) Every Form ATS-N filed pursuant to this section shall constitute a “report” within the meaning of sections 11A, 17(a), 18(a), and 32(a) (15 U.S.C. 78k-1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(2) The Commission will make public via posting on the Commission’s website, each:

(i) Effective initial Form ATS-N, as amended;

(ii) Order of ineffective initial Form ATS-N;

(iii) Form ATS-N amendment to an effective Form ATS-N;

(A) *Material Amendments:* The cover page of the Material Amendment will be made public by the Commission upon filing and, unless the Commission declares the Material Amendment ineffective, the entirety of the Material Amendment, as amended, will be made public by the Commission following the expiration of the review period pursuant to paragraph (a)(2)(ii) of this section.

(B) *Updating, Correcting, and Order Display and Fair Access Amendments:* The entirety of Updating, Correcting, and Order Display and Fair Access Amendments will be made public by the Commission upon filing. Notwithstanding the foregoing, an Updating or Correcting Amendment filed to a Material Amendment will be made public by the Commission following the expiration of the review period for such Material Amendment pursuant to paragraph (a)(2)(ii) of this section.

(iv) Order of ineffective Form ATS-N amendment;

(v) Notice of cessation; and

(vi) Order suspending, limiting, or revoking the exemption for an NMS Stock ATS from the definition of an “exchange” pursuant to §240.3a1-1(a)(2) of this chapter.

(3) Each NMS Stock ATS shall make public via posting on its website a direct URL hyperlink to the Commission’s website that contains the docu-

ments enumerated in paragraph (b)(2) of this section.

(c) *Form ATS-N disclosure requirements.* (1) An NMS Stock ATS must file a Form ATS-N in accordance with the instructions therein.

(2) Any report required to be filed with the Commission under this section shall be filed on Form ATS-N, and include all information as prescribed in Form ATS-N and the instructions thereto. Such document shall be executed at, or prior to, the time Form ATS-N is filed and shall be retained by the NMS Stock ATS in accordance with §§242.303 and §232.302 of this chapter, and the instructions in Form ATS-N.

[83 FR 38911, Aug. 7, 2018]

CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

SOURCE: 67 FR 53176, Aug. 14, 2002, unless otherwise noted.

§ 242.400 Customer margin requirements for security futures—authority, purpose, interpretation, and scope.

(a) *Authority and purpose.* Sections 242.400 through 242.406 and 17 CFR 41.42 through 41.49 (“this Regulation, §§242.400 through 242.406”) are issued by the Securities and Exchange Commission (“Commission”) jointly with the Commodity Futures Trading Commission (“CFTC”), pursuant to authority delegated by the Board of Governors of the Federal Reserve System under section 7(c)(2)(A) of the Securities Exchange Act of 1934 (“Act”) (15 U.S.C. 78g(c)(2)(A)). The principal purpose of this Regulation (§§242.400 through 242.406) is to regulate customer margin collected by brokers, dealers, and members of national securities exchanges, including futures commission merchants required to register as brokers or dealers under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)), relating to security futures.

(b) *Interpretation.* This Regulation (§§242.400 through 242.406) shall be jointly interpreted by the Commission and the CFTC, consistent with the criteria set forth in clauses (i) through (iv) of section 7(c)(2)(B) of the Act (15

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U.S.C. 78g(c)(2)(B) and the provisions of Regulation T (12 CFR part 220).

(c) *Scope.* (1) This Regulation (§§ 242.400 through 242.406) does not preclude a self-regulatory authority, under rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)) and, as applicable, section 5c(c) of the Commodity Exchange Act (“CEA”) (7 U.S.C. 7a-2(c)), or a security futures intermediary from imposing additional margin requirements on security futures, including higher initial or maintenance margin levels, consistent with this Regulation (§§ 242.400 through 242.406), or from taking appropriate action to preserve its financial integrity.

(2) This Regulation (§§ 242.400 through 242.406) does not apply to:

(i) Financial relations between a customer and a security futures intermediary to the extent that they comply with a portfolio margining system under rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a-2(c));

(ii) Financial relations between a security futures intermediary and a foreign person involving security futures traded on or subject to the rules of a foreign board of trade;

(iii) Margin requirements that clearing agencies registered under section 17A of the Exchange Act (15 U.S.C. 78q-1) or derivatives clearing organizations registered under section 5b of the CEA (7 U.S.C. 7a-1) impose on their members;

(iv) Financial relations between a security futures intermediary and a person based on a good faith determination by the security futures intermediary that such person is an exempted person; and

(v) Financial relations between a security futures intermediary and, or arranged by a security futures intermediary for, a person relating to trading in security futures by such person for its own account, if such person:

(A) Is a member of a national securities exchange or national securities association registered pursuant to sec-

tion 15A(a) of the Act (15 U.S.C. 78o-3(a)); and

(B) Is registered with such exchange or such association as a security futures dealer pursuant to rules that are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, section 5c(c) of the CEA (7 U.S.C. 7a-2(c)), that:

(1) Require such member to be registered as a floor trader or a floor broker with the CFTC under Section 4f(a)(1) of the CEA (7 U.S.C. 6f(a)(1)), or as a dealer with the Commission under section 15(b) of the Act (15 U.S.C. 78o(b));

(2) Require such member to maintain records sufficient to prove compliance with this paragraph (c)(2)(v) and the rules of the exchange or association of which it is a member;

(3) Require such member to hold itself out as being willing to buy and sell security futures for its own account on a regular or continuous basis; and

(4) Provide for disciplinary action, including revocation of such member’s registration as a security futures dealer, for such member’s failure to comply with this Regulation (§§ 242.400 through 242.406) or the rules of the exchange or association.

(d) *Exemption.* The Commission may exempt, either unconditionally or on specified terms and conditions, financial relations involving any security futures intermediary, customer, position, or transaction, or any class of security futures intermediaries, customers, positions, or transactions, from one or more requirements of this Regulation (§§ 242.400 through 242.406), if the Commission determines that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors. An exemption granted pursuant to this paragraph shall not operate as an exemption from any CFTC rules. Any exemption that may be required from such rules must be obtained separately from the CFTC.

### § 242.401 Definitions.

(a) For purposes of this Regulation (§§ 242.400 through 242.406) only, the following terms shall have the meanings set forth in this section.

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(1) *Applicable margin rules* and *margin rules applicable to an account* mean the rules and regulations applicable to financial relations between a security futures intermediary and a customer with respect to security futures and related positions carried in a securities account or futures account as provided in § 242.402(a) of this Regulation (§§ 242.400 through 242.406).

(2) *Broker* shall have the meaning provided in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)).

(3) *Contract multiplier* means the number of units of a narrow-based security index expressed as a dollar amount, in accordance with the terms of the security future contract.

(4) *Current market value* means, on any day:

(i) With respect to a security future:

(A) If the instrument underlying such security future is a stock, the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable number of shares per contract; or

(B) If the instrument underlying such security future is a narrow-based security index, as defined in section 3(a)(55)(B) of the Act (15 U.S.C. 78c(a)(55)(B)), the product of the daily settlement price of such security future as shown by any regularly published reporting or quotation service, and the applicable contract multiplier.

(ii) With respect to a security other than a security future, the most recent closing sale price of the security, as shown by any regularly published reporting or quotation service. If there is no recent closing sale price, the security futures intermediary may use any reasonable estimate of the market value of the security as of the most recent close of business.

(5) *Customer* excludes an exempted person and includes:

(i) Any person or persons acting jointly:

(A) On whose behalf a security futures intermediary effects a security futures transaction or carries a security futures position; or

(B) Who would be considered a customer of the security futures intermediary according to the ordinary usage of the trade;

(ii) Any partner in a security futures intermediary that is organized as a partnership who would be considered a customer of the security futures intermediary absent the partnership relationship; and

(iii) Any joint venture in which a security futures intermediary participates and which would be considered a customer of the security futures intermediary if the security futures intermediary were not a participant.

(6) *Daily settlement price* means, with respect to a security future, the settlement price of such security future determined at the close of trading each day, under the rules of the applicable exchange, clearing agency, or derivatives clearing organization.

(7) *Dealer* shall have the meaning provided in section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)).

(8) *Equity* means the equity or margin equity in a securities or futures account, as computed in accordance with the margin rules applicable to the account and subject to adjustment under § 242.404(c), (d) and (e) of this Regulation (§§ 242.400 through 242.406).

(9) *Exempted person* means:

(i) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant, a substantial portion of whose business consists of transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, futures commission merchants, floor brokers, or floor traders, and includes a person who:

(A) Maintains at least 1000 active accounts on an annual basis for persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader that are effecting transactions in securities, commodity futures, or commodity options;

(B) Earns at least \$10 million in gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants,



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floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader; or

(C) Earns at least 10 percent of its gross revenues on an annual basis from transactions in securities, commodity futures, or commodity options with persons other than brokers, dealers, persons associated with a broker or dealer, futures commission merchants, floor brokers, floor traders, and persons affiliated with a futures commission merchant, floor broker, or floor trader.

(ii) For purposes of paragraph (a)(9)(i) of this section only, persons affiliated with a futures commission merchant, floor broker, or floor trader means any partner, officer, director, or branch manager of such futures commission merchant, floor broker, or floor trader (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such futures commission merchant, floor broker, or floor trader, or any employee of such a futures commission merchant, floor broker, or floor trader.

(iii) A member of a national securities exchange, a registered broker or dealer, or a registered futures commission merchant that has been in existence for less than one year may meet the definition of exempted person based on a six-month period.

(10) *Exempted security* shall have the meaning provided in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)).

(11) *Floor broker* shall have the meaning provided in Section 1a(16) of the CEA (7 U.S.C. 1a(16)).

(12) *Floor trader* shall have the meaning provided in Section 1a(17) of the CEA (7 U.S.C. 1a(17)).

(13) *Futures account* shall have the meaning provided in §240.15c3-3(a) of this chapter.

(14) *Futures commission merchant* shall have the meaning provided in Section 1a of the CEA (7 U.S.C. 1a).

(15) *Good faith*, with respect to making a determination or accepting a statement concerning financial relations with a person, means that the security futures intermediary is alert to the circumstances surrounding such fi-

ancial relations, and if in possession of information that would cause a prudent person not to make the determination or accept the notice or certification without inquiry, investigates and is satisfied that it is correct.

(16) *Listed option* means a put or call option that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 17q-1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a-1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(17) *Margin call* means a demand by a security futures intermediary to a customer for a deposit of cash, securities or other assets to satisfy the required margin for security futures or related positions or a special margin requirement.

(18) *Margin deficiency* means the amount by which the required margin in an account is not satisfied by the equity in the account, as computed in accordance with §242.404 of this Regulation (§§242.400 through 242.406).

(19) *Margin equity security* shall have the meaning provided in Regulation T.

(20) *Margin security* shall have the meaning provided in Regulation T.

(21) *Member* shall have the meaning provided in section 3(a)(3) of the Act (15 U.S.C. 78c(a)(3)), and shall include persons registered under section 15(b)(11) of the Act (15 U.S.C. 78o(b)(11)) that are permitted to effect transactions on a national securities exchange without the services of another person acting as executing broker.

(22) *Money market mutual fund* means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8) that is considered a money market fund under §270.2a-7 of this chapter.

(23) *Persons associated with a broker or dealer* shall have the meaning provided in section 3(a)(18) of the Act (15 U.S.C. 78c(a)(18)).

(24) *Regulation T* means Regulation T promulgated by the Board of Governors of the Federal Reserve System, 12 CFR part 220, as amended from time to time.

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(25) *Regulation T collateral value*, with respect to a security, means the current market value of the security reduced by the percentage of required margin for a position in the security held in a margin account under Regulation T.

(26) *Related position*, with respect to a security future, means any position in an account that is combined with the security future to create an offsetting position as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406).

(27) *Related transaction*, with respect to a position or transaction in a security future, means:

(i) Any transaction that creates, eliminates, increases or reduces an offsetting position involving a security future and a related position, as provided in § 242.403(b)(2) of this Regulation (§§ 242.400 through 242.406); or

(ii) Any deposit or withdrawal of margin for the security future or a related position, except as provided in § 242.405(b) of this Regulation (§§ 242.400 through 242.406).

(28) *Securities account* shall have the meaning provided in § 240.15c3–3(a) of this chapter.

(29) *Security futures intermediary* means any creditor as defined in Regulation T with respect to its financial relations with any person involving security futures.

(30) *Self-regulatory authority* means a national securities exchange registered under section 6 of the Act (15 U.S.C. 78f), a national securities association registered under section 15A of the Act (15 U.S.C. 78o–3), a contract market registered under Section 5 of the CEA (7 U.S.C. 7) or Section 5f of the CEA (7 U.S.C. 7b–1), or a derivatives transaction execution facility registered under Section 5a of the CEA (7 U.S.C. 7a).

(31) *Special margin requirement* shall have the meaning provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406).

(32) *Variation settlement* means any credit or debit to a customer account, made on a daily or intraday basis, for the purpose of marking to market a security future or any other contract that is:

(i) Issued by a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q–1) or cleared and guaranteed by a derivatives clearing organization that is registered under Section 5b of the CEA (7 U.S.C. 7a–1); and

(ii) Traded on or subject to the rules of a self-regulatory authority.

(b) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section shall have the meaning set forth in the margin rules applicable to the account.

(c) Terms used in this Regulation (§§ 242.400 through 242.406) and not otherwise defined in this section or in the margin rules applicable to the account shall have the meaning set forth in the Act and the CEA; if the definitions of a term in the Act and the CEA are inconsistent as applied in particular circumstances, such term shall have the meaning set forth in rules, regulations, or interpretations jointly promulgated by the Commission and the CFTC.

### § 242.402 General provisions.

(a) *Applicable margin rules*. Except to the extent inconsistent with this Regulation (§§ 242.400 through 242.406):

(1) A security futures intermediary that carries a security future on behalf of a customer in a securities account shall record and conduct all financial relations with respect to such security future and related positions in accordance with Regulation T and the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(2) A security futures intermediary that carries a security future on behalf of a customer in a futures account shall record and conduct all financial relations with respect to such security future and related positions in accordance with the margin rules of the self-regulatory authorities of which the security futures intermediary is a member.

(b) *Separation and consolidation of accounts*. (1) The requirements for security futures and related positions in one account may not be met by considering items in any other account, except as permitted or required under paragraph (b)(2) of this section or applicable margin rules. If withdrawals of

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cash, securities or other assets deposited as margin are permitted under this Regulation (§§ 242.400 through 242.406), bookkeeping entries shall be made when such cash, securities, or assets are used for purposes of meeting requirements in another account.

(2) Notwithstanding paragraph (b)(1) of this section, the security futures intermediary shall consider all futures accounts in which security futures and related positions are held that are within the same regulatory classification or account type and are owned by the same customer to be a single account for purposes of this Regulation (§§ 242.400 through 242.406). The security futures intermediary may combine such accounts with other futures accounts that are within the same regulatory classification or account type and are owned by the same customer for purposes of computing a customer's overall margin requirement, as permitted or required by applicable margin rules.

(c) *Accounts of partners.* If a partner of the security futures intermediary has an account with the security futures intermediary in which security futures or related positions are held, the security futures intermediary shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of any such account.

(d) *Contribution to joint venture.* If an account in which security futures or related positions are held is the account of a joint venture in which the security futures intermediary participates, any interest of the security futures intermediary in the joint account in excess of the interest which the security futures intermediary would have on the basis of its right to share in the profits shall be margined in accordance with this Regulation (§§ 242.400 through 242.406).

(e) *Extensions of credit.* (1) No security futures intermediary may extend or maintain credit to or for any customer for the purpose of evading or circumventing any requirement under this Regulation (§§ 242.400 through 242.406).

(2) A security futures intermediary may arrange for the extension or maintenance of credit to or for any cus-

tomers by any person, provided that the security futures intermediary does not willfully arrange credit that would constitute a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System (12 CFR parts 220, 221, and 224) by such person.

(f) *Change in exempted person status.* Once a person ceases to qualify as an exempted person, it shall notify the security futures intermediary of this fact before entering into any new security futures transaction or related transaction that would require additional margin to be deposited under this Regulation (§§ 242.400 through 242.406). Financial relations with respect to any such transactions shall be subject to the provisions of this Regulation (§§ 242.400 through 242.406).

### § 242.403 Required margin.

(a) *Applicability.* Each security futures intermediary shall determine the required margin for the security futures and related positions held on behalf of a customer in a securities account or futures account as set forth in this section.

(b) *Required margin—(1) General rule.* The required margin for each long or short position in a security future shall be fifteen (15) percent of the current market value of such security future.

(2) *Offsetting positions.* Notwithstanding the margin levels specified in paragraph (b)(1) of this section, a self-regulatory authority may set the required initial or maintenance margin level for an offsetting position involving security futures and related positions at a level lower than the level that would be required under paragraph (b)(1) of this section if such positions were margined separately, pursuant to rules that meet the criteria set forth in section 7(c)(2)(B) of the Act (15 U.S.C. 78g(c)(2)(B)) and are effective in accordance with section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and, as applicable, Section 5c(c) of the CEA (7 U.S.C. 7a-2(c)).

(c) *Procedures for certain margin level adjustments.* An exchange registered under section 6(g) of the Act (15 U.S.C. 78f(g)), or a national securities association registered under section 15A(k) of the Act (15 U.S.C. 78o-3(k)), may raise or lower the required margin level for a

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security future to a level not lower than that specified in this section, in accordance with section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)).

[67 FR 53176, Aug. 14, 2002, as amended at 85 FR 75146, Nov. 24, 2020]

§ 242.404 Type, form and use of margin.

(a) When margin is required. Margin is required to be deposited whenever the required margin for security futures and related positions in an account is not satisfied by the equity in the account, subject to adjustment under paragraph (c) of this section.

(b) Acceptable margin deposits. (1) The required margin may be satisfied by a deposit of cash, margin securities (subject to paragraph (b)(2) of this section), exempted securities, any other asset permitted under Regulation T to satisfy a margin deficiency in a securities margin account, or any combination thereof, each as valued in accordance with paragraph (c) of this section.

(2) Shares of a money market mutual fund may be accepted as a margin deposit for purposes of this Regulation (§§ 242.400 through 242.406), provided that:

(i) The customer waives any right to redeem the shares without the consent of the security futures intermediary and instructs the fund or its transfer agent accordingly;

(ii) The security futures intermediary (or clearing agency or derivatives clearing organization with which the shares are deposited as margin) obtains the right to redeem the shares in cash, promptly upon request; and

(iii) The fund agrees to satisfy any conditions necessary or appropriate to ensure that the shares may be redeemed in cash, promptly upon request.

(c) Adjustments—(1) Futures accounts. For purposes of this section, the equity in a futures account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Each net long or short position in a listed option on a contract for future delivery shall be valued in accordance

with the margin rules applicable to the account;

(iii) Except as permitted in paragraph (e) of this section, each margin equity security shall be valued at an amount no greater than its Regulation T collateral value;

(iv) Each other security shall be valued at an amount no greater than its current market value reduced by the percentage specified for such security in § 240.15c3-1(c)(2)(vi) of this chapter;

(v) Freely convertible foreign currency may be valued at an amount no greater than its daily marked-to-market U.S. dollar equivalent;

(vi) Variation settlement receivable (or payable) by an account at the close of trading on any day shall be treated as a credit (or debit) to the account on that day; and

(vii) Each other acceptable margin deposit or component of equity shall be valued at an amount no greater than its value under Regulation T.

(2) Securities accounts. For purposes of this section, the equity in a securities account shall be computed in accordance with the margin rules applicable to the account, subject to the following:

(i) A security future shall have no value;

(ii) Freely convertible foreign currency may be valued at an amount no greater than its daily mark-to-market U.S. dollar equivalent; and

(iii) Variation settlement receivable (or payable) to an account at the close of trading on any day shall be treated as a credit (or debit) by the account on that day.

(d) Satisfaction restriction. Any transaction, position or deposit that is used to satisfy the required margin for security futures or related positions under this Regulation (§§ 242.400 through 242.406), including a related position, shall be unavailable to satisfy the required margin for any other position or transaction or any other requirement.

(e) Alternative collateral valuation for margin equity securities in a futures account. (1) Notwithstanding paragraph (c)(1)(iii) of this section, a security futures intermediary need not value a margin equity security at its Regulation T collateral value when determining whether the required margin

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for the security futures and related positions in a futures account is satisfied, *provided that*:

(i) The margin equity security is valued at an amount no greater than the current market value of the security reduced by the lowest percentage level of margin required for a long position in the security held in a margin account under the rules of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a));

(ii) Additional margin is required to be deposited on any day when the day's security futures transactions and related transactions would create or increase a margin deficiency in the account if the margin equity securities were valued at their Regulation T collateral value, and shall be for the amount of the margin deficiency so created or increased (a "special margin requirement"); and

(iii) Cash, securities, or other assets deposited as margin for the positions in an account are not permitted to be withdrawn from the account at any time that:

(A) Additional cash, securities, or other assets are required to be deposited as margin under this section for a transaction in the account on the same or a previous day; or

(B) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency if the margin equity securities were valued at their Regulation T collateral value.

(2) All security futures transactions and related transactions on any day shall be combined to determine the amount of a special margin requirement. Additional margin deposited to satisfy a special margin requirement shall be valued at an amount no greater than its Regulation T collateral value.

(3) If the alternative collateral valuation method set forth in paragraph (e) of this section is used with respect to an account in which security futures or related positions are carried:

(i) An account that is transferred from one security futures intermediary to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee

accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this Regulation (§§ 242.400 through 242.406) has been satisfied; and

(ii) An account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this Regulation (§§ 242.400 through 242.406), may be treated as if it had been maintained for the transferee from the date of its origin, if the security futures intermediary accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(f) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of determining whether the required margin in an account is satisfied, except as permitted under applicable margin rules.

### § 242.405 Withdrawal of margin.

(a) *By the customer.* Except as otherwise provided in § 242.404(e)(1)(ii) of this Regulation (§§ 242.400 through 242.406), cash, securities, or other assets deposited as margin for positions in an account may be withdrawn, provided that the equity in the account after such withdrawal is sufficient to satisfy the required margin for the security futures and related positions in the account under this Regulation (§§ 242.400 through 242.406).

(b) *By the security futures intermediary.* Notwithstanding paragraph (a) of this section, the security futures intermediary, in its usual practice, may deduct the following items from an account in which security futures or related positions are held if they are considered in computing the balance of such account:

(1) Variation settlement payable, directly or indirectly, to a clearing agency that is registered under section 17A of the Act (15 U.S.C. 78q-1) or a derivatives clearing organization that is registered under section 5b of the CEA (7 U.S.C. 7a-1);

(2) Interest charged on credit maintained in the account;

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(3) Communication or shipping charges with respect to transactions in the account;

(4) Payment of commissions, brokerage, taxes, storage and other charges lawfully accruing in connection with the positions and transactions in the account;

(5) Any service charges that the security futures intermediary may impose; or

(6) Any other withdrawals that are permitted from a securities margin account under Regulation T, to the extent permitted under applicable margin rules.

§ 242.406 Undermargined accounts.

(a) Failure to satisfy margin call. If any margin call required by this Regulation (§§ 242.400 through 242.406) is not met in full, the security futures intermediary shall take the deduction required with respect to an undermargined account in computing its net capital under Commission or CFTC rules.

(b) Accounts that liquidate to a deficit. If at any time there is a liquidating deficit in an account in which security futures are held, the security futures intermediary shall take steps to liquidate positions in the account promptly and in an orderly manner.

(c) Liquidation of undermargined accounts not required. Notwithstanding Section 402(a) of this Regulation (§§ 242.400 through 242.406), section 220.4(d) of Regulation T (12 CFR 220.4(d)) respecting liquidation of positions in lieu of deposit shall not apply with respect to security futures carried in a securities account.

REGULATION AC—ANALYST CERTIFICATION

SOURCE: 68 FR 9492, February 27, 2003, unless otherwise noted.

§ 242.500 Definitions.

For purposes of Regulation AC (§§ 242.500 through 242.505 of this chapter) the term:

Covered person of a broker or dealer means an associated person of that broker or dealer but does not include:

- (1) An associated person:

(i) If the associated person has no officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports; and

(ii) If the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person.

(2) An associated person who is an investment adviser:

(i) Not registered with the Commission as an investment adviser because of the prohibition of section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); and

(ii) Not registered or required to be registered with the Commission as a broker or dealer.

NOTE TO DEFINITION OF COVERED PERSON: An associated person of a broker or dealer who is not a covered person continues to be subject to the federal securities laws, including the anti-fraud provisions of the federal securities laws.

Foreign person means any person who is not a U.S. person.

Foreign security means a security issued by a foreign issuer for which a U.S. market is not the principal trading market.

Public appearance means any participation by a research analyst in a seminar, forum (including an interactive electronic forum), or radio or television or other interview, in which the research analyst makes a specific recommendation or provides information reasonably sufficient upon which to base an investment decision about a security or an issuer.

Registered broker or dealer means a broker or dealer registered or required to register pursuant to section 15 or section 15B of the Securities Exchange Act of 1934 (15 U.S.C. 78o or 78o-4) or a government securities broker or government securities dealer registered or required to register pursuant to section 15C(a)(1)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-5(a)(1)(A)).

*Research analyst* means any natural person who is primarily responsible for the preparation of the content of a research report.

*Research report* means a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision.

*Third party research analyst* means:

(1) With respect to a broker or dealer, any research analyst not employed by that broker or dealer or any associated person of that broker or dealer; and

(2) With respect to a covered person of a broker or dealer, any research analyst not employed by that covered person, by the broker or dealer with whom that covered person is associated, or by any other associated person of the broker or dealer with whom that covered person is associated.

*United States* has the meaning contained in § 230.902(l) of this chapter.

*U.S. person* has the meaning contained in § 230.902(k) of this chapter.

**§ 242.501 Certifications in connection with research reports.**

(a) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a research analyst to a U.S. person in the United States shall include in that research report a clear and prominent certification by the research analyst containing the following:

(1) A statement attesting that all of the views expressed in the research report accurately reflect the research analyst's personal views about any and all of the subject securities or issuers; and

(2)(i) A statement attesting that no part of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report; or

(ii) A statement:

(A) Attesting that part or all of the research analyst's compensation was, is, or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in the research report;

(B) Identifying the source, amount, and purpose of such compensation; and

(C) Further disclosing that the compensation could influence the recommendations or views expressed in the research report.

(b) A broker or dealer or covered person that publishes, circulates, or provides a research report prepared by a third party research analyst to a U.S. person in the United States shall be exempt from the requirements of this section with respect to such research report if the following conditions are satisfied:

(1) The employer of the third party research analyst has no officers (or persons performing similar functions) or employees in common with the broker or dealer or covered person; and

(2) The broker or dealer (or, with respect to a covered person, the broker or dealer with whom the covered person is associated) maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), and employees of the broker or dealer from influencing the activities of the third party research analyst and the content of research reports prepared by the third party research analyst.

**§ 242.502 Certifications in connection with public appearances.**

(a) If a broker or dealer publishes, circulates, or provides a research report prepared by a research analyst employed by the broker or dealer or covered person to a U.S. person in the United States, the broker or dealer must make a record within 30 days after any calendar quarter in which the research analyst made a public appearance that contains the following:

(1) A statement by the research analyst attesting that the views expressed by the research analyst in all public appearances during the calendar quarter accurately reflected the research analyst's personal views at that time about any and all of the subject securities or issuers; and

(2) A statement by the research analyst attesting that no part of the research analyst's compensation was, is,

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or will be, directly or indirectly, related to the specific recommendations or views expressed by the research analyst in such public appearances.

(b) If the broker or dealer does not obtain a statement by the research analyst in accordance with paragraph (a) of this section:

(1) The broker or dealer shall promptly notify in writing its examining authority, designated pursuant to section 17(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(d)) and §240.17d-2 of this chapter, that the research analyst did not provide the certifications specified in paragraph (a) of this section; and

(2) For 120 days following notification pursuant to paragraph (b)(1) of this section, the broker or dealer shall disclose in any research report prepared by the research analyst and published, circulated, or provided to a U.S. person in the United States that the research analyst did not provide the certifications specified in paragraph (a) of this section.

(c) In the case of a research analyst who is employed outside the United States by a foreign person located outside the United States, this section shall only apply to a public appearance while the research analyst is physically present in the United States.

(d) A broker or dealer shall preserve the records specified in paragraphs (a) and (b) of this section in accordance with §240.17a-4 of this chapter and for a period of not less than 3 years, the first 2 years in an accessible place.

**§ 242.503 Certain foreign research reports.**

A foreign person, located outside the United States and not associated with a registered broker or dealer, who prepares a research report concerning a foreign security and provides it to a U.S. person in the United States in accordance with the provisions of §240.15a-6(a)(2) of this chapter shall be exempt from the requirements of this regulation.

**§ 242.504 Notification to associated persons.**

A broker or dealer shall notify any person with whom that broker or deal-

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er is associated who publishes, circulates, or provides research reports:

(a) Whether the broker or dealer maintains and enforces written policies and procedures reasonably designed to prevent the broker or dealer, any controlling persons, officers (or persons performing similar functions), or employees of the broker or dealer from influencing the activities of research analysts and the content of research reports prepared by the associated person; and

(b) Whether the associated person has any officers (or persons performing similar functions) or employees in common with the broker or dealer who can influence the activities of research analysts or the content of research reports and, if so, the identity of those persons.

**§ 242.505 Exclusion for news media.**

No provision of this Regulation AC shall apply to any person who:

(a) Is the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; and

(b) Is not registered or required to be registered with the Commission as a broker or dealer or investment adviser.

**REGULATION NMS—REGULATION OF THE NATIONAL MARKET SYSTEM**

SOURCE: 70 FR 37620, June 29, 2005, unless otherwise noted.

**§ 242.600 NMS security designation and definitions.**

(a) The term *national market system security* as used in section 11A(a)(2) of the Act (15 U.S.C. 78k-1(a)(2)) shall mean any NMS security as defined in paragraph (b) of this section.

(b) For purposes of Regulation NMS (§§242.600 through 242.612), the following definitions shall apply:

(1) *Actionable indication of interest* means any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest:

- (i) Symbol;
- (ii) Side (buy or sell);



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(iii) A price that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and

(iv) A size that is at least equal to one round lot.

(2) *Administrative data* means administrative, control, and other technical messages made available by national securities exchanges and national securities associations pursuant to the effective national market system plan or plans required under §242.603(b) or the technical specifications thereto as of April 9, 2021.

(3) *Aggregate quotation size* means the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any national securities exchange bids or offers for an NMS security at the same price.

(4) *Alternative trading system* has the meaning provided in §242.300(a).

(5) *Auction information* means all information specified by national securities exchange rules or effective national market system plans that is generated by a national securities exchange leading up to and during auctions, including opening, reopening, and closing auctions, and publicly disseminated during the time periods and at the time intervals provided in such rules and plans.

(6) *Automated quotation* means a quotation displayed by a trading center that:

(i) Permits an incoming order to be marked as immediate-or-cancel;

(ii) Immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size;

(iii) Immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;

(iv) Immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and

(v) Immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

(7) *Automated trading center* means a trading center that:

(i) Has implemented such systems, procedures, and rules as are necessary to render it capable of displaying quotations that meet the requirements for an automated quotation set forth in paragraph (b)(6) of this section;

(ii) Identifies all quotations other than automated quotations as manual quotations;

(iii) Immediately identifies its quotations as manual quotations whenever it has reason to believe that it is not capable of displaying automated quotations; and

(iv) Has adopted reasonable standards limiting when its quotations change from automated quotations to manual quotations, and vice versa, to specifically defined circumstances that promote fair and efficient access to its automated quotations and are consistent with the maintenance of fair and orderly markets.

(8) *Average effective spread* means the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price.

(9) *Average realized spread* means the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer five minutes after the time of order execution and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer five minutes after the time of order execution and the execution price; *provided, however,* that the midpoint of the final national best bid and national best offer disseminated for regular trading hours shall be used to calculate a realized spread if it is disseminated less than five minutes after the time of order execution.

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(10) *Best bid and best offer* mean the highest priced bid and the lowest priced offer.

(11) *Bid or offer* means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

(12) *Block size with respect to* an order means it is:

- (i) Of at least 10,000 shares; or
- (ii) For a quantity of stock having a market value of at least \$200,000.

(13) *Categorized by order size* means dividing orders into separate categories for sizes from 100 to 499 shares, from 500 to 1999 shares, from 2000 to 4999 shares, and 5000 or greater shares.

(14) *Categorized by order type* means dividing orders into separate categories for market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders.

(15) *Categorized by security* means dividing orders into separate categories for each NMS stock that is included in a report.

(16) *Competing consolidator* means a securities information processor required to be registered pursuant to § 242.614 (Rule 614) or a national securities exchange or national securities association that receives information with respect to quotations for and transactions in NMS stocks and generates a consolidated market data product for dissemination to any person.

(17) *Consolidated display* means:

(i) The prices, sizes, and market identifications of the national best bid and national best offer for a security; and

(ii) Consolidated last sale information for a security.

(18) *Consolidated last sale information* means the price, volume, and market identification of the most recent transaction report for a security that is disseminated pursuant to an effective national market system plan.

(19) *Consolidated market data* means the following data, consolidated across

all national securities exchanges and national securities associations:

- (i) Core data;
- (ii) Regulatory data;
- (iii) Administrative data;
- (iv) Self-regulatory organization-specific program data; and
- (v) Additional regulatory, administrative, or self-regulatory organization-specific program data elements defined as such pursuant to the effective national market system plan or plans required under § 242.603(b).

(20) *Consolidated market data product* means any data product developed by a competing consolidator that contains consolidated market data or data components of consolidated market data. For purposes of this paragraph (b)(20), data components of consolidated market data include the enumerated elements, and any subcomponent of the enumerated elements, of consolidated market data in paragraph (b)(19) of this section. All consolidated market data products must reflect data consolidated across all national securities exchanges and national securities associations.

(21) *Core data* means:

(i) The following information with respect to quotations for, and transactions in, NMS stocks:

- (A) Quotation sizes;
- (B) Aggregate quotation sizes;
- (C) Best bid and best offer;
- (D) National best bid and national best offer;
- (E) Protected bid and protected offer;
- (F) Transaction reports;
- (G) Last sale data;
- (H) Odd-lot information;
- (I) Depth of book data; and
- (J) Auction information.

(ii) For purposes of the calculation and dissemination of core data by competing consolidators, as defined in paragraph (b)(16) of this section, and the calculation of core data by self-aggregators, as defined in paragraph (b)(84) of this section, the best bid and best offer, national best bid and national best offer, protected bid and protected offer, and depth of book data shall include odd-lots that when aggregated are equal to or greater than a round lot; such aggregation shall occur

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across multiple prices and shall be disseminated at the least aggressive price of all such aggregated odd-lots.

(iii) Competing consolidators shall represent the quotation sizes of the following data elements, if disseminated in a consolidated market data product as defined in paragraph (b)(20) of this section, as the number of shares rounded down to the nearest multiple of a round lot: The best bid and best offer, national best bid and national best offer, protected bid and protected offer, depth of book data, and auction information.

(iv) Competing consolidators shall attribute the following data elements, if disseminated in a consolidated market data product as defined in paragraph (b)(20) of this section, to the national securities exchange or national securities association that is the source of each such data element: Best bid and best offer, national best bid and national best offer, protected bid and protected offer, transaction reports, last sale data, odd-lot information, depth of book data, and auction information.

(22) *Covered order* means any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a "not held" basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution.

(23) *Customer* means any person that is not a broker or dealer.

(24) *Customer limit order* means an order to buy or sell an NMS stock at a specified price that is not for the account of either a broker or dealer; provided, however, that the term *customer limit order* shall include an order trans-

mitted by a broker or dealer on behalf of a customer.

(25) *Customer order* means an order to buy or sell an NMS security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least \$50,000 for an NMS security that is an option contract and a market value of at least \$200,000 for any other NMS security.

(26) *Depth of book data* means all quotation sizes at each national securities exchange and on a facility of a national securities association at each of the next five prices at which there is a bid that is lower than the national best bid and offer that is higher than the national best offer. For these five prices, the aggregate size available at each price, if any, at each national securities exchange and national securities association shall be attributed to such exchange or association.

(27) *Directed order* means an order from a customer that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(28) *Dynamic market monitoring device* means any service provided by a vendor on an interrogation device or other display that:

(i) Permits real-time monitoring, on a dynamic basis, of transaction reports, last sale data, or quotations with respect to a particular security; and

(ii) Displays the most recent transaction report, last sale data, or quotation with respect to that security until such report, data, or quotation has been superseded or supplemented by the display of a new transaction report, last sale data, or quotation reflecting the next reported transaction or quotation in that security.

(29) *Effective national market system plan* means any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to § 242.608.

(30) *Effective transaction reporting plan* means any transaction reporting plan approved by the Commission pursuant to § 242.601.

(31) *Electronic communications network* means, for the purposes of § 242.602(b)(5), any electronic system

that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term *electronic communications network* shall not include:

(i) Any system that crosses multiple orders at one or more specified times at a single price set by the system (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or

(ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

(32) *Exchange market maker* means any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange.

(33) *Exchange-traded security* means any NMS security or class of NMS securities listed and registered, or admitted to unlisted trading privileges, on a national securities exchange; *provided, however,* that securities not listed on any national securities exchange that are traded pursuant to unlisted trading privileges are excluded.

(34) *Executed at the quote* means, for buy orders, execution at a price equal to the national best offer at the time of order receipt and, for sell orders, execution at a price equal to the national best bid at the time of order receipt.

(35) *Executed outside the quote* means, for buy orders, execution at a price higher than the national best offer at the time of order receipt and, for sell orders, execution at a price lower than the national best bid at the time of order receipt.

(36) *Executed with price improvement* means, for buy orders, execution at a price lower than the national best offer at the time of order receipt and, for sell orders, execution at a price higher than the national best bid at the time of order receipt.

(37) *Inside-the-quote limit order, at-the-quote limit order, and near-the-quote limit order* mean non-marketable buy orders with limit prices that are, respectively,

higher than, equal to, and lower by \$0.10 or less than the national best bid at the time of order receipt, and non-marketable sell orders with limit prices that are, respectively, lower than, equal to, and higher by \$0.10 or less than the national best offer at the time of order receipt.

(38) *Intermarket sweep order* means a limit order for an NMS stock that meets the following requirements:

(i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and

(ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.

(39) *Interrogation device* means any securities information retrieval system capable of displaying transaction reports, last sale data, or quotations upon inquiry, on a current basis on a terminal or other device.

(40) *Joint self-regulatory organization plan* means a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.

(41) *Last sale data* means any price or volume data associated with a transaction.

(42) *Listed equity security* means any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange.

(43) *Listed option* means any option traded on a registered national securities exchange or automated facility of a national securities association.

(44) *Make publicly available* means posting on an Internet Web site that is free and readily accessible to the public, furnishing a written copy to customers on request without charge, and notifying customers at least annually in writing that a written copy will be furnished on request.

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(45) *Manual quotation* means any quotation other than an automated quotation.

(46) *Market center* means any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.

(47) *Marketable limit order* means any buy order with a limit price equal to or greater than the national best offer at the time of order receipt, or any sell order with a limit price equal to or less than the national best bid at the time of order receipt.

(48) *Moving ticker* means any continuous real-time moving display of transaction reports or last sale data (other than a dynamic market monitoring device) provided on an interrogation or other display device.

(49) *Nasdaq security* means any registered security listed on The Nasdaq Stock Market, Inc.

(50) *National best bid and national best offer* means, with respect to quotations for an NMS stock, the best bid and best offer for such stock that are calculated and disseminated on a current and continuing basis by a competing consolidator or calculated by a self-aggregator and, for NMS securities other than NMS stocks, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to the plan processor, a competing consolidator or a self-aggregator identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

(51) *National market system plan* means any joint self-regulatory organization plan in connection with:

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and their members with any section of this Regulation NMS and part 240, subpart A of this chapter promulgated pursuant to section 11A of the Act (15 U.S.C. 78k-1).

(52) *National securities association* means any association of brokers and dealers registered pursuant to section 15A of the Act (15 U.S.C. 78o-3).

(53) *National securities exchange* means any exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f).

(54) *NMS security* means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

(55) *NMS stock* means any NMS security other than an option.

(56) *Non-directed order* means any order from a customer other than a directed order.

(57) *Non-marketable limit order* means any limit order other than a marketable limit order.

(58) *Odd-lot* means an order for the purchase or sale of an NMS stock in an amount less than a round lot.

(59) *Odd-lot information* means:

(i) Odd-lot transaction data disseminated pursuant to the effective national market system plan or plans required under §242.603(b) as of April 9, 2021; and

(ii) Odd-lots at a price greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each national securities exchange and national securities association.

(60) *Options class* means all of the put option or call option series overlying a security, as defined in section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(61) *Options series* means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.

(62) *Orders providing liquidity* means orders that were executed against after resting at a trading center.

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(63) *Orders removing liquidity* means orders that executed against resting trading interest at a trading center.

(64) *OTC market maker* means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(65) *Participants*, when used in connection with a national market system plan, means any self-regulatory organization which has agreed to act in accordance with the terms of the plan but which is not a signatory of such plan.

(66) *Payment for order flow* has the meaning provided in §240.10b-10 of this chapter.

(67) *Plan processor* means any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.

(68) *Primary listing exchange* means, for each NMS stock, the national securities exchange identified as the primary listing exchange in the effective national market system plan or plans required under §242.603(b).

(69) *Profit-sharing relationship* means any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

(70) *Protected bid or protected offer* means a quotation in an NMS stock that:

- (i) Is displayed by an automated trading center;
- (ii) Is disseminated pursuant to an effective national market system plan; and
- (iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, or the best bid or best offer of a national securities association.

(71) *Protected quotation* means a protected bid or a protected offer.

(72) *Published aggregate quotation size* means the aggregate quotation size calculated by a national securities ex-

change and displayed by a vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(73) *Published bid and published offer* means the bid or offer of a responsible broker or dealer for an NMS security communicated by it to its national securities exchange or association pursuant to §242.602 and displayed by a vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(74) *Published quotation size* means the quotation size of a responsible broker or dealer communicated by it to its national securities exchange or association pursuant to §242.602 and displayed by a vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(75) *Quotation* means a bid or an offer.

(76) *Quotation size*, when used with respect to a responsible broker's or dealer's bid or offer for an NMS security, means:

- (i) The number of shares (or units of trading) of that security which such responsible broker or dealer has specified, for purposes of dissemination to vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or
- (ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that NMS security.

(77) *Regular trading hours* means the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to §242.605(a)(2).

(78) *Regulatory data* means:

- (i) Information required to be collected or calculated by the primary listing exchange for an NMS stock and provided to competing consolidators and self-aggregators pursuant to the effective national market system plan or plans required under §242.603(b), including, at a minimum:

- (A) Information regarding Short Sale Circuit Breakers pursuant to §242.201;
- (B) Information regarding Price Bands required pursuant to the Plan to

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Address Extraordinary Market Volatility (LULD Plan);

(C) Information relating to regulatory halts or trading pauses (news dissemination/pending, LULD, Market-Wide Circuit Breakers) and reopenings or resumptions;

(D) The official opening and closing prices of the primary listing exchange; and

(E) An indicator of the applicable round lot size.

(ii) Information required to be collected or calculated by the national securities exchange or national securities association on which an NMS stock is traded and provided to competing consolidators and self-aggregators pursuant to the effective national market system plan or plans required under §242.603(b), including, at a minimum:

(A) Whenever such national securities exchange or national securities association receives a bid (offer) below (above) an NMS stock's lower (upper) LULD price band, an appropriate regulatory data flag identifying the bid (offer) as non-executable; and

(B) Other regulatory messages including subpenny execution and trade-through exempt indicators.

(iii) For purposes of paragraph (b)(78)(i)(C) of this section, the primary listing exchange that has the largest proportion of companies included in the S&P 500 Index shall monitor the S&P 500 Index throughout the trading day, determine whether a Level 1, Level 2, or Level 3 decline, as defined in self-regulatory organization rules related to Market-Wide Circuit Breakers, has occurred, and immediately inform the other primary listing exchanges of all such declines.

(79) *Responsible broker or dealer* means:

(i) When used with respect to bids or offers communicated on a national securities exchange, any member of such national securities exchange who communicates to another member on such national securities exchange, at the location (or locations) or through the facility or facilities designated by such national securities exchange for trading in an NMS security a bid or offer for such NMS security, as either principal or agent; *provided, however*, that,

in the event two or more members of a national securities exchange have communicated on or through such national securities exchange bids or offers for an NMS security at the same price, each such member shall be considered a *responsible broker or dealer* for that bid or offer, subject to the rules of priority and precedence then in effect on that national securities exchange; and further provided, that for a bid or offer which is transmitted from one member of a national securities exchange to another member who undertakes to represent such bid or offer on such national securities exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the *responsible broker or dealer* for that bid or offer; and

(ii) When used with respect to bids and offers communicated by a member of an association to a broker or dealer or a customer, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(80) *Revised bid or offer* means a market maker's bid or offer which supersedes its published bid or published offer.

(81) *Revised quotation size* means a market maker's quotation size which supersedes its published quotation size.

(82) *Round lot* means:

(i) For any NMS stock for which the prior calendar month's average closing price on the primary listing exchange was \$250.00 or less per share, an order for the purchase or sale of an NMS stock of 100 shares;

(ii) For any NMS stock for which the prior calendar month's average closing price on the primary listing exchange was \$250.01 to \$1,000.00 per share, an order for the purchase or sale of an NMS stock of 40 shares;

(iii) For any NMS stock for which the prior calendar month's average closing price on the primary listing exchange was \$1,000.01 to \$10,000.00 per share, an order for the purchase or sale of an NMS stock of 10 shares;

(iv) For any NMS stock for which the prior calendar month's average closing price on the primary listing exchange was \$10,000.01 or more per share, an

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order for the purchase or sale of an NMS stock of 1 share; and

(v) For any NMS stock for which the prior calendar month's average closing price is not available, an order for the purchase or sale of an NMS stock of 100 shares.

(83) *Self-aggregator* means a broker, dealer, national securities exchange, national securities association, or investment adviser registered with the Commission that receives information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, and generates consolidated market data solely for internal use. A self-aggregator may make consolidated market data available to its affiliates that are registered with the Commission for their internal use. Except as provided in the preceding sentence, a self-aggregator may not disseminate or otherwise make available consolidated market data, or components of consolidated market data, as provided in paragraph (b)(20) of this section, to any person.

(84) *Self-regulatory organization* means any national securities exchange or national securities association.

(85) *Self-regulatory organization-specific program data* means:

(i) Information related to retail liquidity programs specified by the rules of national securities exchanges and disseminated pursuant to the effective national market system plan or plans required under § 242.603(b) as of April 9, 2021; and

(ii) Other self-regulatory organization-specific information with respect to quotations for or transactions in NMS stocks as specified by the effective national market system plan or plans required under § 242.603(b).

(86) *Specified persons*, when used in connection with any notification required to be provided pursuant to § 242.602(a)(3) and any election (or withdrawal thereof) permitted under § 242.602(a)(5), means:

(i) Each vendor;

(ii) Each plan processor; and

(iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities under-

lying options admitted to trading on any national securities exchange).

(87) *Sponsor*, when used in connection with a national market system plan, means any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan.

(88) *SRO display-only facility* means a facility operated by or on behalf of a national securities exchange or national securities association that displays quotations in a security, but does not execute orders against such quotations or present orders to members for execution.

(89) *SRO trading facility* means a facility operated by or on behalf of a national securities exchange or a national securities association that executes orders in a security or presents orders to members for execution.

(90) *Subject security* means:

(i) With respect to a national securities exchange:

(A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported pursuant to an effective transaction reporting plan or effective national market system plan; and

(B) Any other NMS security for which such exchange has in effect an election, pursuant to § 242.602(a)(5)(i), to collect, process, and make available to a vendor bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of a national securities association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported pursuant to an effective transaction reporting plan or effective national market system plan; and

(B) Any other NMS security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to



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§ 242.602(a)(5)(ii), to communicate to its association bids, offers, and quotation sizes for the purpose of making such bids, offers, and quotation sizes available to a vendor.

(91) *Time of order execution* means the time (to the second) that an order was executed at any venue.

(92) *Time of order receipt* means the time (to the second) that an order was received by a market center for execution.

(93) *Time of the transaction* has the meaning provided in § 240.10b-10 of this chapter.

(94) *Trade-through* means the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.

(95) *Trading center* means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

(96) *Trading rotation* means, with respect to an options class, the time period on a national securities exchange during which:

(i) Opening, re-opening, or closing transactions in options series in such options class are not yet completed; and

(ii) Continuous trading has not yet commenced or has not yet ended for the day in options series in such options class.

(97) *Transaction report* means a report containing the price and volume associated with a transaction involving the purchase or sale of one or more round lots of a security.

(98) *Transaction reporting association* means any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under § 242.601(a).

(99) *Transaction reporting plan* means any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in securities filed with the Commission pursuant to, and meeting the requirements of, § 242.601.

(100) *Vendor* means any securities information processor engaged in the business of disseminating transaction reports, last sale data, or quotations with respect to NMS securities to brokers, dealers, or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker, or interrogation device.

[70 FR 37620, June 29, 2005, as amended at 83 FR 58427, Nov. 19, 2018; 86 FR 18809, Apr. 9, 2021; 86 FR 29196, June 1, 2021]

### § 242.601 Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks.

(a) *Filing and effectiveness of transaction reporting plans.* (1) Every national securities exchange shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities, and every national securities association shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed by its members otherwise than on a national securities exchange.

(2) Any transaction reporting plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission, and considered for approval, in accordance with the procedures set forth in § 242.608(a) and (b). Any such plan, or amendment thereto, shall specify, at a minimum:

(i) The listed equity and Nasdaq securities or classes of such securities for which transaction reports shall be required by the plan;

(ii) Reporting requirements with respect to transactions in listed equity securities and Nasdaq securities, for any broker or dealer subject to the plan;

(iii) The manner of collecting, processing, sequencing, making available and disseminating transaction reports and last sale data reported pursuant to such plan;

(iv) The manner in which such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from national securities exchanges and national securities associations reported pursuant to any other effective transaction reporting plan;

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(v) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports;

(vi) Any rules or procedures which may be adopted to ensure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner;

(vii) Specific terms of access to transaction reports made available or disseminated pursuant to the plan; and

(viii) That transaction reports or last sale data made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.

(3) No transaction reporting plan filed pursuant to this section, or any amendment to an effective transaction reporting plan, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608.

(b) *Prohibitions and reporting requirements.* (1) No broker or dealer may execute any transaction in, or induce or attempt to induce the purchase or sale of, any NMS stock:

(i) On or through the facilities of a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed on or through such exchange facilities; or

(ii) Otherwise than on a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on a national securities exchange by such broker or dealer.

(2) Every broker or dealer who is a member of a national securities exchange or national securities association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).

(c) *Retransmission of transaction reports or last sale data.* Notwithstanding any provision of any effective transaction reporting plan, no national securities exchange or national securities

association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan; *provided, however,* that a national securities exchange or national securities association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (d) of this section are collected.

(d) *Charges.* Nothing in this section shall preclude any national securities exchange or national securities association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.

(e) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of § 242.608(d).

(f) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any national securities exchange, national securities association, broker, dealer, or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

§ 242.602 Dissemination of quotations in NMS securities.

(a) *Dissemination requirements for national securities exchanges and national securities associations.* (1) Every national securities exchange and national securities association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes, and aggregate

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quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers, and sizes, and making such bids, offers, and sizes available to vendors, as follows:

(i) Each national securities exchange shall at all times such exchange is open for trading, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any national securities exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.

(ii) Each national securities association shall, at all times that last sale information with respect to NMS securities is reported pursuant to an effective transaction reporting plan, collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended.

(2) Each national securities exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (b)(2) of this section, the identity of the responsible broker or dealer who

made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time a national securities exchange is open for trading, such exchange determines, pursuant to rules approved by the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available pursuant to paragraph (a)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraphs (b)(2) and (c)(3) of this section and such exchange shall be relieved of its obligations under paragraphs (a)(1) and (2) of this section for that security; *provided, however*, that such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to vendors data for that security in accordance with paragraph (a)(1) of this section.

(ii) During any period a national securities exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (a)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to vendors the data for that security required to be made available pursuant to paragraph (a)(1) of this section in a manner that accurately reflects the current state of the market on such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the

prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any national securities exchange or national securities association from making available to vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (a)(1) of this section.

(5)(i) Any national securities exchange may make an election for purposes of the definition of *subject security* in § 242.600(b)(90) for any NMS security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any NMS security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of a national securities association acting in the capacity of an OTC market maker may make an election for purposes of the definition of *subject security* in § 242.600(b)(90) for any NMS security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other NMS security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association and all specified persons, and shall be effective at the opening of trading on the business day following notification.

(iii) The election of a national securities exchange or member of a national securities association for any NMS security pursuant to this paragraph (a)(5) shall cease to be in effect if such exchange or member ceases to make available or communicate bids, offers, and quotation sizes in such security.

(b) *Obligations of responsible brokers and dealers.* (1) Each responsible broker or dealer shall promptly communicate to its national securities exchange or national securities association, pursuant to the procedures established by that exchange or association, its best

bids, best offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (b)(3) of this section, each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

(3)(i) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (b)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size if:

(A) Prior to the presentation of an order for the purchase or sale of a subject security, a responsible broker or dealer has communicated to its exchange or association, pursuant to paragraph (b)(1) of this section, a revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is presented, a responsible broker or dealer is in the process of effecting a transaction in such subject security, and immediately after the completion of such transaction, it communicates to its exchange or association a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (b)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (b)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to its exchange or association pursuant to

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paragraph (b)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (b)(1) of this section, a revised bid or offer; *provided, however*, that such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (b)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (a)(4) of this section:

(i) No national securities exchange or OTC market maker may make available, disseminate or otherwise communicate to any vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any NMS security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any national securities exchange or OTC market maker for any NMS security which is not a subject security with respect to such exchange or OTC market maker.

(5)(i) Entry of any priced order for an NMS security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to this paragraph (b) for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and

(B) A communication of a bid or offer to a vendor for display on a display device for purposes of paragraph (b)(4) of this section.

(ii) An exchange market maker or OTC market maker that has entered a priced order for an NMS security into an electronic communications network that widely disseminates such order shall be deemed to be in compliance with paragraph (b)(5)(i)(A) of this section if the electronic communications network:

(A)(I) Provides to a national securities exchange or national securities association (or an exclusive processor acting on behalf of one or more exchanges or associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the electronic communications network by exchange market makers and OTC market makers for the NMS security, and such prices and sizes are included in the quotation data made available by such exchange, association, or exclusive processor to vendors pursuant to this section; and

(2) Provides, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the electronic communications network entered therein by an exchange market maker or OTC market maker that is:

(i) Equivalent to the ability of any broker or dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the national securities exchange or national securities association to which the electronic communications network supplies such bids and offers; and

(ii) At the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by exchange market makers or OTC market makers at such price, or the size of the execution sought by the broker or dealer, for such security; or

(B) Is an alternative trading system that:

(I) Displays orders and provides the ability to effect transactions with such orders under § 242.301(b)(3); and

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(2) Otherwise is in compliance with Regulation ATS (§242.300 through §242.303).

(c) *Transactions in listed options.* (1) A national securities exchange or national securities association:

(i) Shall not be required, under paragraph (a) of this section, to collect from responsible brokers or dealers who are members of such exchange or association, or to make available to vendors, the quotation sizes and aggregate quotation sizes for listed options, if such exchange or association establishes by rule and periodically publishes the quotation size for which such responsible brokers or dealers are obligated to execute an order to buy or sell an options series that is a subject security at its published bid or offer under paragraph (b)(2) of this section;

(ii) May establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (b)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer; and

(iii) May establish and maintain procedures and mechanisms for collecting from responsible brokers and dealers who are members of such exchange or association, and making available to vendors, the quotation sizes and aggregate quotation sizes in listed options for which such responsible broker or dealer will be obligated under paragraph (b)(2) of this section to execute an order from a customer to buy or sell a listed option and establish by rule and periodically publish the size, which shall not be less than one contract, for which such responsible brokers or dealers are obligated to execute an order for the account of a broker or dealer.

(2) If, pursuant to paragraph (c)(1) of this section, the rules of a national securities exchange or national securities association do not require its members to communicate to it their quotation sizes for listed options, a responsible broker or dealer that is a

member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (b)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option; and

(ii) Comply with its obligations under paragraph (b)(2) of this section by executing any order to buy or sell a listed option, in an amount up to the size established by such exchange's or association's rules under paragraph (c)(1) of this section.

(3) *Thirty second response.* Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option in an amount greater than the quotation size established by a national securities exchange's or national securities association's rules pursuant to paragraph (c)(1) of this section, or its published quotation size must:

(i) Execute the entire order; or

(ii)(A) Execute that portion of the order equal to at least:

(1) The quotation size established by a national securities exchange's or national securities association's rules, pursuant to paragraph (c)(1) of this section, to the extent that such exchange or association does not collect and make available to vendors quotation size and aggregate quotation size under paragraph (a) of this section; or

(2) Its published quotation size; and

(B) Revise its bid or offer.

(4) Notwithstanding paragraph (c)(3) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraph (b)(2) of this section if:

(i) Any of the circumstances in paragraph (b)(3) of this section exist; or

(ii) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, national securities exchange, or national securities association if the Commission determines that such exemption is consistent with the public interest, the

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protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

[70 FR 37620, June 29, 2005; 1997, as amended at 83 FR 58427, Nov. 19, 2018; 86 FR 18811, Apr. 9, 2021]

### § 242.603 Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

(a) *Distribution of information.* (1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, national securities association, broker, or dealer that distributes information with respect to quotations for or transactions in an NMS stock to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

(b) *Dissemination of information.* Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans for the dissemination of consolidated market data. Every national securities exchange on which an NMS stock is traded and national securities association shall make available to all competing consolidators and self-aggregators its information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, in the same manner and using the same methods, including all methods of access and the same format, as such national securities exchange or national securities association makes available any information with respect to quotations for and transactions in NMS stocks to any person.

(c) *Display of information.* (1) No securities information processor, broker, or dealer shall provide, in a context in which a trading or order-routing decision can be implemented, a display of

any information with respect to quotations for or transactions in an NMS stock without also providing, in an equivalent manner, a consolidated display for such stock.

(2) The provisions of paragraph (c)(1) of this section shall not apply to a display of information on the trading floor or through the facilities of a national securities exchange or to a display in connection with the operation of a market linkage system implemented in accordance with an effective national market system plan.

(d) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, or item of information, or any class or classes of persons, securities, or items of information, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[70 FR 37620, June 29, 2005, as amended at 86 FR 18811, Apr. 9, 2021]

### § 242.604 Display of customer limit orders.

(a) *Specialists and OTC market makers.* For all NMS stocks:

(1) Each member of a national securities exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

(ii) The full size of each customer limit order held by the specialist that:

(A) Is priced equal to the bid or offer of such specialist for such security;

(B) Is priced equal to the national best bid or national best offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

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(i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

(ii) The full size of each customer limit order held by the OTC market maker that:

(A) Is priced equal to the bid or offer of such OTC market maker for such security;

(B) Is priced equal to the national best bid or national best offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(b) *Exceptions.* The requirements in paragraph (a) of this section shall not apply to any customer limit order:

(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to a national securities exchange or national securities association-sponsored system, or an electronic communications network that complies with the requirements of § 242.602(b)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an "all or none" order.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, national securities exchange, or national securities association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal

of impediments to and perfection of the mechanism of a national market system.

**§ 242.605 Disclosure of order execution information.**

This section requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.

(a) *Monthly electronic reports by market centers.* (1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (a)(2) of this section, a report on the covered orders in NMS stocks that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;



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(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;

(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange on which NMS stocks are traded and each national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (a)(1) of this section in a uniform, readily accessible, and usable electronic form. In the event there is no effective national market system plan establishing such procedures, market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format, and make such reports available for downloading from an Internet Web site that is free and readily accessible to the public. Every market center shall keep such reports posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website.

(3) A market center shall make available the report required by paragraph (a)(1) of this section within one month after the end of the month addressed in the report.

(b) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[70 FR 37620, June 29, 2005, as amended at 83 FR 58427, Nov. 19, 2018]

### § 242.606 Disclosure of order routing information.

(a) *Quarterly report on order routing.*

(1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and of non-directed orders that are customer orders in NMS securities that are option contracts during that quarter broken down by calendar month and keep such report posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the

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internet website. Such report shall include a section for NMS stocks—separated by securities that are included in the S&P 500 Index as of the first day of that quarter and other NMS stocks—and a separate section for NMS securities that are option contracts. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission’s website for all reports required by this section. Each section in a report shall include the following information:

(i) The percentage of total orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, marketable limit orders, non-marketable limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed marketable limit orders, total non-directed non-marketable limit orders, and total non-directed other orders for the section that were routed to the venue;

(iii) For each venue identified pursuant to paragraph (a)(1)(ii) of this section, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for each of the following non-directed order types:

- (A) Market orders;
- (B) Marketable limit orders;
- (C) Non-marketable limit orders; and
- (D) Other orders.

(iv) A discussion of the material aspects of the broker’s or dealer’s relationship with each venue identified pursuant to paragraph (a)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral,

that may influence a broker’s or dealer’s order routing decision including, among other things:

(A) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;

(B) Disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;

(C) Volume-based tiered payment schedules; and

(D) Agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

(2) A broker or dealer shall make the report required by paragraph (a)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(b) *Customer requests for information on order routing.* (1) Every broker or dealer shall, on request of a customer, disclose to its customer, for:

(i) Orders in NMS stocks that are submitted on a held basis;

(ii) Orders in NMS stocks that are submitted on a not held basis and the broker or dealer is not required to provide the customer a report under paragraph (b)(3) of this section; and

(iii) Orders in NMS securities that are option contracts, the identity of the venue to which the customer’s orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. Such disclosure shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission’s website for all reports required by this section.

(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (b)(1) of this section.

(3) Except as provided for in paragraphs (b)(4) and (5) of this section, every broker or dealer shall, on request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis with the broker or dealer, disclose to such customer within seven

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business days of receiving the request, a report on its handling of such orders for that customer for the prior six months by calendar month. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. For purposes of such report, the handling of a NMS stock order submitted by a customer to a broker-dealer on a not held basis includes the handling of all child orders derived from that order. Such report shall be divided into two sections: One for directed orders and one for non-directed orders. Each section of such report shall include, with respect to such order flow sent by the customer to the broker or dealer, the total number of shares sent to the broker or dealer by the customer during the relevant period; the total number of shares executed by the broker or dealer as principal for its own account; the total number of orders exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker or dealer through an actionable indication of interest, provided that, where applicable, a broker or dealer must disclose that it exposed a customer's order through an actionable indication of interest to other customers but need not disclose the identity of such customers. Each section of such report also shall include the following columns of information for each venue to which the broker or dealer routed such orders for the customer, in the aggregate:

- (i) *Information on Order Routing.*(A) Total shares routed;  
(B) Total shares routed marked immediate or cancel;  
(C) Total shares routed that were further routable; and  
(D) Average order size routed.
- (ii) *Information on Order Execution.*  
(A) Total shares executed;  
(B) Fill rate (shares executed divided by the shares routed);  
(C) Average fill size;  
(D) Average net execution fee or rebate (cents per 100 shares, specified to four decimal places);  
(E) Total number of shares executed at the midpoint;

(F) Percentage of shares executed at the midpoint;

(G) Total number of shares executed that were priced on the side of the spread more favorable to the order;

(H) Percentage of total shares executed that were priced at the side of the spread more favorable to the order;

(I) Total number of shares executed that were priced on the side of the spread less favorable to the order; and

(J) Percentage of total shares executed that were priced on the side of the spread less favorable to the order.

(iii) *Information on Orders that Provided Liquidity.* (A) Total number of shares executed of orders providing liquidity;

(B) Percentage of shares executed of orders providing liquidity;

(C) Average time between order entry and execution or cancellation, for orders providing liquidity (in milliseconds); and

(D) Average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).

(iv) *Information on Orders that Removed Liquidity.* (A) Total number of shares executed of orders removing liquidity;

(B) Percentage of shares executed of orders removing liquidity; and

(C) Average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).

(4) Except as provided below, no broker or dealer shall be required to provide reports pursuant to paragraph (b)(3) of this section if the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers over the prior six calendar months was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers during that time (the "five percent threshold" for purposes of this paragraph). A broker or dealer that equals or exceeds this five percent threshold shall be required (subject to paragraph (b)(5) of this section) to provide reports pursuant to paragraph (b)(3) of this section for at least six calendar months ("Compliance Period") regardless of the percentage of shares of not held orders in NMS stocks the

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broker or dealer receives from its customers during the Compliance Period. The Compliance Period shall begin the first calendar day of the next calendar month after the broker or dealer equaled or exceeded the five percent threshold, unless it is the first time the broker or dealer has equaled or exceeded the five percent threshold, in which case the Compliance Period shall begin the first calendar day four calendar months later. A broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section for orders that the broker or dealer did not receive during a Compliance Period. If, at any time after the end of a Compliance Period, the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers over the prior six calendar months, the broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section, except for orders that the broker or dealer received during the portion of a Compliance Period that remains covered by paragraph (b)(3) of this section.

(5) No broker or dealer shall be subject to the requirements of paragraph (b)(3) of this section with respect to a customer that traded on average each month for the prior six months less than \$1,000,000 of notional value of not held orders in NMS stocks through the broker or dealer.

(c) *Exemptions.* The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[70 FR 37620, June 29, 2005, as amended at 83 FR 58427, Nov. 19, 2018]

**§ 242.607 Customer account statements.**

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct

orders for purchase or sale of, any NMS stock or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow from any broker or dealer, national securities exchange, national securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid and national best offer.

(b) *Exemptions.* The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

**§ 242.608 Filing and amendment of national market system plans.**

(a) *Filing of national market system plans and amendments thereto.* (1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan ("proposed amendment") by submitting the text of the plan or amendment to the Commission by email, together with a statement of the purpose of such plan or

amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (b) of this section.

(3) Self-regulatory organizations are authorized to act jointly in:

(i) Planning, developing, and operating any national market subsystem or facility contemplated by a national market system plan;

(ii) Preparing and filing a national market system plan or any amendment thereto; or

(iii) Implementing or administering an effective national market system plan.

(4) Every national market system plan filed pursuant to this section, or any amendment thereto, shall be accompanied by:

(i) Copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; and

(ii) To the extent applicable:

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or participants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the spon-

sors in accordance with the terms of the plan.

(5) Every national market system plan, or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable:

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this Regulation NMS and part 240, subpart A of this chapter shall, in addition to compliance with this section, also comply

with the requirements of such other section.

(8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan website or on a website designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such website is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (b) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own website to the website with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (a) of this section are posted on a plan website or a designated website no later than two business days after the filing of the proposed amendments with the Commission. If the plan participants do not post a proposed amendment on a plan website or a designated website on the same business day that they file such proposed amendment with the Commission, then the plan participants shall inform the Commission of the business day on which they posted such proposed amendment on a plan website or a designated website. The plan participants shall maintain any proposed amendment to the plan on a plan website or a designated website until the Commission approves the plan amendment and the plan participants update the website to reflect such amendment or the plan participants withdraw the proposed amendment or the plan participants are notified pursuant to paragraph (b)(1)(iii) of this section that the proposed amendment is not filed in compliance with requirements or the Commission disapproves the proposed amendment. If the plan participants withdraw a proposed amendment or are notified pursuant to paragraph (b)(1)(iii) of this section that

a proposed amendment is not filed in compliance with requirements or the Commission disapproves a proposed amendment, the plan participants shall remove such amendment from the plan website or designated website within two business days of withdrawal, notification of non-compliant filing or disapproval. Each plan participant shall provide a link to the website with the current version of the plan.

(b) *Effectiveness of national market system plans.* (1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (b)(3) of this section.

(i) *Publication of national market system plans.* The Commission shall send the notice of the filing of a national market system plan to the FEDERAL REGISTER for publication thereof under this paragraph (b)(1) within 90 days of the business day on which such plan was filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the FEDERAL REGISTER for publication thereof within such 90-day period, then the date of publication shall be deemed to be the last day of such 90-day period.

(ii) *Publication of proposed amendments.* The Commission shall send the notice of the filing of a proposed amendment to the FEDERAL REGISTER for publication thereof under this paragraph (b)(1) within 15 days of the business day on which such proposed amendment was posted on a plan website or a website designated by plan participants pursuant to paragraph (a) of this section after being filed with the Commission pursuant to paragraph (a) of this section. If the Commission fails to send the notice to the FEDERAL

REGISTER for publication thereof within such 15-day period, then the date of publication shall be deemed to be the business day on which such website posting was made.

(iii) A national market system plan or proposed amendment has not been filed with the Commission for purposes of this paragraph (b)(1) if, not later than 7 business days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of the national market system plan or proposed amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter, except that if the Commission determines that the plan or amendment is unusually lengthy and is complex or raises novel regulatory issues, the Commission shall inform the plan participants of such determination not later than 7 business days after the business day of receipt by the Commission and, for purposes of this paragraph (b)(1), the filing of such plan or amendment has not been made with the Commission if, not later than 21 days after the business day of receipt by the Commission, the Commission notifies the plan participants that the filing of such plan or amendment does not comply with paragraph (a) of this section or plan filing requirements in other sections of Regulation NMS and part 240, subpart A of this chapter.

(iv) For purposes of this section, a "business day" is any day other than a Saturday, Sunday, Federal holiday, a day that the Office of Personnel Management has announced that Federal agencies in the Washington, DC area are closed to the public, a day on which the Commission is subject to a Federal government shutdown or a day on which the Commission's Washington, DC office is otherwise not open for regular business; provided further, a filing received by the Commission or a website posting made at or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed received or made on that business day, and a filing received by the Commission or a website posting made after 5:30 p.m. Eastern Stand-

ard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed received or made on the next business day.

(2) The Commission shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. The Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding. Approval or disapproval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(i) Within 90 days of the date of publication of notice of the filing of a national market system plan or proposed amendment, or within such longer period as to which the plan participants consent, the Commission shall, by order, approve or disapprove the plan or amendment, or institute proceedings to determine whether the plan or amendment should be disapproved. Proceedings to determine whether the plan or amendment should be disapproved will be conducted pursuant to 17 CFR 201.700 and 201.701. Such proceedings shall include notice of the grounds for disapproval under consideration and opportunity for hearing and shall be concluded within 180 days of the date of publication of notice of the plan or amendment. At the conclusion of such proceedings the Commission shall, by order, approve or disapprove the plan or amendment. The time for conclusion of such proceedings may be extended for up to 60 days (up to 240 days from the date of notice publication) if the Commission determines that a longer period is appropriate and

publishes the reasons for such determination or the plan participants consent to the longer period.

(ii) The time for conclusion of proceedings to determine whether a national market system plan or proposed amendment should be disapproved may be extended for an additional period up to 60 days beyond the period set forth in paragraph (b)(2)(i) of this section (up to 300 days from the date of notice publication) if the Commission determines that a longer period is appropriate and publishes the reasons for such determination or the plan participants consent to the longer period.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as:

(i) [Reserved]

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (a)(1) of this section and reviewed in accordance with paragraph (b)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise

in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with:

(i) The planning, development, operation, or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this Regulation NMS (§§ 242.600 through 242.612) and part 240, subpart A of this chapter promulgated pursuant to section 11A of the Act (15 U.S.C. 78k-1), approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either temporarily or permanently) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; *provided, however*, that all terms and conditions associated with any such approval (including time limitations) shall continue to be applicable; *provided, further*, that any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(c) *Compliance with terms of national market system plans.* Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.

(d) *Appeals.* The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or



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section 19(d) of the Act (15 U.S.C. 78k-1(b)(5) or 78s(d))) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views, and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or if it finds that such action or failure to act imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(e) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[70 FR 37620, June 29, 2005; 71 FR 232, Jan. 4, 2006, as amended at 85 FR 65497, Oct. 15, 2020]

### § 242.609 Registration of securities information processors: form of application and amendments.

(a) An application for the registration of a securities information processor shall be filed on Form SIP (§249.1001 of this chapter) in accordance with the instructions contained therein.

(b) If any information reported in items 1-13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any securities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b) of the Act (15 U.S.C. 78k-1(b)).

(d) Every amendment filed pursuant to this section shall constitute a "report" within the meaning of sections 17(a), 18(a) and 32(a) of the Act (15 U.S.C. 78q(a), 78r(a), and 78ff(a)).

### § 242.610 Access to quotations.

(a) *Quotations of SRO trading facility.* A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS stock

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displayed through its SRO trading facility.

(b) *Quotations of SRO display-only facility.* (1) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.

(2) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.

(c) *Fees for access to quotations.* A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. in an NMS stock that exceed or accumulate to more than the following limits:

(1) If the price of a protected quotation or other quotation is \$1.00 or more, the fee or fees cannot exceed or accumulate to more than \$0.003 per share; or

(2) If the price of a protected quotation or other quotation is less than \$1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.

(d) *Locking or crossing quotations.* Each national securities exchange and national securities association shall establish, maintain, and enforce written rules that:

(1) Require its members reasonably to avoid:

(i) Displaying quotations that lock or cross any protected quotation in an NMS stock; and

(ii) Displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to

an effective national market system plan;

(2) Are reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock; and

(3) Prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS stock, or of displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan, other than displaying quotations that lock or cross any protected or other quotation as permitted by an exception contained in its rules established pursuant to paragraph (d)(1) of this section.

(e) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotations, orders, or fees, or any class or classes of persons, securities, quotations, orders, or fees, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.611 Order protection rule.

(a) *Reasonable policies and procedures.*

(1) A trading center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in paragraph (b) of this section and, if relying on such an exception, that are reasonably designed to assure compliance with the terms of the exception.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(b) *Exceptions.* (1) The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.

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(2) The transaction that constituted the trade-through was not a “regular way” contract.

(3) The transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

(4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock.

(5) The transaction that constituted the trade-through was the execution of an order identified as an intermarket sweep order.

(6) The transaction that constituted the trade-through was effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.

(7) The transaction that constituted the trade-through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.

(9) The transaction that constituted the trade-through was the execution by a trading center of an order for which, at the time of receipt of the order, the trading center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

(i) The stopped order was for the account of a customer;

(ii) The customer agreed to the specified price on an order-by-order basis; and

(iii) The price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher

than the national best offer in the NMS stock at the time of execution.

(c) *Intermarket sweep orders.* The trading center, broker, or dealer responsible for the routing of an intermarket sweep order shall take reasonable steps to establish that such order meets the requirements set forth in § 242.600(b)(38).

(d) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

[70 FR 37620, June 29, 2005, as amended at 83 FR 58429, Nov. 19, 2018; 86 FR 18811, Apr. 9, 2021]

### § 242.612 Minimum pricing increment.

(a) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than \$1.00 per share.

(b) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than \$0.0001 if that bid or offer, order, or indication of interest is priced less than \$1.00 per share.

(c) The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

**§ 242.613 Consolidated audit trail.**

(a) *Creation of a national market system plan governing a consolidated audit trail.* (1) Each national securities exchange and national securities association shall jointly file on or before 270 days from the date of publication of the Adopting Release in the FEDERAL REGISTER a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by this section. The national market system plan shall discuss the following considerations:

(i) The method(s) by which data will be reported to the central repository including, but not limited to, the sources of such data and the manner in which the central repository will receive, extract, transform, load, and retain such data; and the basis for selecting such method(s);

(ii) The time and method by which the data in the central repository will be made available to regulators, in accordance with paragraph (e)(1) of this section, to perform surveillance or analyses, or for other purposes as part of their regulatory and oversight responsibilities;

(iii) The reliability and accuracy of the data reported to and maintained by the central repository throughout its lifecycle, including transmission and receipt from market participants; data extraction, transformation and loading at the central repository; data maintenance and management at the central repository; and data access by regulators;

(iv) The security and confidentiality of the information reported to the central repository;

(v) The flexibility and scalability of the systems used by the central repository to collect, consolidate and store consolidated audit trail data, including the capacity of the consolidated audit trail to efficiently incorporate, in a cost-effective manner, improvements in technology, additional capacity, additional order data, information about additional securities or transactions, changes in regulatory requirements, and other developments;

(vi) The feasibility, benefits, and costs of broker-dealers reporting to the

consolidated audit trail in a timely manner:

(A) The identity of all market participants (including broker-dealers and customers) that are allocated NMS securities, directly or indirectly, in a primary market transaction;

(B) The number of such securities each such market participant is allocated; and

(C) The identity of the broker-dealer making each such allocation;

(vii) The detailed estimated costs for creating, implementing, and maintaining the consolidated audit trail as contemplated by the national market system plan, which estimated costs should specify:

(A) An estimate of the costs to the plan sponsors for establishing and maintaining the central repository;

(B) An estimate of the costs to members of the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan;

(C) An estimate of the costs to the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan; and

(D) How the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors;

(viii) An analysis of the impact on competition, efficiency and capital formation of creating, implementing, and maintaining of the national market system plan;

(ix) A plan to eliminate existing rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems (or components thereof); to the extent that any existing rules or systems related to monitoring quotes, orders, and executions provide information that is not rendered duplicative by the consolidated audit trail, an analysis of:

(A) Whether the collection of such information remains appropriate;

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(B) If still appropriate, whether such information should continue to be separately collected or should instead be incorporated into the consolidated audit trail; and

(C) If no longer appropriate, how the collection of such information could be efficiently terminated; the steps the plan sponsors propose to take to seek Commission approval for the elimination of such rules and systems (or components thereof); and a timetable for such elimination, including a description of how the plan sponsors propose to phase in the consolidated audit trail and phase out such existing rules and systems (or components thereof);

(x) Objective milestones to assess progress toward the implementation of the national market system plan;

(xi) The process by which the plan sponsors solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the plan sponsors took such views into account in preparing the national market system plan; and

(xii) Any reasonable alternative approaches to creating, implementing, and maintaining a consolidated audit trail that the plan sponsors considered in developing the national market system plan including, but not limited to, a description of any such alternative approach; the relative advantages and disadvantages of each such alternative, including an assessment of the alternative's costs and benefits; and the basis upon which the plan sponsors selected the approach reflected in the national market system plan.

(2) The national market system plan, or any amendment thereto, filed pursuant to this section shall comply with the requirements in § 242.608(a), if applicable, and be filed with the Commission pursuant to § 242.608.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange and national securities association to:

(i) Within two months after effectiveness of the national market system plan jointly (or under the governance

structure described in the plan) select a person to be the plan processor;

(ii) Within four months after effectiveness of the national market system plan synchronize their business clocks and require members of each such exchange and association to synchronize their business clocks in accordance with paragraph (d) of this section;

(iii) Within one year after effectiveness of the national market system plan provide to the central repository the data specified in paragraph (c) of this section;

(iv) Within fourteen months after effectiveness of the national market system plan implement a new or enhanced surveillance system(s) as required by paragraph (f) of this section;

(v) Within two years after effectiveness of the national market system plan require members of each such exchange and association, except those members that qualify as small broker-dealers as defined in § 240.0-10(c) of this chapter, to provide to the central repository the data specified in paragraph (c) of this section; and

(vi) Within three years after effectiveness of the national market system plan require members of each such exchange and association that qualify as small broker-dealers as defined in § 240.0-10(c) of this chapter to provide to the central repository the data specified in paragraph (c) of this section.

(4) Each national securities exchange and national securities association shall be a sponsor of the national market system plan submitted pursuant to this section and approved by the Commission.

(5) No national market system plan filed pursuant to this section, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608. In determining whether to approve the national market system plan, or any amendment thereto, and whether the national market system plan or any amendment thereto is in the public interest under § 242.608(b)(2), the Commission shall consider the impact of the national market system plan or amendment, as applicable, on efficiency, competition, and capital formation.

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(b) *Operation and administration of the national market system plan.* (1) The national market system plan submitted pursuant to this section shall include a governance structure to ensure fair representation of the plan sponsors, and administration of the central repository, including the selection of the plan processor.

(2) The national market system plan submitted pursuant to this section shall include a provision addressing the requirements for the admission of new sponsors of the plan and the withdrawal of existing sponsors from the plan.

(3) The national market system plan submitted pursuant to this section shall include a provision addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan.

(4) The national market system plan submitted pursuant to this section shall include a provision addressing the manner in which the costs of operating the central repository will be allocated among the national securities exchanges and national securities associations that are sponsors of the plan, including a provision addressing the manner in which costs will be allocated to new sponsors to the plan.

(5) The national market system plan submitted pursuant to this section shall require the appointment of a Chief Compliance Officer to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which it is processed.

(6) The national market system plan submitted pursuant to this section shall include a provision requiring the plan sponsors to provide to the Commission, at least every two years after effectiveness of the national market system plan, a written assessment of the operation of the consolidated audit trail. Such document shall include, at a minimum:

(i) An evaluation of the performance of the consolidated audit trail including, at a minimum, with respect to data accuracy (consistent with para-

graph (e)(6) of this section), timeliness of reporting, comprehensiveness of data elements, efficiency of regulatory access, system speed, system downtime, system security (consistent with paragraph (e)(4) of this section), and other performance metrics to be determined by the Chief Compliance Officer, along with a description of such metrics;

(ii) A detailed plan, based on such evaluation, for any potential improvements to the performance of the consolidated audit trail with respect to any of the following: improving data accuracy; shortening reporting timeframes; expanding data elements; adding granularity and details regarding the scope and nature of Customer-IDs; expanding the scope of the national market system plan to include new instruments and new types of trading and order activities; improving the efficiency of regulatory access; increasing system speed; reducing system downtime; and improving performance under other metrics to be determined by the Chief Compliance Officer;

(iii) An estimate of the costs associated with any such potential improvements to the performance of the consolidated audit trail, including an assessment of the potential impact on competition, efficiency, and capital formation; and

(iv) An estimated implementation timeline for any such potential improvements, if applicable.

(7) The national market system plan submitted pursuant to this section shall include an Advisory Committee which shall function in accordance with the provisions set forth in this paragraph (b)(7). The purpose of the Advisory Committee shall be to advise the plan sponsors on the implementation, operation, and administration of the central repository.

(i) The national market system plan submitted pursuant to this section shall set forth the term and composition of the Advisory Committee, which composition shall include representatives of the member firms of the plan sponsors.

(ii) Members of the Advisory Committee shall have the right to attend any meetings of the plan sponsors, to

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receive information concerning the operation of the central repository, and to provide their views to the plan sponsors; provided, however, that the plan sponsors may meet without the Advisory Committee members in executive session if, by affirmative vote of a majority of the plan sponsors, the plan sponsors determine that such an executive session is required.

(c) *Data recording and reporting.* (1) The national market system plan submitted pursuant to this section shall provide for an accurate, time-sequenced record of orders beginning with the receipt or origination of an order by a member of a national securities exchange or national securities association, and further documenting the life of the order through the process of routing, modification, cancellation, and execution (in whole or in part) of the order.

(2) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to report to the central repository the information required by paragraph (c)(7) of this section in a uniform electronic format, or in a manner that would allow the central repository to convert the data to a uniform electronic format, for consolidation and storage.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to record the information required by paragraphs (c)(7)(i) through (v) of this section contemporaneously with the reportable event. The national market system plan shall require that information recorded pursuant to paragraphs (c)(7)(i) through (v) of this section must be reported to the central repository by 8:00 a.m. Eastern Time on the trading day following the day such information has been recorded by the national securities exchange, national securities association, or member. The national market system plan may accommodate voluntary reporting prior to 8:00 a.m. Eastern Time, but shall not impose an earlier reporting deadline on the reporting parties.

(4) The national market system plan submitted pursuant to this section shall require each member of a national securities exchange or national securities association to record and report to the central repository the information required by paragraphs (c)(7)(vi) through (viii) of this section by 8:00 a.m. Eastern Time on the trading day following the day the member receives such information. The national market system plan may accommodate voluntary reporting prior to 8:00 a.m. Eastern Time, but shall not impose an earlier reporting deadline on the reporting parties.

(5) The national market system plan submitted pursuant to this section shall require each national securities exchange and its members to record and report to the central repository the information required by paragraph (c)(7) of this section for each NMS security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.

(6) The national market system plan submitted pursuant to this section shall require each national securities association and its members to record and report to the central repository the information required by paragraph (c)(7) of this section for each NMS security for which transaction reports are required to be submitted to the association.

(7) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and any member of such exchange or association to record and electronically report to the central repository details for each order and each reportable event, including, but not limited to, the following information:

(i) For original receipt or origination of an order:

(A) Customer-ID(s) for each customer;

(B) The CAT-Order-ID;

(C) The CAT-Reporter-ID of the broker-dealer receiving or originating the order;

(D) Date of order receipt or origination;

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(E) Time of order receipt or origination (using time stamps pursuant to paragraph (d)(3) of this section); and

(F) Material terms of the order.

(ii) For the routing of an order, the following information:

(A) The CAT-Order-ID;

(B) Date on which the order is routed;

(C) Time at which the order is routed (using time stamps pursuant to paragraph (d)(3) of this section);

(D) The CAT-Reporter-ID of the broker-dealer or national securities exchange routing the order;

(E) The CAT-Reporter-ID of the broker-dealer, national securities exchange, or national securities association to which the order is being routed;

(F) If routed internally at the broker-dealer, the identity and nature of the department or desk to which an order is routed; and

(G) Material terms of the order.

(iii) For the receipt of an order that has been routed, the following information:

(A) The CAT-Order-ID;

(B) Date on which the order is received;

(C) Time at which the order is received (using time stamps pursuant to paragraph (d)(3) of this section);

(D) The CAT-Reporter-ID of the broker-dealer, national securities exchange, or national securities association receiving the order;

(E) The CAT-Reporter-ID of the broker-dealer or national securities exchange routing the order; and

(F) Material terms of the order.

(iv) If the order is modified or cancelled, the following information:

(A) The CAT-Order-ID;

(B) Date the modification or cancellation is received or originated;

(C) Time the modification or cancellation is received or originated (using time stamps pursuant to paragraph (d)(3) of this section);

(D) Price and remaining size of the order, if modified;

(E) Other changes in material terms of the order, if modified; and

(F) The CAT-Reporter-ID of the broker-dealer or Customer-ID of the person giving the modification or cancellation instruction.

(v) If the order is executed, in whole or part, the following information:

(A) The CAT-Order-ID;

(B) Date of execution;

(C) Time of execution (using time stamps pursuant to paragraph (d)(3) of this section);

(D) Execution capacity (principal, agency, riskless principal);

(E) Execution price and size;

(F) The CAT-Reporter-ID of the national securities exchange or broker-dealer executing the order; and

(G) Whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

(vi) If the order is executed, in whole or part, the following information:

(A) The account number for any sub-accounts to which the execution is allocated (in whole or part);

(B) The CAT-Reporter-ID of the clearing broker or prime broker, if applicable; and

(C) The CAT-Order-ID of any contra-side order(s).

(vii) If the trade is cancelled, a cancelled trade indicator.

(viii) For original receipt or origination of an order, the following information:

(A) Information of sufficient detail to identify the customer; and

(B) Customer account information.

(8) All plan sponsors and their members shall use the same Customer-ID and CAT-Reporter-ID for each customer and broker-dealer.

(d) *Clock synchronization and time stamps.* The national market system plan submitted pursuant to this section shall require:

(1) Each national securities exchange, national securities association, and member of such exchange or association to synchronize its business clocks that are used for the purposes of recording the date and time of any reportable event that must be reported pursuant to this section to the time maintained by the National Institute of Standards and Technology, consistent with industry standards;

(2) Each national securities exchange and national securities association to



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evaluate annually the clock synchronization standard to determine whether it should be shortened, consistent with changes in industry standards; and

(3) Each national securities exchange, national securities association, and member of such exchange or association to utilize the time stamps required by paragraph (c)(7) of this section, with at minimum the granularity set forth in the national market system plan submitted pursuant to this section, which shall reflect current industry standards and be at least to the millisecond. To the extent that the relevant order handling and execution systems of any national securities exchange, national securities association, or member of such exchange or association utilize time stamps in increments finer than the minimum required by the national market system plan, the plan shall require such national securities exchange, national securities association, or member to utilize time stamps in such finer increments when providing data to the central repository, so that all reportable events reported to the central repository by any national securities exchange, national securities association, or member can be accurately sequenced. The national market system plan shall require the sponsors of the national market system plan to annually evaluate whether industry standards have evolved such that the required time stamp standard should be in finer increments.

(e) *Central repository.* (1) The national market system plan submitted pursuant to this section shall provide for the creation and maintenance of a central repository. Such central repository shall be responsible for the receipt, consolidation, and retention of all information reported pursuant to paragraph (c)(7) of this section. The central repository shall store and make available to regulators data in a uniform electronic format, and in a form in which all events pertaining to the same originating order are linked together in a manner that ensures timely and accurate retrieval of the information required by paragraph (c)(7) of this section for all reportable events for that order.

(2) Each national securities exchange, national securities association,

and the Commission shall have access to the central repository, including all systems operated by the central repository, and access to and use of the data reported to and consolidated by the central repository under paragraph (c) of this section, for the purpose of performing its respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. The national market system plan submitted pursuant to this section shall provide that such access to and use of such data by each national securities exchange, national securities association, and the Commission for the purpose of performing its regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations shall not be limited.

(3) The national market system plan submitted pursuant to this section shall include a provision requiring the creation and maintenance by the plan processor of a method of access to the consolidated data stored in the central repository that includes the ability to run searches and generate reports.

(4) The national market system plan submitted pursuant to this section shall include policies and procedures, including standards, to be used by the plan processor to:

(i) Ensure the security and confidentiality of all information reported to the central repository by requiring that:

(A) All plan sponsors and their employees, as well as all employees of the central repository, agree to use appropriate safeguards to ensure the confidentiality of such data and agree not to use such data for any purpose other than surveillance and regulatory purposes, provided that nothing in this paragraph (e)(4)(i)(A) shall be construed to prevent a plan sponsor from using the data that it reports to the central repository for regulatory, surveillance, commercial, or other purposes as otherwise permitted by applicable law, rule, or regulation;

(B) Each plan sponsor adopt and enforce rules that:

(1) Require information barriers between regulatory staff and non-regulatory staff with regard to access and

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use of data in the central repository; and

(2) Permit only persons designated by plan sponsors to have access to the data in the central repository;

(C) The plan processor:

(1) Develop and maintain a comprehensive information security program for the central repository, with dedicated staff, that is subject to regular reviews by the Chief Compliance Officer;

(2) Have a mechanism to confirm the identity of all persons permitted to access the data; and

(3) Maintain a record of all instances where such persons access the data; and

(D) The plan sponsors adopt penalties for non-compliance with any policies and procedures of the plan sponsors or central repository with respect to information security.

(i) Ensure the timeliness, accuracy, integrity, and completeness of the data provided to the central repository pursuant to paragraph (c) of this section; and

(iii) Ensure the accuracy of the consolidation by the plan processor of the data provided to the central repository pursuant to paragraph (c) of this section.

(5) The national market system plan submitted pursuant to this section shall address whether there will be an annual independent evaluation of the security of the central repository and:

(i) If so, provide a description of the scope of such planned evaluation; and

(ii) If not, provide a detailed explanation of the alternative measures for evaluating the security of the central repository that are planned instead.

(6) The national market system plan submitted pursuant to this section shall:

(i) Specify a maximum error rate to be tolerated by the central repository for any data reported pursuant to paragraphs (c)(3) and (c)(4) of this section; describe the basis for selecting such maximum error rate; explain how the plan sponsors will seek to reduce such maximum error rate over time; describe how the plan will seek to ensure compliance with such maximum error rate and, in the event of noncompli-

ance, will promptly remedy the causes thereof;

(ii) Require the central repository to measure the error rate each business day and promptly take appropriate remedial action, at a minimum, if the error rate exceeds the maximum error rate specified in the plan;

(iii) Specify a process for identifying and correcting errors in the data reported to the central repository pursuant to paragraphs (c)(3) and (c)(4) of this section, including the process for notifying the national securities exchanges, national securities association, and members who reported erroneous data to the central repository of such errors, to help ensure that such errors are promptly corrected by the reporting entity, and for disciplining those who repeatedly report erroneous data; and

(iv) Specify the time by which data that has been corrected will be made available to regulators.

(7) The national market system plan submitted pursuant to this section shall require the central repository to collect and retain on a current and continuing basis and in a format compatible with the information consolidated and stored pursuant to paragraph (c)(7) of this section:

(i) Information, including the size and quote condition, on the national best bid and national best offer for each NMS security;

(ii) Transaction reports reported pursuant to an effective transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, § 242.601; and

(iii) Last sale reports reported pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information filed with the Commission pursuant to, and meeting the requirements of, § 242.608.

(8) The national market system plan submitted pursuant to this section shall require the central repository to retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of this section in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years.

(f) *Surveillance.* Every national securities exchange and national securities association subject to this section shall develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail.

(g) *Compliance by members.* (1) Each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and §240.19b-4 of this chapter on or before 60 days from approval of the national market system plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission.

(2) Each member of a national securities exchange or national securities association shall comply with all the provisions of any approved national market system plan applicable to members.

(3) The national market system plan submitted pursuant to this section shall include a provision requiring each national securities exchange and national securities association to agree to enforce compliance by its members with the provisions of any approved plan.

(4) The national market system plan submitted pursuant to this section shall include a mechanism to ensure compliance with the requirements of any approved plan by the members of a national securities exchange or national securities association.

(h) *Compliance by national securities exchanges and national securities associations.* (1) Each national securities exchange and national securities association shall comply with the provisions of the national market system plan approved by the Commission.

(2) Any failure by a national securities exchange or national securities association to comply with the provisions of the national market system plan approved by the Commission shall be considered a violation of this section.

(3) The national market system plan submitted pursuant to this section

shall include a mechanism to ensure compliance by the sponsors of the plan with the requirements of any approved plan. Such enforcement mechanism may include penalties where appropriate.

(i) *Other securities and other types of transactions.* The national market system plan submitted pursuant to this section shall include a provision requiring each national securities exchange and national securities association to jointly provide to the Commission within six months after effectiveness of the national market system plan a document outlining how such exchanges and associations could incorporate into the consolidated audit trail information with respect to equity securities that are not NMS securities, debt securities, primary market transactions in equity securities that are not NMS securities, and primary market transactions in debt securities, including details for each order and reportable event that may be required to be provided, which market participants may be required to provide the data, an implementation timeline, and a cost estimate.

(j) *Definitions.* As used in this section:

(1) The term *CAT-Order-ID* shall mean a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.

(2) The term *CAT-Reporter-ID* shall mean, with respect to each national securities exchange, national securities association, and member of a national securities exchange or national securities association, a code that uniquely and consistently identifies such person for purposes of providing data to the central repository.

(3) The term *customer* shall mean:

(i) The account holder(s) of the account at a registered broker-dealer originating the order; and

(ii) Any person from whom the broker-dealer is authorized to accept trading instructions for such account, if different from the account holder(s).

(4) The term *customer account information* shall include, but not be limited

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to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).

(5) The term *Customer-ID* shall mean, with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the central repository.

(6) The term *error rate* shall mean the percentage of reportable events collected by the central repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.

(7) The term *material terms of the order* shall include, but not be limited to, the NMS security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator; time in force (if applicable); if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close; and any special handling instructions.

(8) The term *order* shall include:

(i) Any order received by a member of a national securities exchange or national securities association from any person;

(ii) Any order originated by a member of a national securities exchange or national securities association; or

(iii) Any bid or offer.

(9) The term *reportable event* shall include, but not be limited to, the original receipt or origination, modification, cancellation, routing, and execution (in whole or in part) of an order, and receipt of a routed order.

[77 FR 45808, Aug. 1, 2012]

§ 242.614 Registration and responsibilities of competing consolidators.

(a) *Competing consolidator registration*—(1) *Initial Form CC*—(i) *Filing and effectiveness requirement*. No person, other than a national securities exchange or a national securities association:

(A) May receive directly, pursuant to an effective national market system plan, from a national securities exchange or national securities association information with respect to quotations for and transactions in NMS stocks; and

(B) Generate a consolidated market data product for dissemination to any person unless the person files with the Commission an initial Form CC and the initial Form CC has become effective pursuant to paragraph (a)(1)(v) of this section.

(ii) *Electronic filing and submission*. Any reports to the Commission required under this section shall be filed electronically on Form CC (17 CFR 249.1002), include all information as prescribed in Form CC and the instructions thereto, and contain an electronic signature as defined in § 240.19b-4(j) of this chapter.

(iii) *Commission review period*. The Commission may, by order, as provided in paragraph (a)(1)(v)(B) of this section, declare an initial Form CC filed by a competing consolidator ineffective no later than 90 calendar days from the date of filing with the Commission.

(iv) *Withdrawal of initial Form CC due to inaccurate or incomplete disclosures*. During the review by the Commission of the initial Form CC, if any information disclosed in the initial Form CC is or becomes inaccurate or incomplete, the competing consolidator shall promptly withdraw the initial Form CC and may refile an initial Form CC pursuant to paragraph (a)(1) of this section.

(v) *Effectiveness; ineffectiveness determination*. (A) An initial Form CC filed by a competing consolidator will become effective, unless declared ineffective, no later than the expiration of the review period provided in paragraph (a)(1)(iii) of this section and publication pursuant to paragraph (b)(2)(i) of this section.

(B) The Commission shall, by order, declare an initial Form CC ineffective if it finds, after notice and opportunity for hearing, that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. If the Commission declares an initial Form CC ineffective, the competing consolidator shall be prohibited from operating as a competing consolidator. An initial Form CC declared ineffective does not prevent the competing consolidator from subsequently filing a new Form CC.

(2) *Form CC amendments*. A competing consolidator shall amend a Form CC:

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(i) Prior to the implementation of a material change to the pricing, connectivity, or products offered (“material amendment”); and

(ii) No later than 30 calendar days after the end of each calendar year to correct information that has become inaccurate or incomplete for any reason and to provide an Annual Report as required under Form CC (each a “Form CC amendment”).

(3) *Notice of cessation.* A competing consolidator shall notice its cessation of operations on Form CC at least 90 calendar days prior to the date the competing consolidator will cease to operate as a competing consolidator. The notice of cessation shall cause the Form CC to become ineffective on the date designated by the competing consolidator.

(4) *Date of filing.* For purposes of filings made pursuant to this section:

(i) The term *business day* shall have the same meaning as defined in § 240.19b-4(b)(2) of this chapter.

(ii) If the conditions of this section and Form CC are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the next business day.

(b) *Public disclosures.* (1) Every Form CC filed pursuant to this section shall constitute a “report” within the meaning of sections 11A, 17(a), 18(a), and 32(a) of the Act (15 U.S.C. 78k-1, 78q(a), 78r(a), and 78ff(a)), and any other applicable provisions of the Act.

(2) The Commission will make public via posting on the Commission’s website:

(i) Identification of each competing consolidator that has filed an initial Form CC with the Commission and the date of filing;

(ii) Each effective initial Form CC, as amended;

(iii) Each order of ineffective initial Form CC;

(iv) Each Form CC amendment. The Commission will make public the en-

tirety of any Form CC amendment no later than 30 calendar days from the date of filing thereof with the Commission; and

(v) Each notice of cessation.

(c) *Posting of hyperlink to the Commission’s website.* Each competing consolidator shall make public via posting on its website a direct URL hyperlink to the Commission’s website that contains the documents enumerated in paragraphs (b)(2)(ii) through (v) of this section.

(d) *Responsibilities of competing consolidators.* Each competing consolidator shall:

(1) Collect from each national securities exchange and national securities association, either directly or indirectly, any information with respect to quotations for and transactions in NMS stocks as provided in § 242.603(b) that is necessary to create a consolidated market data product, as defined in § 242.600(b)(20).

(2) Calculate and generate a consolidated market data product, as defined in § 242.600(b)(20), from the information collected pursuant to paragraph (d)(1) of this section.

(3) Make a consolidated market data product, as defined in § 242.600(b)(20), as timestamped as required by paragraph (d)(4) of this section and including the national securities exchange and national securities association data generation timestamp required to be provided by the national securities exchange and national securities association participants by paragraph (e)(2) of this section, available to subscribers on a consolidated basis on terms that are not unreasonably discriminatory.

(4) Timestamp the information collected pursuant to paragraph (d)(1) of this section upon:

(i) Receipt from each national securities exchange and national securities association;

(ii) Receipt of such information at its aggregation mechanism; and

(iii) Dissemination of a consolidated market data product to subscribers.

(5) Within 15 calendar days after the end of each month, publish prominently on its website monthly performance metrics, as defined by the effective national market system plan(s) for NMS stocks, that shall include at least

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the information in paragraphs (d)(5)(i) through (v) of this section. All information must be publicly posted in downloadable files and must remain free and accessible (without any encumbrances or restrictions) by the general public on the website for a period of not less than three years from the initial date of posting.

- (i) Capacity statistics;
- (ii) Message rate and total statistics;
- (iii) System availability;
- (iv) Network delay statistics; and
- (v) Latency statistics for the following, with distribution statistics up to the 99.99th percentile:

(A) When a national securities exchange or national securities association sends an inbound message to a competing consolidator network and when the competing consolidator network receives the inbound message;

(B) When the competing consolidator network receives the inbound message and when the competing consolidator network sends the corresponding consolidated message to a subscriber; and

(C) When a national securities exchange or national securities association sends an inbound message to a competing consolidator network and when the competing consolidator network sends the corresponding consolidated message to a subscriber.

(6) Within 15 calendar days after the end of each month, publish prominently on its website the information in paragraphs (d)(6)(i) through (v) of this section. All information must be publicly posted and must remain free and accessible (without any encumbrances or restrictions) by the general public on the website for a period of not less than three years from the initial date of posting.

- (i) Data quality issues;
- (ii) System issues;
- (iii) Any clock synchronization protocol utilized;
- (iv) For the clocks used to generate the timestamps described in paragraph (d)(4) of this section, the clock drift averages and peaks, and the number of instances of clock drift greater than 100 microseconds; and
- (v) Vendor alerts.

(7) Keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers,

books, notices, accounts, and such other records as shall be made or received by it in the course of its business as such and in the conduct of its business. Competing consolidators shall keep all such documents for a period of no less than five years, the first two years in an easily accessible place.

(8) Upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it.

(9) Each competing consolidator that is not required to comply with the requirements of §§ 242.1000 through 242.1007 regarding systems compliance and integrity (Regulation SCI) shall comply with the following:

(i) *Definitions.* For purposes of this paragraph (d)(9), the following definitions shall apply:

*Systems disruption* means an event in a competing consolidator's systems involved in the collection and consolidation of consolidated market data, and dissemination of consolidated market data products, that disrupts, or significantly degrades, the normal operation of such systems.

*Systems intrusion* means any unauthorized entry into a competing consolidator's systems involved in the collection and consolidation of consolidated market data, and dissemination of consolidated market data products.

(ii) *Obligations relating to policies and procedures.* (A)(1) Establish, maintain, and enforce written policies and procedures reasonably designed to ensure: That its systems involved in the collection and consolidation of consolidated market data, and dissemination of consolidated market data products have levels of capacity, integrity, resiliency, availability, and security adequate to maintain the competing consolidator's operational capability and promote the maintenance of fair and orderly markets; and the prompt, accurate, and reliable dissemination of consolidated market data products.

(2) Such policies and procedures shall be deemed to be reasonably designed if they are consistent with current industry standards, which shall be comprised of information technology practices that are widely available to information technology professionals in the

financial sector and issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. Compliance with such current industry standards, however, shall not be the exclusive means to comply with the requirements of this paragraph (d)(9)(ii)(A);

(B) Periodically review the effectiveness of the policies and procedures required by paragraph (d)(9)(ii)(A) of this section, and take prompt action to remedy deficiencies in such policies and procedures; and

(C) Establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible personnel, the designation and documentation of responsible personnel, and escalation procedures to quickly inform responsible personnel of potential systems disruptions and systems intrusions; and periodically review the effectiveness of the policies and procedures, and take prompt action to remedy deficiencies.

(iii) *Systems disruptions or systems intrusions.* (A) Upon responsible personnel having a reasonable basis to conclude that a systems disruption or systems intrusion has occurred, begin to take appropriate corrective action which shall include, at a minimum, mitigating potential harm to investors and market integrity resulting from the event and devoting adequate resources to remedy the event as soon as reasonably practicable.

(B) Promptly upon responsible personnel having a reasonable basis to conclude that a systems disruption (other than a system disruption that has had, or the competing consolidator reasonably estimates would have, no or a de minimis impact on the competing consolidator's operations or on market participants) has occurred, publicly disseminate information relating to the event (including the system(s) affected and a summary description); when known, promptly publicly disseminate additional information relating to the event (including a detailed description, an assessment of those potentially affected, a description of the progress of corrective action and when

the event has been or is expected to be resolved); and until resolved, provide regular updates with respect to such information.

(C) Concurrent with public dissemination of information relating to a systems disruption pursuant to paragraph (d)(9)(iii)(B) of this section, or promptly upon responsible personnel having a reasonable basis to conclude that a systems intrusion (other than a system intrusion that has had, or the competing consolidator reasonably estimates would have, no or a de minimis impact on the competing consolidator's operations or on market participants) has occurred, provide the Commission notification and, until resolved, updates of such event. Notifications required pursuant to this paragraph (d)(9)(iii)(C) shall include information relating to the event (including the system(s) affected and a summary description); when known, additional information relating to the event (including a detailed description, an assessment of those potentially affected, a description of the progress of corrective action and when the event has been or is expected to be resolved); and until resolved, regular updates with respect to such information. Notifications relating to systems disruptions and systems intrusions pursuant to this paragraph (d)(9)(iii)(C) shall be submitted to the Commission on Form CC.

(iv) *Coordinated testing.* Participate in the industry- or sector-wide coordinated testing of business recovery and disaster recovery plans required of SCI entities pursuant to § 242.1004(c).

(e) *Amendment of the effective national market system plan(s) for NMS stocks.* The participants to the effective national market system plan(s) for NMS stocks shall file with the Commission, pursuant to § 242.608, an amendment that includes the following provisions within 150 calendar days from June 8, 2021:

(1) Conforming the effective national market system plan(s) for NMS stocks to reflect provision of information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market

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data by the national securities exchange and national securities association participants to competing consolidators and self-aggregators;

(2) The application of timestamps by the national securities exchange and national securities association participants on all information with respect to quotations for and transactions in NMS stocks that is necessary to generate consolidated market data, including the time that such information was generated as applicable by the national securities exchange or national securities association and the time the national securities exchange or national securities association made such information available to competing consolidators and self-aggregators;

(3) Assessments of competing consolidator performance, including speed, reliability, and cost of data provision and the provision of an annual report of such assessment to the Commission, and the Commission will make the annual report publicly available on the Commission’s website;

(4) The development, maintenance, and publication of a list that identifies the primary listing exchange for each NMS stock; and

(5) The calculation and publication on a monthly basis of consolidated market data gross revenues for NMS stocks as specified by:

(i) Listed on the New York Stock Exchange (NYSE);

(ii) Listed on Nasdaq; and

(iii) Listed on exchanges other than NYSE or Nasdaq.

[86 FR 18811, Apr. 9, 2021

**REGULATION SE—REGISTRATION AND REGULATION OF SECURITY-BASED SWAP EXECUTION FACILITIES**

SOURCE: 88 FR 87285, Dec. 15, 2023, unless otherwise noted.

**§ 242.800 Scope.**

The provisions of §§242.800 through 242.835 shall apply to every security-based swap execution facility that is registered or is applying to become registered as a security-based swap execution facility under section 3D of the Securities Exchange Act (“Act”).

**§ 242.801 Applicable provisions.**

A security-based swap execution facility shall comply with the requirements of §§242.800 through 242.835 and all other applicable Commission rules, including any related definitions and cross-referenced sections.

**§ 242.802 Definitions.**

The following terms, and any other terms defined within §§242.800 through 242.835, are defined as follows solely for purposes of §§ 242.800 through 242.835:

*Business day* means the intraday period of time starting at 8:15 a.m. and ending at 4:45 p.m. eastern standard time or eastern daylight saving time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC.

*Committee member* means a member, or functional equivalent thereof, of any committee of a security-based swap execution facility.

*Correcting trade* means a trade executed and submitted for clearing to a registered clearing agency with the same terms and conditions as an error trade other than any corrections to any operational or clerical error and the time of execution.

*Disciplinary committee* means any person or committee of persons, or any subcommittee thereof, that is authorized by a security-based swap execution facility or SBS exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the security-based swap execution facility or SBS exchange, except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day’s transactions, or other similar activities.

*Dormant product* means:

(1) Any security-based swap listed on security-based swap execution facility that has no open interest and in which no trading has occurred for a period of 12 complete calendar months following a certification to, or approval by, the Commission; provided, however, that



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no security-based swap initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be a dormant product;

(2) Any security-based swap of a dormant security-based swap execution facility; or

(3) Any security-based swap not otherwise a dormant product that a security-based swap execution facility self-declares through certification to be a dormant product.

*Dormant rule means:*

(1) Any rule of a security-based swap execution facility which remains unimplemented for 12 consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant security-based swap execution facility.

*Dormant security-based swap execution facility* means a security-based swap execution facility on which no trading has occurred for the previous 12 consecutive calendar months; provided, however, that no security-based swap execution facility shall be considered to be a dormant security-based swap execution facility if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

*Electronic trading facility* means a trading facility that operates by means of an electronic or telecommunications network and maintains an automated audit trail of bids, offers, and the matching orders or the execution of transactions on the facility.

*Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a security-based swap execution facility, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of the security-based swap execution facility under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any security-based swaps, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of security-based swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any market participant;

(4) Any action taken by any governmental body, or any other security-based swap execution facility, market, or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of the security-based swap execution facility.

*Employee* means any person hired or otherwise employed on a salaried or contract basis by a security-based swap execution facility, but does not include:

(1) Any governing board member compensated by the security-based swap execution facility solely for governing board activities; or

(2) Any committee member compensated by a security-based swap execution facility solely for committee activities; or

(3) Any consultant hired by a security-based swap execution facility.

*Error trade* means any trade executed on or subject to the rules of a security-based swap execution facility that contains an operational or clerical error.

*Governing board* means the board of directors of a security-based swap execution facility, or for a security-based swap execution facility whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

*Governing board member* means a member, or functional equivalent thereof, of the governing board of a security-based swap execution facility.

*Member*, with respect to a national securities exchange, has the same meaning as in section 3(a)(3) of the Act. *Member*, with respect to a security-based swap execution facility, means an individual, association, partnership, corporation, or trust owning or holding

a membership in, admitted to membership representation on, or having trading privileges on the security-based swap execution facility.

*Non-U.S. member* means a member of a security-based swap execution facility that is not a U.S. person.

*Offsetting trade* means a trade executed and submitted for clearing to a registered clearing agency with terms and conditions that economically reverse an error trade that was accepted for clearing.

*Order book* means an electronic trading facility, a trading facility, or a trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.

*Oversight panel* means any panel, or any subcommittee thereof, authorized by a security-based swap execution facility or security-based swap exchange (“SBS exchange”) to recommend or establish policies or procedures with respect to the surveillance, compliance, rule enforcement, or disciplinary responsibilities of the security-based swap execution facility or SBS exchange.

*Records* has the meaning as in section 3(a)(37) of the Act (15 U.S.C. 78c(a)(37)).

*Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement, or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a security-based swap execution facility or by the governing board thereof or any committee thereof, in whatever form adopted.

*SBS exchange* means a national securities exchange that posts or makes available for trading security-based swaps.

*Security-based swap execution facility* has the same meaning as in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) but does not include an entity that is registered with the Commission as a

clearing agency pursuant to section 17A of the Act (15 U.S.C. 78q-1) and limits its security-based swap execution facility functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations.

*Senior officer* means the chief executive officer or other equivalent officer of a security-based swap execution facility.

*Terms and conditions* means any definition of the trading unit or the specific asset underlying a security-based swap, description of the payments to be exchanged under a security-based swap, specification of cash settlement or delivery standards and procedures, and establishment of buyers’ and sellers’ rights and obligations under the security-based swap. Terms and conditions of a security-based swap include provisions relating to the following:

(1) Identification of the major group, category, type, or class in which the security-based swap falls (such as a credit or equity security-based swap) and of any further sub-group, category, type, or class that further describes the security-based swap;

(2) Notional amounts, quantity standards, or other unit size characteristics;

(3) Any applicable premiums or discounts for delivery of a non-par product;

(4) Trading hours and the listing of security-based swaps;

(5) Pricing basis for establishing the payment obligations under, and market-to-market value of, the security-based swap including, as applicable, the accrual start dates, termination, or maturity dates, and, for each leg of the security-based swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Payment and reset frequency, day count conventions, business calendars, and accrual features;

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(8) If physical delivery applies, delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery, and applicable penalties or sanctions for failure to perform;

(9) If cash-settled, the definition, composition, calculation, and revision of the cash settlement price, and the settlement currency;

(10) Payment or collection of option premiums or margins;

(11) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(12) Threshold prices for an option, the existence of which is contingent upon those prices;

(13) Any restrictions or requirements for exercising an option; and

(14) Life cycle events.

*Trading facility*—(1) *In general.* The term *trading facility* means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions:

(i) By accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) Through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(2) *Exclusions.* (i) The term *trading facility* does not include:

(A) A person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(B) A government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering

into, executing, or trading an agreement, contract, or transaction in government securities (as the terms *government securities dealer*, *government securities broker*, and *government securities* are defined in section 3(a) of the Act); or

(C) A facility on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

(ii) Any person, group of persons, dealer, broker, or facility described in paragraphs (2)(i)(A) through (C) of this definition of trading facility is excluded from the meaning of the term “trading facility” without any prior specific approval, certification, or other action by the Commission.

(3) *Special rule.* A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a registered clearing agency of transactions executed on or through the person or group of persons.

*U.S. person* has the same meaning as in § 240.3a71-3(a)(4) of this chapter.

NOTE 1 TO § 242.802: The Commission has not yet adopted a definition of “block trade.”

### § 242.803 Requirements and procedures for registration.

(a) *Requirements for registration.* (1) Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade security-based swaps with more than one other market participant on the system or platform shall register the facility as a security-based swap execution facility under this section or as a national securities exchange pursuant to section 6 of the Act.

(2) A security-based swap execution facility shall, at a minimum, offer an order book.

(3) A security-based swap execution facility is not required to provide an order book under this section for transactions defined in § 242.815(d)(2), (3), and (4) except that a security-based swap execution facility must provide an order book under this section for Required Transactions that are components of transactions defined in

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§ 242.815(d)(2), (3), and (4) when such Required Transactions are not executed as components of transactions defined in § 242.815(d)(2), (3), and (4).

(b) *Procedures for full registration*—(1) *Request to register.* An entity requesting registration as a security-based swap execution facility shall:

(i) File electronically a complete Form SBSEF (referenced in § 249.1701), or any successor forms, and all information and documentation described in such forms with the Commission using the EDGAR system and, for the information specified in the Registration Instructions to Form SBSEF, as an Interactive Data File in accordance with § 232.405 of this chapter; and

(ii) Provide to the Commission, upon the Commission’s request, any additional information and documentation necessary to review an application.

(2) *Request for confidential treatment.*

(i) An applicant requesting registration as a security-based swap execution facility shall identify with particularity any information in the application that will be subject to a request for confidential treatment pursuant to § 240.24b-2 of this chapter.

(ii) As set forth in § 242.808, certain information provided in an application shall be made publicly available.

(3) *Amendment of application prior to full registration.* An applicant amending a pending application for registration as a security-based swap execution facility or requesting an amendment to an order of registration shall file an amended application electronically with the Commission using the EDGAR system and, for the information specified in the Registration Instructions to Form SBSEF, as an Interactive Data File in accordance with § 232.405 of this chapter.

(4) *Effect of incomplete application.* If an application is incomplete pursuant to paragraph (b)(1) of this section, the Commission shall notify the applicant that its application will not be deemed to have been submitted for purposes of the Commission’s review.

(5) *Commission review period.* The Commission shall approve or deny an application for registration as a security-based swap execution facility within 180 days of the filing of the application. If the Commission notifies

the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form, *provided* that the Commission shall have not less than 60 days to approve or deny the application from the time the application is resubmitted in completed form.

(6) *Commission determination.* (i) The Commission shall issue an order granting registration upon a Commission determination, in its own discretion, that the applicant has demonstrated compliance with the Act and the Commission’s rules applicable to security-based swap execution facilities. If deemed appropriate, the Commission may issue an order granting registration subject to conditions.

(ii) The Commission may issue an order denying registration upon a Commission determination, in its own discretion, that the applicant has not demonstrated compliance with the Act and the Commission’s rules applicable to security-based swap execution facilities. If the Commission denies an application, it shall specify the grounds for the denial.

(c) *Reinstatement of dormant registration.* A dormant security-based swap execution facility may reinstate its registration under the procedures of paragraph (b) of this section. The applicant may rely upon previously submitted materials if such materials accurately describe the dormant security-based swap execution facility’s conditions at the time that it applies for reinstatement of its registration.

(d) *Request for transfer of registration.* (1) A security-based swap execution facility seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Commission in the form and manner specified by the Commission.

(2) A request for transfer of registration shall be filed no later than three months prior to the anticipated corporate change; or in the event that the security-based swap execution facility could not have known of the anticipated change three months prior to the

anticipated change, as soon as it knows of such change.

(3) The request for transfer of registration shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A description of the corporate change, including the reason for the change and its impact on the security-based swap execution facility, including its governance and operations, and its impact on the rights and obligations of members;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to security-based swap execution facilities and the Commission's rules thereunder;

(iv) The governing documents of the transferee, including, but not limited to, articles of incorporation and by-laws;

(v) The transferee's rules marked to show changes from the current rules of the security-based swap execution facility;

(vi) A representation by the transferee that it:

(A) Will be the surviving entity and successor-in-interest to the transferor security-based swap execution facility and will retain and assume, without limitation, all of the assets and liabilities of the transferor;

(B) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's rules thereunder;

(C) Will assume, maintain, and enforce all rules implementing and complying with the core principles applicable to security-based swap execution facilities, including the adoption of the transferor's rulebook, as amended in the request, and that any such amendments will be submitted to the Commission pursuant to § 242.806 or § 242.807;

(D) Will comply with all regulatory responsibilities except if otherwise indicated in the request, and will maintain and enforce all regulatory programs; and

(E) Will notify members of all changes to the transferor's rulebook prior to the transfer and will further notify members of the concurrent transfer of the registration to the transferee upon Commission approval

and issuance of an order permitting this transfer.

(vi) A representation by the transferee that upon the transfer:

(A) It will assume responsibility for and maintain compliance with core principles for all security-based swaps previously made available for trading through the transferor, whether by certification or approval; and

(B) None of the proposed rule changes will affect the rights and obligations of any member.

(4) Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request.

(e) *Request for withdrawal of application for registration.* An applicant for registration as a security-based swap execution facility may withdraw its application submitted pursuant to paragraph (b) of this section by filing a withdrawal request electronically with the Commission using the EDGAR system. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application was pending with the Commission.

(f) *Request for vacation of registration.* A security-based swap execution facility may request that its registration be vacated by filing a vacation request electronically with the Commission using the EDGAR system at least 90 days prior to the date that the vacation is requested to take effect. Upon receipt of such request, the Commission shall promptly order the vacation to be effective upon the date named in the request and send a copy of the request and its order to all other security-based swap execution facilities, SBS exchanges, and registered clearing agencies that clear security-based swaps. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the security-based swap execution facility was registered by the Commission. From and after the date upon which the vacation became effective the said security-based swap execution facility can thereafter be

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registered again by applying to the Commission in the manner provided in paragraph (b) of this section for an original application.

**§ 242.804 Listing products for trading by certification.**

(a) *General.* A security-based swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 242.805 or that remains a dormant product subsequent to being submitted under this section or approved under § 242.805. A submission shall comply with the following conditions:

(1) The security-based swap execution facility has filed its submission electronically with the Commission using the EFFS system;

(2) The Commission has received the submission by the open of business on the business day that is 10 business days preceding the product's listing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions therein;

(ii) A copy of the product's rules, including all rules related to its terms and conditions;

(iii) The intended listing date;

(iv) A certification by the security-based swap execution facility that the product to be listed complies with the Act and the Commission's rules thereunder;

(v) A concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's rules thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(vi) A certification that the security-based swap execution facility posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the

security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution's website but must be republished consistent with any determination made pursuant to § 240.24b-2 of this chapter; and

(vii) A request for confidential treatment, if appropriate, as permitted under § 240.24b-2 of this chapter.

(b) *Additional information.* If requested by Commission staff, a security-based swap execution facility shall provide any additional evidence, information, or data that demonstrates that the security-based swap meets, initially or on a continuing basis, the requirements of the Act or the Commission's rules or policies thereunder.

(c) *Stay of certification of product—(1) General.* The Commission may stay the certification of a product submitted pursuant to paragraph (a) of this section by issuing a notification informing the security-based swap execution facility that the Commission is staying the certification of the product on the grounds that the product presents novel or complex issues that require additional time to analyze, the product is accompanied by an inadequate explanation, or the product is potentially inconsistent with the Act or the Commission's rules thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the stay is in effect, as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission's website. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of product.* A product subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section, unless the Commission withdraws the stay prior to that time, or the Commission notifies the security-based swap execution facility during the 90-day time period

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that it objects to the proposed certification on the grounds that the product is inconsistent with the Act or the Commission's rules.

### § 242.805 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A security-based swap execution facility may request that the Commission approve a new or dormant product prior to listing the product for trading, or if a product was initially submitted under § 242.804, subsequent to listing the product for trading. A submission requesting approval shall:

(1) Be filed electronically with the Commission using the EFFF system;

(2) Include a copy of the submission cover sheet in accordance with the instructions therein;

(3) Include a copy of the rules that set forth the security-based swap's terms and conditions;

(4) Include an explanation and analysis of the product and its compliance with applicable provisions of the Act, including the core principles and the Commission's rules thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(5) Describe any agreements or contracts entered into with other parties that enable the security-based swap execution facility to carry out its responsibilities;

(6) Include, if appropriate, a request for confidential treatment as permitted under § 240.24b-2 of this chapter;

(7) Certify that the security-based swap execution facility posted a notice of its request for Commission approval of the new product and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility's website but must be republished consistent with any determina-

tion made pursuant to § 240.24b-2 of this chapter; and

(8) Include, if requested by Commission staff, additional evidence, information, or data demonstrating that the security-based swap meets, initially or on a continuing basis, the requirements of the Act, or other requirement for registration under the Act, or the Commission's rules or policies thereunder. The security-based swap execution facility shall submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff, or at the conclusion of such extended period agreed to by Commission staff after timely receipt of a written request from the security-based swap execution facility.

(b) *Standard for review and approval.* The Commission shall approve a new product unless the terms and conditions of the product violate the Act or the Commission's rules thereunder.

(c) *Forty-five-day review.* A product submitted for Commission approval under this paragraph shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under paragraph (d) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting security-based swap execution facility does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering, or other non-substantive revisions, during that period. Any voluntary, substantive amendment by the security-based swap execution facility will be treated as a new submission under this section.

(d) *Extension of time.* The Commission may extend the 45-day review period in paragraph (c) of this section for:

(1) An additional 45 days, if the product raises novel or complex issues that require additional time to analyze, in which case the Commission shall notify the security-based swap execution facility within the initial 45-day review period and shall briefly describe the

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nature of the specific issue(s) for which additional time for review is required; or

(2) Any extended review period to which the security-based swap execution facility agrees in writing.

(e) *Notice of non-approval.* The Commission, at any time during its review under this section, may notify the security-based swap execution facility that it will not, or is unable to, approve the product. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's rules thereunder, including the form or content requirements of paragraph (a) of this section, that the product violates, appears to violate, or potentially violates but which cannot be ascertained from the submission.

(f) *Effect of non-approval.* (1) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's determination not to approve a product does not prejudice the security-based swap execution facility from subsequently submitting a revised version of the product for Commission approval, or from submitting the product as initially proposed pursuant to a supplemented submission.

(2) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the security-based swap execution facility may not truthfully certify under § 242.804 that the same, or substantially the same, product does not violate the Act or the Commission's rules thereunder.

**§ 242.806 Voluntary submission of rules for Commission review and approval.**

(a) *Request for approval of rules.* A security-based swap execution facility may request that the Commission approve a new rule, rule amendment, or dormant rule prior to implementation of the rule, or if the request was initially submitted under § 242.806 or § 242.807, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically with the Commission using the EFFF system;

(2) Include a copy of the submission cover sheet in accordance with the instructions therein;

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the security-based swap execution facility or by its governing board or by any committee thereof, and cite the rules of the security-based swap execution facility that authorize the adoption of the proposed rule;

(5) Provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including the core principles relating to security-based swap execution facilities and the Commission's rules thereunder and, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the security-based swap execution facility's framework of regulation;

(6) Certify that the security-based swap execution facility posted a notice of the pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility's website but must be republished consistent with any determination made pursuant to § 240.24b-2 of this chapter;

(7) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the security-based swap execution facility, the pertinent text of any such rule must be set forth and the anticipated effect described;



(8) Provide a brief explanation of any substantive opposing views expressed to the security-based swap execution facility by governing board or committee members, members of the security-based swap execution facility, or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed; and

(9) As appropriate, include a request for confidential treatment as permitted under § 240.24b-2 of this chapter.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's rules thereunder.

(c) *Forty-five-day review.* A rule or rule amendment submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the security-based swap execution facility is notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section;

(2) The security-based swap execution facility does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period, other than for correction of typographical errors, renumbering, or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(d) *Extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for:

(1) An additional 45 days, if the proposed rule or rule amendment raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting security-based

swap execution facility within the initial 45-day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in paragraph (d)(1) of this section, to which the security-based swap execution facility agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the security-based swap execution facility that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's rules thereunder, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's rules thereunder.

(f) *Effect of non-approval.* (1) Notification to a security-based swap execution facility under paragraph (e) of this section does not prevent the security-based swap execution facility from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission. The revised submission will be reviewed without prejudice.

(2) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment shall be presumptive evidence that the security-based swap execution facility may not truthfully certify the same, or substantially the same, proposed rule or rule amendment under § 242.807(a).

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and the Commission's rules thereunder, may be approved by the Commission at such time and

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under such conditions as the Commission shall specify in the written notification; provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

**§ 242.807 Self-certification of rules.**

(a) *Required certification.* A security-based swap execution facility shall comply with the following conditions prior to implementing any rule—other than a rule delisting or withdrawing the certification of a product with no open interest and submitted in compliance with paragraphs (a)(1), (2), and (6) of this section—that has not obtained Commission approval under § 242.806, or that remains a dormant rule subsequent to being submitted under this section or approved under § 242.806.

(1) The security-based swap execution facility has filed its submission electronically with the Commission using the EFFF system.

(2) The security-based swap execution facility has provided a certification that it posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility’s website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility’s website, but it must be republished consistent with any determination made pursuant to § 240.24b-2 of this chapter.

(3) The Commission has received the submission not later than the open of business on the business day that is 10 business days prior to the security-based swap execution facility’s implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 242.807(c).

(5) A new rule or rule amendment that establishes standards for responding to an emergency shall be submitted pursuant to § 242.807(a). A rule or rule amendment implemented under procedures of the governing board to respond to an emergency shall, if practicable, be filed with the Commission prior to

implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation. Any such submission shall be subject to the certification and stay provisions of paragraphs (b) and (c) of this section.

(6) The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions therein (in the case of a rule or rule amendment that responds to an emergency, “Emergency Rule Certification” should be noted in the description section of the submission cover sheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the security-based swap execution facility that the rule complies with the Act and the Commission’s rules thereunder;

(v) A concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles relating to security-based swap execution facilities and the Commission’s rules thereunder;

(vi) A brief explanation of any substantive opposing views expressed to the security-based swap execution facility by governing board or committee members, members of the security-based swap execution facility, or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed; and

(vii) As appropriate, a request for confidential treatment pursuant to the procedures provided in § 240.24b-2 of this chapter.

(7) The security-based swap execution facility shall provide, if requested by Commission staff, additional evidence, information, or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the security-based swap execution facility’s compliance with any of the requirements of the Act or the Commission’s rules or policies thereunder.

(b) *Review by the Commission.* The Commission shall have 10 business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the security-based swap execution facility during the 10-business-day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay*—(1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the security-based swap execution facility that the Commission is staying the certification of the rule or rule amendment on the grounds that the rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule or rule amendment is accompanied by an inadequate explanation, or the rule or rule amendment is potentially inconsistent with the Act or the Commission's rules thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the stay is in effect, as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission website. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section, unless the Commission withdraws the stay prior to that time, or the Commission notifies the security-based swap execution facility during the 90-day time period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's rules thereunder.

(d) *Notification of rule amendments.* Notwithstanding the rule certification requirement of paragraph (a) of this section, a security-based swap execution facility may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The security-based swap execution facility provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled "Weekly Notification of Rule Amendments" and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically using the EDFS system; and

(2) The rule governs:

(i) *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about the security-based swap execution facility, and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(A) Total \$1.00 or more per contract, and

(B) Are established by an independent third party or are unrelated to delivery, trading, clearing, or dispute resolution.

(iii) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms;

(iv) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(v) *Trading months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to paragraph (d)(3)(ii)(F) of this section, within the currently established cycle of trading months; or

(vi) *Minimum tick.* Reductions in the minimum price fluctuation (or "tick").

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(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of paragraph (a) of this section, a security-based swap execution facility may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The security-based swap execution facility maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale, or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership, or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a security-based swap execution facility's governing bodies such as a governing board, officers, and committees, but not voting requirements, governing board, or committee composition requirements or procedures, decision-making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C) *Administration.* The routine daily administration, direction, and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays; and changes to facilities housing the market, trading floor, or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules;

(E) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(1) Are less than \$1.00; or

(2) Relate to matters such as dues, badges, telecommunication services, booth space, real-time quotations, historical information, publications, software licenses, or other matters that are administrative in nature; and

(F) *Trading months.* The initial listing of trading months which are within the currently established cycle of trading months.

**§ 242.808 Availability of public information.**

(a) The Commission shall make publicly available on its website the following parts of an application to register as a security-based swap execution facility, unless confidential treatment is obtained pursuant to § 240.24b-2 of this chapter:

(1) Transmittal letter and first page of the application cover sheet;

(2) Exhibit C;

(3) Exhibit G;

(4) Exhibit L; and

(5) Exhibit M.

(b) The Commission shall make publicly available on its website, unless confidential treatment is obtained pursuant to § 240.24b-2 of this chapter, a security-based swap execution facility's filing of new products pursuant to the self-certification procedures of § 242.804, new products for Commission review and approval pursuant to § 242.805, new rules and rule amendments for Commission review and approval pursuant to § 242.806, and new rules and rule amendments pursuant to the self-certification procedures of § 242.807.

(c) The terms and conditions of a product submitted to the Commission pursuant to § 242.804, § 242.805, § 242.806, or § 242.807 shall be made publicly available at the time of submission unless confidential treatment is obtained pursuant to § 240.24b-2 of this chapter.

**§ 242.809 Staying of certification and tolling of review period pending jurisdictional determination.**

(a) A product certification made by a security-based swap execution facility pursuant to § 242.804 shall be stayed, or the review period for a product that has been submitted for Commission approval by a security-based swap execution facility pursuant to § 242.805 shall be tolled, upon request for a joint interpretation of whether the product is a swap, security-based swap, or mixed swap made pursuant to § 240.3a68-2 of this chapter by the security-based swap execution facility, the Commission, or

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the Commodity Futures Trading Commission.

(b) The Commission shall provide the security-based swap execution facility with a written notice of the stay or tolling pending issuance of a joint interpretation.

(c) The stay shall be withdrawn, or the approval review period shall resume, if a joint interpretation finding that the Commission has jurisdiction over the product is issued.

### **§ 242.810 Product filings by security-based swap execution facilities that are not yet registered and by dormant security-based swap execution facilities.**

(a) An applicant for registration as a security-based swap execution facility may submit a security-based swap's terms and conditions prior to listing the product as part of its application for registration.

(b) Any security-based swap terms and conditions or rules submitted as part of a security-based swap execution facility's application for registration shall be considered for approval by the Commission at the time the Commission issues the security-based swap execution facility's order of registration.

(c) After the Commission issues the order of registration, the security-based swap execution facility shall submit a security-based swap's terms and conditions, including amendments to such terms and conditions, new rules, or rule amendments pursuant to the procedures in §§ 242.804, 242.805, 242.806, and 242.807.

(d) Any security-based swap terms and conditions or rules submitted as part of an application to reinstate the registration of a dormant security-based swap execution facility shall be considered for approval by the Commission at the time the Commission approves the reinstatement of registration of the dormant security-based swap execution facility.

### **§ 242.811 Information relating to security-based swap execution facility compliance.**

(a) *Request for information.* Upon the Commission's request, a security-based swap execution facility shall file with the Commission information related to

its business as a security-based swap execution facility in the form and manner, and within the timeframe, specified by the Commission.

(b) *Demonstration of compliance.* Upon the Commission's request, a security-based swap execution facility shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with one or more core principles or with its other obligations under the Act or the Commission's rules thereunder, as the Commission specifies in its request. The security-based swap execution facility shall file such written demonstration in the form and manner, and within the timeframe, specified by the Commission.

(c) *Equity interest transfer—(1) Equity interest transfer notification.* A security-based swap execution facility shall file with the Commission a notification of any transaction involving the direct or indirect transfer of 50 percent or more of the equity interest in the security-based swap execution facility. The Commission may, upon receiving such notification, request supporting documentation of the transaction.

(2) *Timing of notification.* The equity interest transfer notice described in paragraph (c)(1) of this section shall be filed with the Commission in a form and manner specified by the Commission at the earliest possible time, but in no event later than the open of business 10 business days following the date upon which the security-based swap execution facility enters into a firm obligation to transfer the equity interest.

(3) *Rule filing.* Notwithstanding the foregoing, if any aspect of an equity interest transfer described in paragraph (c)(1) of this section requires a security-based swap execution facility to file a rule, the security-based swap execution facility shall comply with the applicable rule filing requirements of § 242.806 or § 242.807.

(4) *Certification.* Upon an equity interest transfer described in paragraph (c)(1) of this section, the security-based swap execution facility shall file with the Commission, in a form and manner specified by the Commission, a certification that the security-based swap

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execution facility meets all of the requirements of section 3D of the Act and the Commission rules thereunder, no later than two business days following the date on which the equity interest of 50 percent or more was acquired.

(d) *Pending legal proceedings.* (1) A security-based swap execution facility shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the security-based swap execution facility is a party or its property or assets is subject.

(2) A security-based swap execution facility shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any officer, director, or other official of the security-based swap execution facility from conduct in such person's capacity as an official of the security-based swap execution facility and alleging violations of:

(i) The Act or any rule, regulation, or order under the Act;

(ii) The constitution, bylaws, or rules of the security-based swap execution facility; or

(iii) The applicable provisions of State law relating to the duties of officers, directors, or other officials of business organizations.

(3) All documents required by this paragraph (d) to be submitted to the Commission shall be submitted electronically in a form and manner specified by the Commission within 10 days after the initiation of the legal proceedings to which they relate, after the date of issuance, or after receipt by the security-based swap execution facility of the notice of appeal, as the case may be.

(4) For purposes of this paragraph (d), a "material legal proceeding" includes but is not limited to actions involving alleged violations of the Act or the Commission rules thereunder. However, a legal proceeding is not "mate-

rial" for the purposes of this rule if the proceeding is not in a Federal or State court or if the Commission is a party.

**§ 242.812 Enforceability.**

(a) A transaction entered into on or pursuant to the rules of a security-based swap execution facility shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of a violation by the security-based swap execution facility of the provisions of section 3D of the Act or the Commission's rules thereunder.

(b) A security-based swap execution facility shall, as soon as technologically practicable after the time of execution of a transaction entered into on or pursuant to the rules of the facility, provide a written record to each counterparty of all of the terms of the transaction that were agreed to on the facility, which shall legally supersede any previous agreement regarding such terms.

**§ 242.813 Prohibited use of data collected for regulatory purposes.**

A security-based swap execution facility shall not use for business or marketing purposes any proprietary data or personal information it collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations; provided, however, that a security-based swap execution facility may use such data or information for business or marketing purposes if the person from whom it collects or receives such data or information clearly consents to the security-based swap execution facility's use of such data or information in such manner. A security-based swap execution facility shall not condition access to its market(s) or market services on a person's consent to the security-based swap execution facility's use of proprietary data or personal information for business or marketing purposes. A security-based swap execution facility, where necessary for regulatory purposes, may share such data or information with one or more security-based swap execution facilities or national securities exchanges registered with the Commission.

**§ 242.814 Entity operating both a national securities exchange and security-based swap execution facility.**

(a) An entity that intends to operate both a national securities exchange and a security-based swap execution facility shall separately register the two facilities pursuant to section 6 of the Act and § 242.803, respectively.

(b) A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

**§ 242.815 Methods of execution for Required and Permitted Transactions.**

(a) *Execution methods for Required Transactions*—(1) *Required Transaction* means any transaction involving a security-based swap that is subject to the trade execution requirement in section 3C(h) of the Act.

(2) *Execution methods*. (i) Each Required Transaction that is not a block trade shall be executed on a security-based swap execution facility in accordance with one of the following methods of execution, except as provided in paragraph (d) or (e) of this section:

(A) An order book; or

(B) A request-for-quote system that operates in conjunction with an order book.

(ii) In providing either one of the execution methods set forth in paragraph (a)(2)(i)(A) or (B) of this section, a security-based swap execution facility may for purposes of execution and communication use any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone, provided that the chosen execution method satisfies the requirements for order books in § 242.802 of this chapter or in paragraph (a)(3) of this section for request-for-quote systems.

(3) *Request-for-quote system* means a trading system or platform in which a

market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond. The three market participants shall not be affiliates of or controlled by the requester and shall not be affiliates of or controlled by each other. A security-based swap execution facility that offers a request-for-quote system in connection with Required Transactions shall provide the following functionality:

(i) At the same time that the requester receives the first responsive bid or offer, the security-based swap execution facility shall communicate to the requester any firm bid or offer pertaining to the same instrument resting on any of the security-based swap execution facility's order books;

(ii) The security-based swap execution facility shall provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders; and

(iii) The security-based swap execution facility shall ensure that its trading protocols provide each of its market participants with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

(b) *Time delay requirement for Required Transactions on an order book*—(1) *Time delay requirement*. With regard to Required Transactions, a security-based swap execution facility shall require that a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the security-based swap execution facility's order book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15-second time delay between the entry of those two orders into the order book, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for a second customer, is submitted for execution.

(2) *Adjustment of time delay requirement*. A security-based swap execution facility may adjust the time period of

the 15-second time delay requirement described in paragraph (b)(1) of this section, based upon a security-based swap's liquidity or other product-specific considerations; however, the time delay shall be set for a sufficient period of time so that an order is exposed to the market and other market participants have a meaningful opportunity to execute against such order.

(c) *Execution methods for Permitted Transactions.* (1) *Permitted Transaction* means any transaction not involving a security-based swap that is subject to the trade execution requirement in section 3C(h) of the Act.

(2) *Execution methods.* A security-based swap execution facility may offer any method of execution for each Permitted Transaction.

(d) *Exceptions to required methods of execution for package transactions.* (1) For purposes of this paragraph, a package transaction consists of two or more component transactions executed between two or more counterparties where:

(i) At least one component transaction is a Required Transaction;

(ii) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(iii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

(2) A Required Transaction that is executed as a component of a package transaction that includes a component security-based swap that is subject exclusively to the Commission's jurisdiction, but is not subject to the clearing requirement under section 3C of the Act and is not intended to be cleared, may be executed on a security-based swap execution facility in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction;

(3) A Required Transaction that is executed as a component of a package transaction that includes a component that is not a security-based swap may be executed on a security-based swap execution facility in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction. This provision shall not apply to:

(i) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are U.S. Treasury securities;

(ii) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are contracts for the purchase or sale of a commodity for future delivery;

(iii) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are agency mortgage-backed securities;

(iv) A Required Transaction that is executed as a component of a package transaction that includes a component transaction that is the issuance of a bond in a primary market; and

(v) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are swaps that are subject to a trade execution requirement under 17 CFR 37.9.

(4) A Required Transaction that is executed as a component of a package transaction that includes a component security-based swap that is not exclusively subject to the Commission's jurisdiction may be executed on a security-based swap in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction.

(e) *Resolution of operational and clerical error trades.* (1) A security-based swap execution facility shall maintain rules and procedures that facilitate the resolution of error trades. Such rules shall be fair, transparent, and consistent; allow for timely resolution; require members to provide prompt notice of an error trade—and, as applicable, offsetting and correcting trades—to the security-based swap execution facility; and permit members to:

(i) Execute a correcting trade, in accordance with paragraph (c)(2) of this section, regardless of whether it is a Required or Permitted Transaction, for an error trade that has been rejected from clearing as soon as technologically practicable, but no later than one hour after a registered clearing agency provides notice of the rejection; or



(ii) Execute an offsetting trade and a correcting trade, in accordance with paragraph (c)(2) of this section, regardless of whether it is a Required or Permitted Transaction, for an error trade that was accepted for clearing as soon as technologically practicable, but no later than three days after the error trade was accepted for clearing at a registered clearing agency.

(2) If a correcting trade is rejected from clearing, then the security-based swap execution facility shall not allow the counterparties to execute another correcting trade.

(f) *Counterparty anonymity.* (1) Except as otherwise required under the Act or the Commission's rules thereunder, a security-based swap execution facility shall not directly or indirectly, including through a third-party service provider, disclose the identity of a counterparty to a security-based swap that is executed anonymously and intended to be cleared.

(2) A security-based swap execution facility shall establish and enforce rules that prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a security-based swap that is executed anonymously and intended to be cleared.

(3) For purposes of paragraphs (f)(1) and (2) of this section, "executed anonymously" shall include a security-based swap that is pre-arranged or pre-negotiated anonymously, including by a member of the security-based swap execution facility.

(4) For a package transaction that includes a component transaction that is not a security-based swap intended to be cleared, disclosing the identity of a counterparty shall not violate paragraphs (f)(1) or (2) of this section. For purposes of this paragraph (f), a "package transaction" consists of two or more component transactions executed between two or more counterparties where:

(i) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(ii) The component transactions are priced or quoted together as one economic transaction with simultaneous

or near-simultaneous execution of all components.

(g) *Transactions not accepted for clearing.* A security-based swap execution facility shall establish and enforce rules that provide that a security-based swap that is intended to be cleared at the time of the transaction, but is not accepted for clearing at a registered clearing agency, shall be void *ab initio*.

**§ 242.816 Trade execution requirement and exemptions therefrom.**

(a) *General—(1) Required submission.* A security-based swap execution facility that makes a security-based swap available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such security-based swap as a rule, pursuant to the procedures under § 242.806 or § 242.807.

(2) *Listing requirement.* A security-based swap execution facility that makes a security-based swap available to trade must demonstrate that it lists or offers that security-based swap for trading on its trading system or platform.

(b) *Factors to consider.* To make a security-based swap available to trade for purposes of section 3C(h) of the Act, a security-based swap execution facility shall consider, as appropriate, the following factors with respect to such security-based swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions;

(3) The trading volume;

(4) The number and types of market participants;

(5) The bid/ask spread; or

(6) The usual number of resting firm or indicative bids and offers.

(c) *Applicability.* Upon a determination that a security-based swap is available to trade on a security-based swap execution facility or national securities exchange, all other security-based swap execution facilities and SBS exchanges shall comply with the requirements of section 3C(h) of the Act in listing or offering such security-based swap for trading.

(d) *Removal.* The Commission may issue a determination that a security-

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based swap is no longer available to trade upon determining that no security-based swap execution facility or SBS exchange lists such security-based swap for trading.

(e) *Exemptions to trade execution requirement.* (1) A security-based swap transaction that is executed as a component of a package transaction that also includes a component transaction that is the issuance of a bond in a primary market is exempt from the trade execution requirement in section 3C(h) of the Act. For purposes of paragraph (e) of this section, a package transaction consists of two or more component transactions executed between two or more counterparties where:

(i) At least one component transaction is subject to the trade execution requirement in section 3C(h) of the Act;

(ii) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(iii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

(2) Section 3C(h) of the Act does not apply to a security-based swap transaction that qualifies for an exception under section 3C(g) of the Act, or any exemption from the clearing requirement that is granted by the Commission, for which the associated requirements are met.

(3)(i) Section 3C(h) of the Act does not apply to a security-based swap transaction that is executed between counterparties that qualify as “eligible affiliate counterparties,” as defined below.

(ii) For purposes of this paragraph (e)(3), counterparties will be “eligible affiliate counterparties” if:

(A) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial re-

sults of the majority-owned counterparty; or

(B) A third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the counterparties.

(iii) For purposes of this paragraph (e)(3), a counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

**§ 242.817 Trade execution compliance schedule.**

(a) A security-based swap transaction shall be subject to the requirements of section 3C(h) of the Act upon the later of:

(1) A determination by the Commission that the security-based swap is required to be cleared as set forth in section 3C(a) or any later compliance date that the Commission may establish as a term or condition of such determination or following a stay and review of such determination pursuant to section 3C(c) of the Act and § 240.3Ca-1 of this chapter thereunder; and

(2) Thirty days after the available-to-trade determination submission or certification for that security-based swap is, respectively, deemed approved under § 242.806 or deemed certified under § 242.807.

(b) Nothing in this section shall prohibit any counterparty from complying voluntarily with the requirements of section 3C(h) of the Act sooner than as provided in paragraph (a) of this section.

**§ 242.818 Core Principle 1—Compliance with core principles.**

(a) *In general.* To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall

comply with the core principles described in section 3D of the Act, and any requirement that the Commission may impose by rule or regulation.

(b) *Reasonable discretion of security-based swap execution facility.* Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in paragraph (a) of this section shall have reasonable discretion in establishing the manner in which it complies with the core principles described in section 3D of the Act.

**§ 242.819 Core Principle 2—Compliance with rules.**

(a) *General.* A security-based swap execution facility shall:

(1) Establish and enforce compliance with any rule established by such security-based swap execution facility, including the terms and conditions of the security-based swaps traded or processed on or through the facility, and any limitation on access to the facility;

(2) Establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred; and

(3) Establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility.

(b) *Operation of security-based swap execution facility and compliance with rules.* (1) A security-based swap execution facility shall establish rules governing the operation of the security-based swap execution facility, including, but not limited to, rules specifying trading procedures to be followed by members when entering and executing orders traded or posted on the security-based swap execution facility.

(2) A security-based swap execution facility shall establish and impartially enforce compliance with the rules of the security-based swap execution facility, including, but not limited to:

(i) The terms and conditions of any security-based swaps traded or processed on or through the security-based swap execution facility;

(ii) Access to the security-based swap execution facility;

(iii) Trade practice rules;

(iv) Audit trail requirements;

(v) Disciplinary rules; and

(vi) Mandatory trading requirements.

(c) *Access requirements—(1) Impartial access to markets and market services.* A security-based swap execution facility shall provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays, provided that the facility has:

(i) Criteria governing such access that are impartial, transparent, and applied in a fair and non-discriminatory manner;

(ii) Procedures whereby eligible contract participants provide the security-based swap execution facility with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission rules thereunder, prior to obtaining access; and

(iii) Comparable fee structures for eligible contract participants and independent software vendors receiving comparable access to, or services from, the security-based swap execution facility.

(2) *Jurisdiction.* Prior to granting any eligible contract participant access to its facilities, a security-based swap execution facility shall require that the eligible contract participant consent to its jurisdiction.

(3) *Limitations on access.* A security-based swap execution facility shall establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar an eligible contract participant's access to the security-based swap execution facility, including when a decision is made as part of a disciplinary or emergency action taken by the security-based swap execution facility.

(4) *Commission review with respect to a denial or limitation of access to any service or a denial or conditioning of membership—(i) In general.* An application for

review by the Commission may be filed by any person who is aggrieved by a determination of a security-based swap execution facility with respect to any final action with respect to a denial or limitation of access to any service offered by the security-based swap execution facility or any final action with respect to a denial or conditioning of membership, as defined in § 242.835(b)(2) of this chapter (Rule 835(b)(2)), in accordance with § 201.442 of this chapter (Rule of Practice 442).

(ii) *Standard to govern Commission review.* In reviewing such a determination, if the Commission finds that the specific grounds on which such denial, limitation, or conditioning is based exist in fact, that such denial, limitation, or conditioning is in accordance with the rules of the security-based swap execution facility, and that such rules are, and were applied in a manner, consistent with the purposes of the Exchange Act, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding or if it finds that such denial, limitation, or conditioning imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, the Commission, by order, shall set aside the action of the security-based swap execution facility and require it to admit such person to membership or participation or grant such person access to services offered by the security-based swap execution facility.

(d) *Rule enforcement program.* A security-based swap execution facility shall establish and enforce trading, trade processing, and participation rules that will deter abuses and it shall have the capacity to detect, investigate, and enforce those rules.

(1) *Abusive trading practices prohibited.* A security-based swap execution facility shall prohibit abusive trading practices on its markets by members. A security-based swap execution facility that permits intermediation shall prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that shall be prohibited include front-running, wash

trading, pre-arranged trading (except for transactions approved by or certified to the Commission pursuant to § 242.806 or § 242.807, respectively), fraudulent trading, money passes, and any other trading practices that a security-based swap execution facility deems to be abusive. A security-based swap execution facility shall also prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation.

(2) *Capacity to detect and investigate rule violations.* A security-based swap execution facility shall have arrangements and resources for effective enforcement of its rules. Such arrangements shall include the authority to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the security-based swap execution facility's members and by persons under investigation. A security-based swap execution facility's arrangements and resources shall also facilitate the direct supervision of the market and the analysis of data collected to determine whether a rule violation has occurred.

(3) *Compliance staff and resources.* A security-based swap execution facility shall establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. The security-based swap execution facility's compliance staff shall also be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in paragraph (d)(6) of this section.

(4) *Automated trade surveillance system.* A security-based swap execution facility shall maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated trade surveillance system shall load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system shall have the capability to detect and flag specific trade execution patterns and trade anomalies;

compute, retain, and compare trading statistics; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data.

(5) *Real-time market monitoring.* A security-based swap execution facility shall conduct real-time market monitoring of all trading activity on its system(s) or platform(s) to identify any market or system anomalies. A security-based swap execution facility shall have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members. Any trade price adjustments or trade cancellations shall be transparent to the market and subject to standards that are clear, fair, and publicly available.

(6) *Investigations and investigation reports—(i) Procedures.* A security-based swap execution facility shall establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations. An investigation shall be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the security-based swap execution facility that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(ii) *Timeliness.* Each compliance staff investigation shall be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff.

(iii) *Investigation reports when a reasonable basis exists for finding a violation.* Compliance staff shall submit a written investigation report for disciplinary action in every instance in which compliance staff determines

from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report shall include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(iv) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation, compliance staff determines that no reasonable basis exists for finding a rule violation, it shall prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and compliance staff's analysis and conclusions.

(v) *Warning letters.* The rules of a security-based swap execution facility may authorize its compliance staff to issue a warning letter to a person or entity under investigation or to recommend that a disciplinary panel take such an action. No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling 12-month period.

(e) *Regulatory services provided by a third party—(1) Use of regulatory service provider permitted.* A security-based swap execution facility may choose to contract with a registered futures association (under section 17 of the Commodity Exchange Act), a board of trade designated as a contract market (under section 5 of the Commodity Exchange Act), a national securities exchange, a national securities association, or another security-based swap execution facility (each a "regulatory service provider"), for the provision of services to assist in complying with the Act and Commission rules thereunder, as approved by the Commission. A security-based swap execution facility that chooses to contract with a regulatory service provider shall ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A security-based swap execution facility shall at all times remain responsible for the performance of any

regulatory services received, for compliance with the security-based swap execution facility's obligations under the Act and Commission rules thereunder, and for the regulatory service provider's performance on its behalf.

(2) *Duty to supervise regulatory service provider.* A security-based swap execution facility that elects to use the service of a regulatory service provider shall retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf. Compliance staff of the security-based swap execution facility shall hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A security-based swap execution facility shall also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews shall be documented carefully and made available to the Commission upon request.

(3) *Regulatory decisions required from the security-based swap execution facility.* A security-based swap execution facility that elects to use the service of a regulatory service provider shall retain exclusive authority in all substantive decisions made by its regulatory service provider, including, but not limited to, decisions involving the cancellation of trades, the issuance of disciplinary charges against members, and denials of access to the trading platform for disciplinary reasons. A security-based swap execution facility shall document any instances where its actions differ from those recommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the security-based swap execution facility chose a different course of action.

(f) *Audit trail.* A security-based swap execution facility shall establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred.

(1) *Audit trail required.* A security-based swap execution facility shall capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses.

Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the security-based swap execution facility. An acceptable audit trail shall also permit the security-based swap execution facility to track a customer order from the time of receipt through execution on the security-based swap execution facility.

(2) *Elements of an acceptable audit trail program—(i) Original source documents.* A security-based swap execution facility's audit trail shall include original source documents. Original source documents include unalterable, sequentially identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates back to the account's owner(s), the time of order entry, and the time of trade execution. A security-based swap execution facility shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.

(ii) *Transaction history database.* A security-based swap execution facility's audit trail program shall include an electronic transaction history database. An adequate transaction history database shall include a history of all indications of interest, requests for quotes, orders, and trades entered into a security-based swap execution facility's trading system or platform, including all order modifications and cancellations. An adequate transaction history database shall also include:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) The customer type indicator code; and

(C) Timing and sequencing data adequate to reconstruct trading.

(iii) *Electronic analysis capability.* A security-based swap execution facility's audit trail program shall include electronic analysis capability with respect to all audit trail data in the

transaction history database. Such electronic analysis capability shall ensure that the security-based swap execution facility has the ability to reconstruct indications of interest, requests for quotes, orders, and trades, and identify possible trading violations with respect to both customer and market abuse.

(iv) *Safe-storage capability.* A security-based swap execution facility's audit trail program shall include the capability to safely store all audit trail data retained in its transaction history database. Such safe-storage capability shall include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data shall be retained in accordance with the recordkeeping requirements of § 242.826 (Core Principle 9).

(3) *Enforcement of audit trail requirements—(i) Annual audit trail and recordkeeping reviews.* A security-based swap execution facility shall enforce its audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to the security-based swap execution facility's recordkeeping rules to verify their compliance with the security-based swap execution facility's audit trail and recordkeeping requirements. Such reviews shall include, but are not limited to, reviews of randomly selected samples of front-end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

(ii) *Enforcement program required.* A security-based swap execution facility shall establish a program for effective enforcement of its audit trail and recordkeeping requirements. An effective program shall identify members, persons, and firms subject to the security-based swap execution facility's recordkeeping rules that have failed to maintain high levels of compliance with

such requirements, and impose meaningful sanctions when deficiencies are found. Sanctions shall be sufficient to deter recidivist behavior. No more than one warning letter shall be issued to the same person or entity found to have committed the same violation of audit trail or recordkeeping requirements within a rolling 12-month period.

(g) *Disciplinary procedures and sanctions.* A security-based swap execution facility shall establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members that violate the rules of the security-based swap execution facility.

(1) *Enforcement staff.* (i) A security-based swap execution facility shall establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the security-based swap execution facility.

(ii) The enforcement staff of a security-based swap execution facility shall not include members or other persons whose interests conflict with their enforcement duties.

(iii) A member of the enforcement staff shall not operate under the direction or control of any person or persons with trading privileges at the security-based swap execution facility.

(iv) The enforcement staff of a security-based swap execution facility may operate as part of the security-based swap execution facility's compliance department.

(2) *Disciplinary panels.* A security-based swap execution facility shall establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this section. Disciplinary panels shall meet the composition requirements of § 242.834(d), and shall not include any members of the security-based swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding.

(3) *Notice of charges.* If compliance staff authorized by a security-based swap execution facility or disciplinary

panel thereof determines that a reasonable basis exists for finding a violation and adjudication is warranted, it shall direct that the person or entity alleged to have committed the violation be served with a notice of charges. A notice of charges shall adequately state the acts, conduct, or practices in which the respondent is alleged to have engaged; state the rule or rules alleged to have been violated (or about to be violated); advise the respondent that it is entitled, upon request, to a hearing on the charges; and prescribe the period within which a hearing on the charges may be requested. If the rules of the security-based swap execution facility so provide, a notice may also advise:

(i) That failure to request a hearing within the period prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing; and

(ii) That failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

(4) *Right to representation.* Upon being served with a notice of charges, a respondent shall have the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, except by any member of the security-based swap execution facility's governing board or disciplinary panel, any employee of the security-based swap execution facility, or any person substantially related to the underlying investigations, such as a material witness or respondent.

(5) *Answer to charges.* A respondent shall be given a reasonable period of time to file an answer to a notice of charges. The rules of a security-based swap execution facility governing the requirements and timeliness of a respondent's answer to a notice of charges shall be fair, equitable, and publicly available.

(6) *Admission or failure to deny charges.* The rules of a security-based swap execution facility may provide that, if a respondent admits or fails to deny any of the charges, a disciplinary panel may find that the violations alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges have been com-

mitted. If the security-based swap execution facility's rules so provide, then:

(i) The disciplinary panel may impose a sanction for each violation found to have been committed;

(ii) The disciplinary panel shall promptly notify the respondent in writing of any sanction to be imposed and shall advise the respondent that the respondent may request a hearing on such sanction within the period of time, which shall be stated in the notice; and

(iii) The rules of a security-based swap execution facility may provide that, if a respondent fails to request a hearing within the period of time stated in the notice, the respondent will be deemed to have accepted the sanction.

(7) *Denial of charges and right to hearing.* Where a respondent has requested a hearing on a charge that is denied, or on a sanction set by the disciplinary panel, the respondent shall be given an opportunity for a hearing in accordance with the rules of the security-based swap execution facility.

(8) *Settlement offers.* (i) The rules of a security-based swap execution facility may permit a respondent to submit a written offer of settlement at any time after an investigation report is completed. The disciplinary panel presiding over the matter may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent agrees.

(ii) The rules of a security-based swap execution facility may provide that, in its discretion, a disciplinary panel may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(iii) If an offer of settlement is accepted, the panel accepting the offer shall issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which shall include full customer restitution where customer harm is demonstrated, except where the amount of restitution or to whom



it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the agreement of the enforcement staff, the decision shall adequately support the disciplinary panel's acceptance of the settlement. Where applicable, the decision shall also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(iv) The respondent may withdraw its offer of settlement at any time before final acceptance by a disciplinary panel. If an offer is withdrawn after submission, or is rejected by a disciplinary panel, the respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise prejudiced by having submitted the offer of settlement.

(9) *Hearings.* A security-based swap execution facility shall adopt rules that provide for the following minimum requirements for any hearing:

(i) The hearing shall be fair, shall be conducted before members of the disciplinary panel, and shall be promptly convened after reasonable notice to the respondent. A security-based swap execution facility need not apply the formal rules of evidence for a hearing; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing;

(ii) No member of the disciplinary panel for the hearing may have a financial, personal, or other direct interest in the matter under consideration;

(iii) In advance of the hearing, the respondent shall be entitled to examine all books, documents, or other evidence in the possession or under the control of the security-based swap execution facility. The security-based swap execution facility may withhold documents that are privileged or constitute attorney work product; were prepared by an employee of the security-based swap execution facility but will not be offered in evidence in the disciplinary proceedings; may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings; or disclose the identity of a confidential source;

(iv) The security-based swap execution facility's enforcement and compli-

ance staffs shall be parties to the hearing, and the enforcement staff shall present their case on those charges and sanctions that are the subject of the hearing;

(v) The respondent shall be entitled to appear personally at the hearing, to cross-examine any persons appearing as witnesses at the hearing, to call witnesses, and to present such evidence as may be relevant to the charges;

(vi) The security-based swap execution facility shall require persons within its jurisdiction who are called as witnesses to participate in the hearing and produce evidence. The security-based swap execution facility shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant. The rules of a security-based swap execution facility may provide that a sanction may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing; and

(vii) If the respondent has requested a hearing, a copy of the hearing shall be made and shall become a part of the record of the proceeding. The record shall not be required to be transcribed unless:

(A) The transcript is requested by Commission staff or the respondent;

(B) The decision is appealed pursuant to the rules of the security-based swap execution facility; or

(C) The decision is reviewed by the Commission pursuant to § 201.442 of this chapter. In all other instances, a summary record of a hearing is permitted.

(10) *Decisions.* Promptly following a hearing conducted in accordance with the rules of the security-based swap execution facility, the disciplinary panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(i) The notice of charges or a summary of the charges;

(ii) The answer, if any, or a summary of the answer;

(iii) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

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(iv) A statement of findings and conclusions with respect to each charge and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;

(v) An indication of each specific rule that the respondent was found to have violated; and

(vi) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

(11) *Emergency disciplinary actions.* (i) A security-based swap execution facility may impose a sanction, including suspension, or take other summary action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the market place.

(ii) Any emergency disciplinary action shall be taken in accordance with a security-based swap execution facility's procedures that provide for the following:

(A) If practicable, a respondent should be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice shall state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(B) The respondent shall have the right to be represented by legal counsel or any other representative of its choosing in all proceedings subsequent to the emergency action taken. The respondent shall be given the opportunity for a hearing as soon as reasonably practicable and the hearing shall be conducted before the disciplinary panel pursuant to the rules of the security-based swap execution facility.

(C) Promptly following the hearing, the security-based swap execution facility shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should

be affirmed, modified, or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.

(12) *Right to appeal.* The rules of a security-based swap execution facility may permit the parties to a proceeding to appeal promptly an adverse decision of a disciplinary panel in all or in certain classes of cases. Such rules may require a party's notice of appeal to be in writing and to specify the findings, conclusions, or sanctions to which objection are taken. If the rules of a security-based swap execution facility permit appeals, then both the respondent and the enforcement staff shall have the opportunity to appeal and:

(i) The security-based swap execution facility shall establish an appellate panel that is authorized to hear appeals. The rules of the security-based swap execution facility may provide that the appellate panel may, on its own initiative, order review of a decision by a disciplinary panel within a reasonable period of time after the decision has been rendered;

(ii) The composition of the appellate panel shall be consistent with §242.834(d) and shall not include any members of the security-based swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding. The rules of a security-based swap execution facility shall provide for the appeal proceeding to be conducted before all of the members of the appellate panel or a panel thereof;

(iii) Except for good cause shown, the appeal or review shall be conducted solely on the record before the disciplinary panel, the written exceptions filed by the parties, and the oral or written arguments of the parties; and

(iv) Promptly following the appeal or review proceeding, the appellate panel shall issue a written decision and shall provide a copy to the respondent. The decision issued by the appellate panel shall adhere to all the requirements of paragraph (g)(10) of this section to the extent that a different conclusion is reached from that issued by the disciplinary panel.

(13) *Disciplinary sanctions—(i) In general.* All disciplinary sanctions imposed

by a security-based swap execution facility or its disciplinary panels shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other members. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, shall take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction shall also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

(ii) *Summary fines for violations of rules regarding timely submission of records.* A security-based swap execution facility may adopt a summary fine schedule for violations of rules relating to the failure to timely submit accurate records required for clearing or verifying each day's transactions. A security-based swap execution facility may permit its compliance staff, or a designated panel of security-based swap execution facility officials, to summarily impose minor sanctions against persons within the security-based swap execution facility's jurisdiction for violating such rules. A security-based swap execution facility's summary fine schedule may allow for warning letters to be issued for first-time violations or violators. If adopted, a summary fine schedule shall provide for progressively larger fines for recurring violations.

(14) *Commission review of a disciplinary sanction—(i) In general.* An application for review by the Commission may be filed by any person who is aggrieved by a determination of a security-based swap facility with respect to any final disciplinary action, as defined in § 242.835(b)(1) of this chapter (Rule 835(b)(1)), in accordance with § 201.442 of this chapter (Rule of Practice 442).

(ii) *Standard to govern Commission review.* (A) In reviewing such a determination, if the Commission finds that such person has engaged in such acts or practices, or has omitted such acts, as the security-based swap execution facility has found him to have engaged in or omitted, that such acts or practices, or omissions to act, are in violation of

the Exchange Act, the rules or regulations thereunder, or the rules of the security-based swap execution facility, and that such provisions are, and were applied in a manner, consistent with the purposes of Exchange Act, the Commission, by order, shall so declare and, as appropriate, affirm the sanction imposed by the security-based swap execution facility, modify the sanction in accordance with paragraph (C) of this subsection, or remand to the security-based swap execution facility for further proceedings; or

(B) if the Commission does not make any such finding it shall, by order, set aside the sanction imposed by the security-based swap execution facility and, if appropriate, remand to the security-based swap execution facility for further proceedings.

(C) If the Commission, having due regard for the public interest and the protection of investors, finds that a sanction imposed by a security-based swap execution facility upon such person imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act or is excessive or oppressive, the Commission may cancel, reduce, or require the remission of such sanction.

(h) *Activities of security-based swap execution facility's employees, governing board members, committee members, and consultants—(1) Definitions.* The following definitions shall apply only in this paragraph (h):

(i) *Covered interest,* with respect to a security-based swap execution facility, means:

(A) A security-based swap that trades on the security-based swap execution facility;

(B) A security of an issuer that has issued a security that underlies a security-based swap that is listed on that facility; or

(C) A derivative based on a security that falls within paragraph (h)(1)(i)(B) of this section.

(ii) *Pooled investment vehicle* means an investment company registered under the Investment Company Act of 1940 in which no covered interest constitutes more than 10 percent of the investment company's assets.

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(2) *Required rules.* A security-based swap execution facility must maintain in effect rules which have been submitted to the Commission pursuant to § 242.806 or § 242.807 that, at a minimum, prohibit an employee of the security-based swap execution facility from:

- (i) Trading, directly or indirectly, any covered interest; and
- (ii) Disclosing to any other person any material, non-public information which such employee obtains as a result of their employment at the security-based swap execution facility, where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any covered interest; provided, however, that such rules shall not prohibit disclosures made in the course of an employee's duties, or disclosures made to another security-based swap execution facility, court of competent jurisdiction, or representative of any agency or department of the Federal or State government acting in their official capacity.

(3) *Possible exemptions.* A security-based swap execution facility may adopt rules, which must be submitted to the Commission pursuant to § 242.806 or § 242.807, which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (h)(2)(i) of this section may be granted; such exemptions are to be administered by the security-based swap execution facility on a case-by-case basis. Specifically, such circumstances may include:

- (i) Participation by an employee in a pooled investment vehicle where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicle;
- (ii) Trading by an employee in a derivative based on a pooled investment vehicle that falls within paragraph (h)(3)(i) of this section;
- (iii) Trading by an employee in a derivative based on an index in which no covered interest constitutes more than 10 percent of the index; and
- (iv) Trading by an employee under circumstances enumerated by the security-based swap execution facility in rules which the security-based swap execution facility determines are not contrary to applicable law, the public

interest, or just and equitable principles of trade.

(4) *Prohibited conduct.* (i) No employee, governing board member, committee member, or consultant of a security-based swap execution facility shall:

(A) Trade for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(B) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(ii) No person shall trade for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information that such person knows was obtained in violation of this paragraph (h)(4) from an employee, governing board member, committee member, or consultant.

(i) *Service on security-based swap execution facility governing boards or committees by persons with disciplinary histories.* (1) A security-based swap execution facility shall maintain in effect rules which have been submitted to the Commission pursuant to § 242.806 or § 242.807 that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels, or governing board who:

- (i) Was found within the prior three years by a final decision of a security-based swap execution facility, a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, or the Commission to have committed a disciplinary offense;
- (ii) Entered into a settlement agreement with a security-based swap execution facility, a court of competent jurisdiction, or the Commission within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

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(iii) Currently is suspended from trading on any security-based swap execution facility, is suspended or expelled from membership with a self-regulatory organization, is serving any sentence of probation, or owes any portion of a fine imposed pursuant to:

(A) A finding by a final decision of a security-based swap execution facility, a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, or the Commission that such person committed a disciplinary offense; or

(B) A settlement agreement with a security-based swap execution facility, a court of competent jurisdiction, or the Commission in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(iv) Currently is subject to an agreement with the Commission, a security-based swap execution facility, or a self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) Currently is subject to or has had imposed on him or her within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any felony; or

(vi) Currently is subject to a denial, suspension, or disqualification from serving on a disciplinary committee, arbitration panel, or governing board of any security-based swap execution facility or self-regulatory organization.

(2) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a security-based swap execution facility if such person is subject to any of the conditions listed in paragraphs (i)(1)(i) through (vi) of this section.

(3) A security-based swap execution facility shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses and, to the extent necessary to reflect revisions, shall submit an amended schedule within 30 days of the end of each calendar year. A security-based swap execution facility shall maintain and keep current the schedule required by this section, and post

the schedule on the security-based swap execution facility's website so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(4) A security-based swap execution facility shall submit to the Commission within 30 days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels, or governing board pursuant to the requirements of this section during the prior year.

(5) Whenever a security-based swap execution facility finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that security-based swap execution facility's disciplinary committees, arbitration panels, oversight panels, or governing board, the security-based swap execution facility shall inform the Commission of that finding and the length of the ineligibility in a form and manner specified by the Commission.

(6) For purposes of this paragraph:

(i) *Arbitration panel* means any person or panel empowered by a security-based swap execution facility to arbitrate disputes involving the security-based swap execution facility's members or their customers.

(ii) *Disciplinary offense* means:

(A) Any violation of the rules of a security-based swap execution facility, except a violation resulting in fines aggregating to less than \$5,000 within a calendar year involving:

- (1) Decorum or attire;
- (2) Financial requirements; or
- (3) Reporting or recordkeeping;

(B) Any rule violation which involves fraud, deceit, or conversion or results in a suspension or expulsion;

(C) Any violation of the Act or the Commission's rules thereunder; or

(D) Any failure to exercise supervisory responsibility when such failure is itself a violation of either the rules of the security-based swap execution facility, the Act, or the Commission's rules thereunder.

(E) A disciplinary offense must arise out of a proceeding or action which is

brought by a security-based swap execution facility, the Commission, any Federal or State agency, or other governmental body.

(iii) *Final decision* means:

(A) A decision of a security-based swap execution facility which cannot be further appealed within the security-based swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or

(B) Any decision by an administrative law judge, a court of competent jurisdiction, or the Commission which has not been stayed or reversed.

(j) *Notification of final disciplinary action involving financial harm to a customer.* (1) Upon any final disciplinary action in which a security-based swap execution facility finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(i) The security-based swap execution facility shall promptly provide written notice of the disciplinary action to the member; and

(ii) The security-based swap execution facility shall have established a rule pursuant to § 242.806 or § 242.807 that requires a member that receives such a notice to promptly provide written notice of the disciplinary action to the customer, as disclosed on the member's books and records.

(2) A written notice required by paragraph (j)(1) of this section must include the principal facts of the disciplinary action and a statement that the security-based swap execution facility has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer.

(3) Solely for purposes of this paragraph (j):

(i) *Customer* means a person that utilizes an agent in connection with trading on a security-based swap execution facility.

(ii) *Final disciplinary action* means any decision by or settlement with a security-based swap execution facility

in a disciplinary matter which cannot be further appealed at the security-based swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(k) *Designation of agent for non-U.S. member.* (1) A security-based swap execution facility that admits a non-U.S. person as a member shall be deemed to be the agent of the non-U.S. member with respect to any security-based swaps executed by the non-U.S. member. Service or delivery of any communication issued by or on behalf of the Commission to the security-based swap execution facility shall constitute valid and effective service upon the non-U.S. member. The security-based swap execution facility which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a non-U.S. member shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the non-U.S. member.

(2) It shall be unlawful for a security-based swap execution facility to permit a non-U.S. member to execute security-based swaps on the facility unless the security-based swap execution facility prior thereto informs the non-U.S. member in writing of the requirements of this section.

(3) The requirements of paragraphs (k)(1) and (2) of this section shall not apply if the non-U.S. member has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the security-based swap execution facility prior to effecting any transaction on the security-based swap execution facility. This agreement must authorize the person domiciled in the United States to serve as the agent of the non-U.S. member for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the non-U.S. member and must provide an address in the United States where the agent will

accept delivery and service of communications from the Commission. This agreement must be filed with the Commission by the security-based swap execution facility prior to permitting the non-U.S. member to effect any transactions in security-based swaps. Such agreements shall be filed in a manner specified by the Commission.

(4) A non-U.S. member shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the security-based swap execution facility knows or should know that the agreement has expired, been terminated, or is no longer in effect, the security-based swap execution facility shall notify the Commission immediately.

**§ 242.820 Core Principle 3—Security-based swaps not readily susceptible to manipulation.**

The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

**§ 242.821 Core Principle 4—Monitoring of trading and trade processing.**

(a) *General.* The security-based swap execution facility shall:

(1) Establish and enforce rules or terms and conditions defining, or specifications detailing:

(i) Trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) Procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(2) Monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(b) *Market oversight obligations.* A security-based swap execution facility shall:

(1) Collect and evaluate data on its members' market activity on an ongoing

basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process;

(2) Monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand;

(3) Demonstrate an effective program for conducting real-time monitoring of trading for the purpose of detecting and resolving abnormalities. A security-based swap execution facility shall employ automated alerts to detect abnormal price movements and unusual trading volumes in real time and instances or threats of manipulation, price distortion, and disruptions on at least a T + 1 basis. The T + 1 detection and analysis should incorporate any additional data that becomes available on a T + 1 basis, including the trade reconstruction data;

(4) Demonstrate the ability to comprehensively and accurately reconstruct daily trading activity for the purpose of detecting instances or threats of manipulation, price distortion, and disruptions; and

(5) Have rules in place that allow it to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the security-based swap execution facility shall take steps to prevent the market disruption or reduce its severity.

(c) *Monitoring of physical-delivery security-based swaps.* For physical-delivery security-based swaps, the security-based swap execution facility shall demonstrate that it:

(1) Monitors a security-based swap's terms and conditions as they relate to the underlying asset market; and

(2) Monitors the availability of the supply of the asset specified by the delivery requirements of the security-based swap.

(d) *Additional requirements for cash-settled security-based swaps.* (1) For cash-settled security-based swaps, the security-based swap execution facility shall demonstrate that it monitors the pricing of the reference price used to determine cash flows or settlement.

(2) For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price is formulated and computed by the security-based swap execution facility, the security-based swap execution facility shall demonstrate that it monitors the continued appropriateness of its methodology for deriving that price and shall promptly amend any methodologies that result, or are likely to result, in manipulation, price distortions, or market disruptions, or impose new methodologies to resolve the threat of disruptions or distortions.

(3) For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price relies on a third-party index or instrument, including an index or instrument traded on another venue, the security-based swap execution facility shall demonstrate that it monitors for pricing abnormalities in the index or instrument used to calculate the reference price and shall conduct due diligence to ensure that the reference price is not susceptible to manipulation.

(e) *Ability to obtain information.* (1) A security-based swap execution facility shall demonstrate that it has access to sufficient information to assess whether trading in security-based swaps listed on its market, in the index or instrument used as a reference price, or in the underlying asset for its listed security-based swaps is being used to affect prices on its market. The security-based swap execution facility shall demonstrate that it can obtain position and trading information directly from members that conduct substantial trading on its facility or through an information-sharing agreement with other venues or a third-party regulatory service provider. If the position and trading information is not available directly from its members but is available through information-sharing agreements with other trading venues or a third-party regulatory service provider, the security-based swap execution facility should cooperate in such information-sharing agreements.

(2) A security-based swap execution facility shall have rules that require its members to keep records of their trading, including records of their ac-

tivity in the underlying asset, and related derivatives markets, and make such records available, upon request, to the security-based swap execution facility or, if applicable, to its regulatory service provider and the Commission. The security-based swap execution facility may limit the application of this requirement to only those members that conduct substantial trading on its facility.

(f) *Risk controls for trading.* A security-based swap execution facility shall establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the security-based swap execution facility. Such risk control mechanisms shall be designed to avoid market disruptions without unduly interfering with that market's price discovery function. The security-based swap execution facility may choose from among controls that include: pre-trade limits on order size, price collars or bands around the current price, message throttles, daily price limits, and intraday position limits related to financial risk to the clearing member, or design other types of controls, as well as clear error-trade and order-cancellation policies. Within the specific array of controls that are selected, the security-based swap execution facility shall set the parameters for those controls, so that the specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions.

(g) *Trade reconstruction.* A security-based swap execution facility shall have the ability to comprehensively and accurately reconstruct all trading on its facility. All audit-trail data and reconstructions shall be made available to the Commission in a form, manner, and time that is acceptable to the Commission.

(h) *Regulatory service provider.* A security-based swap execution facility shall comply with the rules in this section through a dedicated regulatory department or by contracting with a regulatory service provider pursuant to § 242.819(e).



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### § 242.822 Core Principle 5—Ability to obtain information.

(a) *General.* The security-based swap execution facility shall:

(1) Establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in section 3D of the Act;

(2) Provide the information to the Commission on request; and

(3) Have the capacity to carry out such international information-sharing agreements as the Commission may require.

(b) *Establish and enforce rules.* A security-based swap execution facility shall establish and enforce rules that will allow the security-based swap execution facility to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under this section, including the capacity to carry out international information-sharing agreements as the Commission may require.

(c) *Collection of information.* A security-based swap execution facility shall have rules that allow it to collect information on a routine basis, allow for the collection of non-routine data from its members, and allow for its examination of books and records kept by members on its facility.

(d) *Provide information to the Commission.* A security-based swap execution facility shall provide information in its possession to the Commission upon request, in a form and manner specified by the Commission.

(e) *Information-sharing agreements.* A security-based swap execution facility shall share information with other regulatory organizations, data repositories, and third-party data reporting services as required by the Commission or as otherwise necessary and appropriate to fulfill its regulatory and reporting responsibilities. Appropriate information-sharing agreements can be established with such entities, or the Commission can act in conjunction with the security-based swap execution facility to carry out such information sharing.

### § 242.823 Core Principle 6—Financial integrity of transactions.

(a) *General.* The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1) of the Act.

(b) *Required clearing.* Transactions executed on or through the security-based swap execution facility that are required to be cleared under section 3C(a)(1) of the Act or are voluntarily cleared by the counterparties shall be cleared through a registered clearing agency or a clearing agency that has obtained an exemption from clearing agency registration to provide central counterparty services for security-based swaps.

(c) *General financial integrity.* A security-based swap execution facility shall provide for the financial integrity of its transactions:

(1) By establishing minimum financial standards for its members, which shall, at a minimum, require that each member qualify as an eligible contract participant;

(2) For transactions cleared by a registered clearing agency:

(i) By ensuring that the security-based swap execution facility has the capacity to route transactions to the registered clearing agency in a manner acceptable to the clearing agency for purposes of clearing; and

(ii) By coordinating with each registered clearing agency to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing.

(d) *Monitoring for financial soundness.* A security-based swap execution facility shall monitor its members to ensure that they continue to qualify as eligible contract participants.

### § 242.824 Core Principle 7—Emergency authority.

(a) The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation

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with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

(b) To comply with this core principle, a security-based swap execution facility shall adopt rules that are reasonably designed to:

(1) Allow the security-based swap execution facility to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the security-based swap execution facility's market or as part of a coordinated, cross-market intervention;

(2) Have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the security-based swap execution facility are made in good faith to protect the integrity of the markets;

(3) Take market actions as may be directed by the Commission, including, in situations where a security-based swap is traded on more than one platform, emergency action to liquidate or transfer open interest as directed, or agreed to, by the Commission or the Commission's staff;

(4) Include procedures and guidelines for decision-making and implementation of emergency intervention that avoid conflicts of interest;

(5) Include alternate lines of communication and approval procedures to address emergencies associated with real-time events; and

(6) Allow the security-based swap execution facility, to address perceived market threats, to impose or modify position limits, impose or modify price limits, impose or modify intraday market restrictions, impose special margin requirements, order the liquidation or transfer of open positions in any contract, order the fixing of a settlement price, extend or shorten the expiration date or the trading hours, suspend or curtail trading in any contract, transfer customer contracts and the margin, or alter any contract's settlement terms or conditions, or, if applicable,

provide for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services.

(c) A security-based swap execution facility shall promptly notify the Commission of its exercise of emergency authority, explaining its decision-making process, the reasons for using its emergency authority, and how conflicts of interest were minimized, including the extent to which the security-based swap execution facility considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contracts traded on its facility, including similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a security-based swap execution facility's emergency authority shall be included in a timely submission of a certified rule pursuant to § 242.807.

**§ 242.825 Core Principle 8—Timely publication of trading information.**

(a)(1) The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

(2) The security-based swap execution facility shall be required to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility.

(b) A security-based swap execution facility shall report security-based swap transaction data as required by §§ 242.900 through 242.909 (Regulation SBSR).

(c) A security-based swap execution facility shall make available a "Daily Market Data Report" containing the information required in paragraphs (c)(1) and (2) of this section in a manner and timeframe required by this section.

(1) *Contents.* The Daily Market Data Report of a security-based swap execution facility for a business day shall contain the following information for each tenor of each security-based swap traded on that security-based swap execution facility during that business day:

(i) The trade count (excluding error trades, correcting trades, and offsetting trades);

(ii) The total notional amount traded (excluding error trades, correcting trades, and offsetting trades);

(iii) The total notional amount of block trades, after such time as the Commission adopts a definition of “block trade” in § 242.802 of this chapter (Rule 802);

(iv) The opening and closing price;

(v) The price that is used for settlement purposes, if different from the closing price; and

(vi) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the security-based swap execution facility reasonably determines accurately reflects market conditions. Bids and offers vacated or withdrawn shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(2) *Additional information.* A security-based swap execution facility must record the following information with respect to security-based swaps on that reporting market:

(i) The method used by the security-based swap execution facility in determining nominal prices and settlement prices; and

(ii) If discretion is used by the security-based swap execution facility in determining the opening and/or closing ranges or the settlement prices, an explanation that certain discretion may be employed by the security-based swap execution facility and a description of the manner in which that discretion may be employed. Discretionary authority must be noted explicitly in each case in which it is applied (for example, by use of an asterisk or footnote).

(3) *Form of publication.* A security-based swap execution facility shall publicly post the Daily Market Data Report on its website:

(i) In a downloadable and machine-readable format using the most recent versions of the associated XML schema and PDF renderer as published on the Commission’s website;

(ii) Without fees or other charges;

(iii) Without any encumbrances on access or usage restrictions; and

(iv) Without requiring a user to agree to any terms before being allowed to view or download the Daily Market Data Report, such as by waiving any requirements of this paragraph (c)(3). Any such waiver agreed to by a user shall be null and void.

(4) *Timing of publication.* A security-based swap execution facility shall publish the Daily Market Data Report on its website as soon as reasonably practicable on the next business day after the day to which the information pertains, but in no event later than 7 a.m. on the next business day.

(5) *Duration.* A security-based swap execution facility shall keep each Daily Market Data Report available on its website in the same location as all other Daily Market Data Reports for no less than one year after the date of first publication.

**§ 242.826 Core Principle 9—Record-keeping and reporting.**

(a) *In general.* (1) A security-based swap execution facility shall:

(i) Maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years; and

(ii) Report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act.

(2) The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

(b) *Required records.* A security-based swap execution facility shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to its business with respect to security-based swaps. Such records shall include, without limitation, the audit trail information required under § 242.819(f) and all other records that a

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security-based swap execution facility is required to create or obtain under §§ 242.800 through 242.835 (Regulation SE).

(c) *Duration of retention.* (1) A security-based swap execution facility shall keep records of any security-based swap from the date of execution until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of not less than five years, the first two years in an easily accessible place, after such date.

(2) A security-based swap execution facility shall keep each record other than the records described in paragraph (c)(1) of this section for a period of not less than five years, the first two years in an easily accessible place, from the date on which the record was created.

(d) *Record retention.* (1) A security-based swap execution facility shall retain all records in a form and manner that ensures the authenticity and reliability of such records in accordance with the Act and the Commission's rules thereunder.

(2) A security-based swap execution facility shall, upon request of any representative of the Commission, promptly furnish to the representative legible, true, complete, and current copies of any records required to be kept and preserved pursuant to this section.

(3)(i) An electronic record shall be retained in a form and manner that allows for prompt production at the request of any representative of the Commission.

(ii) A security-based swap execution facility maintaining electronic records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic records, including, without limitation:

(A) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic records and to monitor compliance with the Act and the Commission's rules thereunder;

(B) Systems that ensure that the security-based swap execution facility is able to produce electronic records in accordance with this section, and en-

sure the availability of such electronic records in the event of an emergency or other disruption of the security-based swap execution facility's electronic record retention systems; and

(C) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic records.

(e) *Record examination.* All records required to be kept by a security-based swap execution facility pursuant to this section are subject to examination by any representative of the Commission pursuant to section 17(b) of the Act (15 U.S.C. 78q).

(f) *Records of non-U.S. members.* A security-based swap execution facility shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any non-U.S. member that executes transactions on the facility. Upon request, the security-based swap execution facility shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such non-U.S. member.

§ 242.827 Core Principle 10—Antitrust considerations.

Unless necessary or appropriate to achieve the purposes of the Act, the security-based swap execution facility shall not:

(a) Adopt any rules or take any actions that result in any unreasonable restraint of trade; or

(b) Impose any material anticompetitive burden on trading or clearing.

§ 242.828 Core Principle 11—Conflicts of interest.

(a) The security-based swap execution facility shall:

(1) Establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(2) Establish a process for resolving the conflicts of interest.

(b) A security-based swap execution facility shall comply with the requirements of § 242.834.

**§ 242.829 Core Principle 12—Financial resources.**

(a) *In general.* (1) The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

(2) The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources:

(i) Enables the organization to meet its financial obligations to its members notwithstanding a default by a member creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(ii) Exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a one-year period, as calculated on a rolling basis.

(b) *General requirements.* A security-based swap execution facility shall maintain financial resources on an ongoing basis that are adequate to enable it to comply with the core principles set forth in section 3D of the Act and any applicable Commission rules. Financial resources shall be considered adequate if their value exceeds the total amount that would enable the security-based swap execution facility to cover its projected operating costs necessary for the security-based swap execution facility to comply with section 3D of the Act and applicable Commission rules for a one-year period, as calculated on a rolling basis pursuant to paragraph (e) of this section.

(c) *Types of financial resources.* Financial resources available to satisfy the requirements of this section may include:

(1) The security-based swap execution facility's own capital, meaning its assets minus its liabilities calculated in accordance with generally accepted accounting principles in the United States; and

(2) Any other financial resource deemed acceptable by the Commission.

(d) *Liquidity of financial resources.* The financial resources allocated by a security-based swap execution facility to meet the ongoing requirements of para-

graph (b) of this section shall include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) equal to at least the greater of three months of projected operating costs, as calculated on a rolling basis, or the projected costs needed to wind down the security-based swap execution facility's operations, in each case as determined under paragraph (e) of this section. If a security-based swap execution facility lacks sufficient unencumbered, liquid financial assets to satisfy its obligations under this section, the security-based swap execution facility may satisfy this requirement by obtaining a committed line of credit or similar facility in an amount at least equal to such deficiency.

(e) *Computation of costs to meet financial resources requirement.* (1) A security-based swap execution facility shall, each fiscal quarter, make a reasonable calculation of its projected operating costs and wind-down costs in order to determine its applicable obligations under this section. The security-based swap execution facility shall have reasonable discretion in determining the methodologies used to compute such amounts.

(i) *Calculation of projected operating costs.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if it includes all expenses necessary for the security-based swap execution facility to comply with the core principles set forth in section 3D of the Act and any applicable Commission rules, and if the calculation is based on the security-based swap execution facility's current level of business and business model, taking into account any projected modification to its business model (*e.g.*, the addition or subtraction of business lines or operations or other changes), and any projected increase or decrease in its level of business over the next 12 months. A security-based swap execution facility may exclude the following expenses ("excludable expenses") from its projected operating cost calculations:

(A) Costs attributable solely to sales, marketing, business development, product development, or recruitment and any related travel, entertainment, event, or conference costs;

(B) Compensation and related taxes and benefits for personnel who are not necessary to ensure that the security-based swap execution facility is able to comply with the core principles set forth in section 3D of the Act and any applicable Commission rules;

(C) Costs for acquiring and defending patents and trademarks for security-based swap execution facility products and related intellectual property;

(D) Magazine, newspaper, and online periodical subscription fees;

(E) Tax preparation and audit fees;

(F) The variable commissions that a voice-based security-based swap execution facility may pay to its trading specialists, calculated as a percentage of transaction revenue generated by the voice-based security-based swap execution facility; and

(G) Any non-cash costs, including depreciation and amortization.

(ii) *Prorated expenses.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if an expense is prorated and the security-based swap execution facility:

(A) Maintains sufficient documentation that reasonably shows the extent to which an expense is partially attributable to an excludable expense;

(B) Identifies any prorated expense in the financial reports that it submits to the Commission pursuant to paragraph (g) of this section; and

(C) Sufficiently explains why it prorated any expense. Common allocation methodologies that may be used include actual use, headcount, or square footage. A security-based swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies to support its determination to prorate an expense.

(iii) *Expenses allocated among affiliates.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if it prorates any shared expense that the security-based swap execution facility pays for, but only to the extent that such shared expense is attributable to an affiliate and for which the security-based swap execution facility is reimbursed. To prorate a shared ex-

pense, the security-based swap execution facility shall:

(A) Maintain sufficient documentation that reasonably shows the extent to which the shared expense is attributable to and paid for by the security-based swap execution facility and/or affiliated entity. The security-based swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies, that reasonably shows how expenses are attributable to, and paid for by, the security-based swap execution facility and/or its affiliated entities to support its determination to prorate an expense;

(B) Identify any shared expense in the financial reports that it submits to the Commission pursuant to paragraph (g) of this section; and

(C) Sufficiently explain why it prorated the shared expense.

(2) Notwithstanding any provision of paragraph (e)(1) of this section, the Commission may review the methodologies and require changes as appropriate.

(f) *Valuation of financial resources.* No less than each fiscal quarter, a security-based swap execution facility shall compute the current market value of each financial resource used to meet its obligations under this section. Reductions in value to reflect market and credit risk ("haircuts") shall be applied as appropriate.

(g) *Reporting to the Commission.* (1) Each fiscal quarter, or at any time upon Commission request, a security-based swap execution facility shall provide a report to the Commission that includes:

(i) The amount of financial resources necessary to meet the requirements of this section, computed in accordance with the requirements of paragraph (e) of this section, and the market value of each available financial resource, computed in accordance with the requirements of paragraph (f) of this section; and

(ii) Financial statements, including the balance sheet, income statement, and statement of cash flows of the security-based swap execution facility.

(A) The financial statements shall be prepared in accordance with generally

accepted accounting principles in the United States, prepared in English, and denominated in U.S. dollars.

(B) The financial statements of a security-based swap execution facility that is not domiciled in the United States, and is not otherwise required to prepare financial statements in accordance with generally accepted accounting principles in the United States, may satisfy the requirement in paragraph (g)(1)(ii)(A) of this section if such financial statements are prepared in accordance with either International Financial Reporting Standards issued by the International Accounting Standards Board, or a comparable international standard as the Commission may otherwise accept in its discretion.

(2) The calculations required by this paragraph (g) shall be made as of the last business day of the security-based swap execution facility's applicable fiscal quarter.

(3) With each report required under paragraph (g) of this section, the security-based swap execution facility shall also provide the Commission with sufficient documentation explaining the methodology used to compute its financial requirements under this section. Such documentation shall:

(i) Allow the Commission to reliably determine, without additional requests for information, that the security-based swap execution facility has made reasonable calculations pursuant to paragraph (e) of this section; and

(ii) Include, at a minimum:

(A) A total list of all expenses, without any exclusion;

(B) All expenses and the corresponding amounts, if any, that the security-based swap execution facility excluded or prorated when determining its operating costs, calculated on a rolling basis, required under this section, and the basis for any determination to exclude or prorate any such expenses;

(C) Documentation demonstrating the existence of any committed line of credit or similar facility relied upon for the purpose of meeting the requirements of this section (*e.g.*, copies of agreements establishing or amending a credit facility or similar facility); and

(D) All costs that a security-based swap execution facility would incur to wind down its operations, the projected amount of time for any such wind-down period, and the basis of its determination for the estimation of its costs and timing.

(4) The reports and supporting documentation required by this section shall be filed not later than 40 calendar days after the end of the security-based swap execution facility's first three fiscal quarters, and not later than 90 calendar days after the end of the security-based swap execution facility's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the security-based swap execution facility.

(5) A security-based swap execution facility shall provide notice to the Commission no later than 48 hours after it knows or reasonably should know that it no longer meets its obligations under paragraphs (b) and (d) of this section.

(6) A security-based swap execution facility shall provide the report and documentation required by this section to the Commission electronically using the EDGAR system as an Interactive Data File in accordance with § 232.405 of this chapter.

**§ 242.830 Core Principle 13—System safeguards.**

(a) *In general.* The security-based swap execution facility shall:

(1) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that:

(i) Are reliable and secure; and

(ii) Have adequate scalable capacity;

(2) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for:

(i) The timely recovery and resumption of operations; and

(ii) The fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

(3) Periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued:

(i) Order processing and trade matching;

(ii) Price reporting;

(iii) Market surveillance; and

(iv) Maintenance of a comprehensive and accurate audit trail.

(b) *Requirements.* (1) A security-based swap execution facility's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(i) *Enterprise risk management and governance.* This category includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; governing board and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

(ii) *Information security.* This category includes, but is not limited to, controls relating to: Access to systems and data (including least privilege, separation of duties, account monitoring, and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including network port control, boundary defenses, and encryption); system and information integrity (including malware defenses and software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

(iii) *Business continuity-disaster recovery planning and resources.* This category includes, but is not limited to: Regular, periodic testing and review of business continuity-disaster recovery capabilities; the controls and capabilities described in paragraphs (b)(3) and (10) of this section; and any other elements of business continuity-disaster recovery planning and resources in-

cluded in generally accepted best practices.

(iv) *Capacity and performance planning.* This category includes, but is not limited to: Controls for monitoring the security-based swap execution facility's systems to ensure adequate scalable capacity (including testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices.

(v) *Systems operations.* This category includes, but is not limited to: System maintenance; configuration management (including baseline configuration, configuration change and patch management, least functionality, and inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices.

(vi) *Systems development and quality assurance.* This category includes, but is not limited to: Requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices.

(vii) *Physical security and environmental controls.* This category includes, but is not limited to: Physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(2) In addressing the categories of risk analysis and oversight required under paragraph (b)(1) of this section, a security-based swap execution facility shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.



(3) A security-based swap execution facility shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and back-up facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a security-based swap execution facility following any disruption of its operations. Such responsibilities and obligations include, without limitation: Order processing and trade matching; transmission of matched orders to a registered clearing agency for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. A security-based swap execution facility's business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of security-based swaps executed on or pursuant to the rules of the security-based swap execution facility during the next business day following the disruption. A security-based swap execution facility shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

(4) A security-based swap execution facility satisfies the requirement to be able to resume its operations and resume its ongoing fulfillment of its responsibilities and obligations during the next business day following any disruption of its operations by maintaining either:

(i) Infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a security-based swap execution facility following any disruption of its operations; or

(ii) Contractual arrangements with other security-based swap execution facilities or disaster recovery service providers, as appropriate, that are sufficient to ensure continued trading and clearing of security-based swaps executed on the security-based swap execution facility, and ongoing fulfillment of all of the security-based swap execu-

tion facility's responsibilities and obligations with respect to such security-based swaps, in the event that a disruption renders the security-based swap execution facility temporarily or permanently unable to satisfy this requirement on its own behalf.

(5) A security-based swap execution facility shall notify Commission staff promptly of all:

(i) Electronic trading halts and material system malfunctions;

(ii) Cyber-security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and

(iii) Activations of the security-based swap execution facility's business continuity-disaster recovery plan.

(6) A security-based swap execution facility shall provide Commission staff timely advance notice of all material:

(i) Planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and

(ii) Planned changes to the security-based swap execution facility's program of risk analysis and oversight.

(7) As part of a security-based swap execution facility's obligation to produce books and records in accordance with §242.826 (Core Principle 9), the security-based swap execution facility shall provide to the Commission the following system-safeguards-related books and records, promptly upon the request of any Commission representative:

(i) Current copies of its business continuity-disaster recovery plans and other emergency procedures;

(ii) All assessments of its operational risks or system safeguards-related controls;

(iii) All reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or by employees of the security-based swap execution facility; and

(iv) All other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission rules, or in connection with Commission maintenance of a current profile of the security-based

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swap execution facility’s automated systems.

(v) Nothing in paragraph (b)(7) of this section shall be interpreted as reducing or limiting in any way a security-based swap execution facility’s obligation to comply with §242.826 (Core Principle 9).

(8) A security-based swap execution facility shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. A security-based swap execution facility shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Such testing and review shall include, without limitation, all of the types of testing set forth in this paragraph (b)(8).

(i) *Definitions.* As used in this paragraph (b)(8):

*Controls* means the safeguards or countermeasures employed by the security-based swap execution facility to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, and availability of its data and information, and to enable the security-based swap execution facility to fulfill its statutory and regulatory responsibilities.

*Controls testing* means assessment of the security-based swap execution facility’s controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the security-based swap execution facility to meet the requirements of this section.

*Enterprise technology risk assessment* means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to security-based swap execution facility operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.

*External penetration testing* means attempts to penetrate the security-based swap execution facility’s automated systems from outside the systems’

boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

*Internal penetration testing* means attempts to penetrate the security-based swap execution facility’s automated systems from inside the systems’ boundaries, to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

*Security incident* means a cybersecurity or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

*Security incident response plan* means a written plan documenting the security-based swap execution facility’s policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff, and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

*Security incident response plan testing* means testing of a security-based swap execution facility’s security incident response plan to determine the plan’s effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

*Vulnerability testing* means testing of a security-based swap execution facility’s automated systems to determine what information may be discoverable through a reconnaissance analysis of

those systems and what vulnerabilities may be present on those systems.

(ii) *Vulnerability testing.* A security-based swap execution facility shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis.

(B) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(C) A security-based swap execution facility shall conduct vulnerability testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(iii) *External penetration testing.* A security-based swap execution facility shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such external penetration testing at a frequency determined by an appropriate risk analysis.

(B) A security-based swap execution facility shall conduct external penetration testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(iv) *Internal penetration testing.* A security-based swap execution facility shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis.

(B) A security-based swap execution facility shall conduct internal penetration testing by engaging independent contractors, or by using employees of the security-based swap execution fa-

cility who are not responsible for development or operation of the systems or capabilities being tested.

(v) *Controls testing.* A security-based swap execution facility shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis.

(B) A security-based swap execution facility shall conduct controls testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(vi) *Security incident response plan testing.* A security-based swap execution facility shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis.

(B) A security-based swap execution facility's security incident response plan shall include, without limitation, the security-based swap execution facility's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(C) A security-based swap execution facility may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(D) A security-based swap execution facility may conduct security incident

response plan testing by engaging independent contractors or by using employees of the security-based swap execution facility.

(vii) *Enterprise technology risk assessment.* A security-based swap execution facility shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct enterprise technology risk assessment at a frequency determined by an appropriate risk analysis. A security-based swap execution facility that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(B) A security-based swap execution facility may conduct enterprise technology risk assessments by using independent contractors or employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being assessed.

(9) To the extent practicable, a security-based swap execution facility shall:

(i) Coordinate its business continuity-disaster recovery plan with those of its members that it depends upon to provide liquidity, in a manner adequate to enable effective resumption of activity in its markets following a disruption causing activation of the security-based swap execution facility's business continuity-disaster recovery plan;

(ii) Initiate and coordinate periodic, synchronized testing of its business continuity-disaster recovery plan with those of members that it depends upon to provide liquidity; and

(iii) Ensure that its business continuity-disaster recovery plan takes into account the business continuity-disaster recovery plans of its telecommunications, power, water, and other essential service providers.

(10) The scope for all system safeguards testing and assessment required by this section shall be broad enough to include the testing of automated systems and controls that the security-based swap execution facility's re-

quired program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(i) Interfere with the security-based swap execution facility's operations or with fulfillment of its statutory and regulatory responsibilities;

(ii) Impair or degrade the reliability, security, or adequate scalable capacity of the security-based swap execution facility's automated systems;

(iii) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the security-based swap execution facility's regulated activities; or

(iv) Undertake any other unauthorized action affecting the security-based swap execution facility's regulated activities or the hardware or software used in connection with those activities.

(11) Both the senior management and the governing board of a security-based swap execution facility shall receive and review reports setting forth the results of the testing and assessment required by this section. A security-based swap execution facility shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (b)(12) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(12) A security-based swap execution facility shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The security-based swap execution facility shall conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept the associated risk. When the security-based swap execution facility determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

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§ 242.831 Core Principle 14—Designation of chief compliance officer.

(a)(1) In general. Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

(2) Duties. The chief compliance officer shall:

(i) Report directly to the board or to the senior officer of the facility;

(ii) Review compliance with the core principles in this subsection;

(iii) In consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) Be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) Ensure compliance with the Act and the rules and regulations issued under the Act, including rules prescribed by the Commission pursuant to section 3D of the Act;

(vi) Establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints; and

(vii) Establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) Annual reports—(i) In general. In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of:

(A) The compliance of the security-based swap execution facility with the Act; and

(B) The policies and procedures, including the code of ethics and conflict of interest policies, of the security-based swap execution facility.

(ii) [Reserved]

(4) Requirements. The chief compliance officer shall:

(i) Submit each report described in paragraph (a)(3) of this section with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(ii) Include in the report a certification that, under penalty of law, the report is accurate and complete.

(b) Authority of chief compliance officer. (1) The position of chief compliance officer shall carry with it the authority and resources to develop, in consultation with the governing board or senior officer, the policies and procedures of the security-based swap execution facility and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and the Commission's rules thereunder.

(2) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(c) Qualifications of chief compliance officer. (1) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.

(2) No individual that would be disqualified from serving on a security-based swap execution facility's governing board or committees pursuant to the criteria set forth in §242.819(i) may serve as a chief compliance officer.

(3) In determining whether the background and skills of a potential chief compliance officer are appropriate for fulfilling the responsibilities of the role of the chief compliance officer, a security-based swap execution facility has the discretion to base its determination on the totality of the qualifications of the potential chief compliance officer, including, but not limited to, compliance experience, related career experience, training, potential conflicts of interest, and any other relevant factors to the position.

(d) Appointment and removal of chief compliance officer. (1) Only the governing board or the senior officer may appoint or remove the chief compliance officer.

(2) The security-based swap execution facility shall notify the Commission within two business days of the appointment or removal, whether interim or permanent, of a chief compliance officer.

(e) Compensation of the chief compliance officer. The governing board or the

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senior officer shall approve the compensation of the chief compliance officer.

(f) *Annual meeting with the chief compliance officer.* The chief compliance officer shall meet with the governing board or senior officer of the security-based swap execution facility at least annually.

(g) *Information requested of the chief compliance officer.* The chief compliance officer shall provide any information regarding the regulatory program of the security-based swap execution facility as requested by the governing board or the senior officer.

(h) *Duties of chief compliance officer.* The duties of the chief compliance officer shall include, but are not limited to, the following:

(1) Overseeing and reviewing compliance of the security-based swap execution facility with section 3D of the Act and the Commission rules thereunder;

(2) Taking reasonable steps, in consultation with the governing board or the senior officer of the security-based swap execution facility, to resolve any material conflicts of interest that may arise, including, but not limited to:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the security-based swap execution facility provide fair, open, and impartial access as set forth in §242.819(c); and

(iii) Conflicts between a security-based swap execution facility's management and members of the governing board;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the security-based swap execution facility designed to prevent ethical violations and to promote honesty and ethical conduct by personnel of the security-based swap execution facility;

(7) Supervising the regulatory program of the security-based swap execution facility with respect to trade practice surveillance; market surveillance; real-time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities (including taking reasonable steps to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

(8) Supervising the effectiveness and sufficiency of any regulatory services provided to the security-based swap execution facility by a regulatory service provider in accordance with §242.819(e).

(i) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report shall, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the security-based swap execution facility, including the code of ethics and conflict of interest policies, to reasonably ensure compliance with the Act and applicable Commission rules;

(2) Any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission rules;

(4) Any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and

(5) A certification by the chief compliance officer that, to the best of their knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

(j) *Submission of annual compliance report and related matters*—(1) *Furnishing the annual compliance report prior to submission to the Commission.* Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report for review to the governing board or, in the absence of a governing board, to the senior officer. Members of the governing board and the senior officer shall not require the chief compliance officer to make any changes to the report.

(2) *Submission of annual compliance report to the Commission.* The annual compliance report shall be submitted electronically to the Commission using the EDGAR system as an Interactive Data File in accordance with §232.405 of this chapter not later than 90 calendar days after the end of the security-based swap execution facility's fiscal year. The security-based swap execution facility shall concurrently file the annual compliance report with the fourth-quarter financial report pursuant to §242.829(g).

(3) *Amendments to annual compliance report.* (i) Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. The chief compliance officer shall submit the amended annual compliance report to the governing board, or in the absence of a governing board, to the senior officer, pursuant to paragraph (j)(1) of this section.

(ii) An amendment shall contain the certification required under paragraph (i)(5) of this section.

(4) *Request for extension.* A security-based swap execution facility may request an extension of time to file its annual compliance report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(k) *Recordkeeping.* A security-based swap execution facility shall maintain

all records demonstrating compliance with the duties of the chief compliance officer and the preparation and submission of annual compliance reports consistent with §242.826 (Core Principle 9).

**§242.832 Application of the trade execution requirement to cross-border security-based swap transactions.**

(a) The trade execution requirement set forth in section 3C(h) of the Act shall not apply in connection with a security-based swap unless at least one counterparty to the security-based swap is a “covered person” as defined in paragraph (b) of this section.

(b) A “covered person” means, with respect to a particular security-based swap, any person that is:

(1) A U.S. person;

(2) A non-U.S. person whose performance under a security-based swap is guaranteed by a U.S. person; or

(3) A non-U.S. person who, in connection with its security-based swap dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute a transaction.

**§242.833 Cross-border exemptions.**

(a) *Exemptions for foreign trading venues for security-based swaps.* An application for an order for exemptive relief under section 36(a)(1) of the Act (15 U.S.C. 78mm(a)(1)) relating to the registration status under the Act of a foreign trading venue for security-based swaps that has one or more members who are covered persons, as defined in §242.832, with respect to security-based swaps transacted on that venue may state that the application also is submitted pursuant to this paragraph (a). In such case, the Commission will consider the submission as an application to exempt the foreign trading venue, with respect to its providing a market place for security-based swaps, from:

(1) The definition of “exchange” in section 3(a)(1) of the Act (15 U.S.C. 78c(a)(1));

(2) The definition of “security-based swap execution facility” in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77));

(3) The definition of “broker” in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)); and

(4) Section 3D(a)(1) of the Act (15 U.S.C. 78c-4(a)(1)).

(b) *Exemptions relating to the trade execution requirement.* (1) An application for an order for exemptive relief under section 36(a)(1) of the Act (15 U.S.C. 78mm(a)(1)) relating to the application of the trade execution requirement in section 3C(h) of the Act (15 U.S.C. 78c-3(h)) to security-based swaps executed on a foreign trading venue, may state that the application also is submitted pursuant to this paragraph (b).

(2) When considering an application under section 36 of the Act (15 U.S.C. 78mm) and this paragraph (b), the Commission may consider:

(i) The extent to which the security-based swaps traded in the foreign jurisdiction covered by the request are subject to a trade execution requirement comparable to that in section 3C(h) of the Act (15 U.S.C. 78c-3(h)) and the Commission’s rules thereunder;

(ii) The extent to which trading venues in the foreign jurisdiction covered by the request are subject to regulation and supervision comparable to that under the Act, including section 3D of the Act (15 U.S.C. 78c-4), and the Commission’s rules thereunder;

(iii) Whether the foreign trading venue or venues where covered persons, as defined in §242.832, intend to trade security-based swaps have received an exemption order contemplated by paragraph (a) of this section; and

(iv) Any other factor that the Commission believes is relevant for assessing whether the exemption is in the public interest and consistent with the protection of investors.

**§ 242.834 Mitigation of conflicts of interest of security-based swap execution facilities and certain exchanges.**

(a) *Definitions.* For purposes of this section:

*Family relationship* of a person means the person’s spouse, former spouse, parent, stepparent, child, stepchild, sibling, stepbrother, stepsister, grandparent, grandchild, uncle, aunt, nephew, niece, or in-law.

*Major disciplinary committee* means a committee of persons who are authorized by a security-based swap execution facility to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the security-based swap execution facility except those which:

(i) Are related to decorum or attire, financial requirements, or reporting or recordkeeping; and

(ii) Do not involve fraud, deceit, or conversion.

*Member’s affiliated firm* is a firm in which the member is a principal or an employee.

*Named party in interest* means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

*Significant action* includes any of the following types of actions or rule changes by a security-based swap execution facility or SBS exchange that can be implemented without the Commission’s prior approval:

(i) Any actions or rule changes which address an emergency; and

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion, or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such security-based swap execution facility or SBS exchange; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any security-based swap traded at such security-based swap execution facility or SBS exchange.

(b) *Ownership and voting limitations.* Each security-based swap execution facility and SBS exchange shall not permit any of its members, either alone or together with any officer, principal, or employee of the member, to:

(1) Own, directly or indirectly, 20 percent or more of any class of voting securities or of other voting interest in the security-based swap execution facility or SBS exchange; or



(2) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20 percent of the voting power of any class of securities or of other ownership interest in the security-based swap execution facility or SBS exchange.

(3) The ownership and voting limitations in paragraphs (b)(1) and (2) of this section shall not apply to an SBSEF that has, pursuant to § 242.819(e), entered into an agreement with a registered futures association or a national securities association for the provision of regulatory services that encompass, at a minimum, real-time market monitoring under § 242.819(d)(5) and investigations and investigation reports under § 242.819(d)(6).

(c) *Enforcement of limitations.* The rules of each security-based swap execution facility and SBS exchange must be reasonably designed, and have an effective mechanism, to:

(1) Deny effect to the portion of any voting interest held by a member in excess of the limitations in paragraph (b) of this section;

(2) Compel a member who possesses a voting interest in excess of the limitations in paragraph (b) of this section to divest enough of that voting interest to come within those limitations; and

(3) Obtain information relating to its ownership and voting interests owned or controlled, directly or indirectly, by its members.

(d) *Disciplinary committees and hearing panels.* Each security-based swap execution facility and SBS exchange shall ensure that its disciplinary processes preclude any member, or group or class of its members, from dominating or exercising disproportionate influence on the disciplinary process. Each major disciplinary committee or hearing panel thereof shall include sufficient different groups or classes of its members so as to ensure fairness and to prevent special treatment or preference for any person or member in the conduct of the responsibilities of the committee or panel.

(e) *Governing board composition.* Each security-based swap execution facility and SBS exchange shall ensure that:

(1) Twenty percent or more of the persons who are eligible to vote rou-

tinely on matters being considered by the governing board (excluding those members who are eligible to vote only in the case of a tie vote by the governing board) are:

(i) Knowledgeable of security-based swap trading or financial regulation, or otherwise capable of contributing to governing board deliberations;

(ii) Not members of the security-based swap execution facility or SBS exchange;

(iii) Not salaried employees of the security-based swap execution facility or SBS exchange;

(iv) Not primarily performing services for the security-based swap execution facility or SBS exchange in a capacity other than as a member of the governing board; and

(v) Not officers, principals, or employees of a firm which holds a membership at the security-based swap execution facility or SBS exchange, either in its own name or through an employee on behalf of the firm; and

(2) The membership of the governing board includes a diversity of groups or classes of its members. The security-based swap execution facility or SBS exchange must be able to demonstrate that the board membership fairly represents the diversity of interests at such security-based swap execution facility or SBS exchange and is otherwise consistent with the composition requirements of this section.

(f) *Providing information about the board to the Commission.* Each security-based swap execution facility and SBS exchange shall submit to the Commission, within 30 days after each governing board election, a list of the governing board's members, the groups or classes of its members that they represent, and how the composition of the governing board otherwise meets the requirements of this section.

(g) *Voting by interested members of governing boards and various committees of security-based swap execution facilities and SBS exchanges—(1) Rules required.* Each security-based swap execution facility and SBS exchange shall maintain in effect rules to address the avoidance of conflicts of interest in the execution of its regulatory functions. Such rules must provide for the following:

(i) *Relationship with named party in interest*—(A) *Nature of relationship.* A member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

- (1) Is a named party in interest;
- (2) Is an employer, employee, or fellow employee of a named party in interest;
- (3) Has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing security-based swaps opposite of each other or to clearing security-based swaps through the same clearing member; or
- (4) Has a family relationship with a named party in interest.

(B) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must disclose to the appropriate staff of the security-based swap execution facility or SBS exchange whether they have one of the relationships listed in paragraph (g)(1)(i)(A) of this section with a named party in interest.

(C) *Procedure for determination.* Each security-based swap execution facility and SBS exchange must establish procedures for determining whether any member of its governing board, disciplinary committees, or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest. Taking into consideration the exigency of the committee action, such determinations should be based upon:

- (1) Information provided by the member pursuant to paragraph (g)(1)(i)(B) of this section; and
- (2) Any other source of information that is held by and reasonably available to the security-based swap execution facility or SBS exchange.

(ii) *Financial interest in a significant action*—(A) *Nature of interest.* A member of the governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or

SBS exchange must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action.

(B) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must disclose to the appropriate staff of the security-based swap execution facility or SBS exchange the position information referred to in paragraph (g)(1)(ii)(C) of this section that is known to them. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(C) *Procedure for determination.* Each security-based swap execution facility and SBS exchange must establish procedures for determining whether any member of its governing board, disciplinary committees, or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of any positions, whether maintained at that security-based swap execution facility, SBS exchange, or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the security-based swap execution facility or SBS exchange reasonably expects could be affected by the significant action.

(D) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

- (1) Information provided by the member with respect to positions pursuant to paragraph (f)(2)(ii)(B) of this section; and
- (2) Any other source of information that is held by and reasonably available to the security-based swap execution facility or SBS exchange.

(iii) *Participation in deliberations.* (A) Under the rules required by this section, a governing board, disciplinary

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committee, or oversight panel of a security-based swap execution facility or SBS exchange may permit a member to participate in deliberations prior to a vote on a significant action for which they otherwise would be required to abstain, pursuant to paragraph (g)(1)(ii) of this section, if such participation would be consistent with the public interest and the member recuses from voting on such action.

(B) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which they otherwise would be required to abstain, the deliberating body shall consider the following factors:

(1) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(2) Whether the member has unique or special expertise, knowledge, or experience in the matter under consideration.

(C) Prior to any determination pursuant to paragraph (g)(1)(iii)(A) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (g)(1)(ii) of this section.

(iv) *Documentation of determination.* The governing boards, disciplinary committees, and oversight panels of each security-based swap execution facility and SBS exchange must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(A) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(B) The name of any members who voluntarily recused themselves or were required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(C) Information on the position information that was reviewed for each member.

(h) *Rules required.* (1) A security-based swap execution facility shall maintain in effect rules to comply with this section that have been submitted to the Commission pursuant to § 242.806 or § 242.807.

(2) An SBS exchange shall maintain in effect rules to comply with this section that have been submitted to the Commission pursuant to § 240.19b-4 of this chapter.

### **§ 242.835 Notice to Commission by security-based swap execution facility of final disciplinary action or denial or limitation of access.**

(a) If a security-based swap execution facility issues a final disciplinary action against a member, or takes final action with respect to a denial or conditioning membership, or takes final action with respect to a denial or limitation of access of a person to any services offered by the security-based swap execution facility, the security-based swap execution facility shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person.

(b) For purposes of paragraph (a) of this section:

(1) A disciplinary action shall not be considered "final" unless:

(i) The affected person has exhausted their administrative remedies at the security-based swap execution facility; and

(ii) The disciplinary action is not a summary action permitted under § 242.819(g)(13)(ii).

(2) A disposition of a matter with respect to a *denial or conditioning of membership*, or a *denial or limitation of access* shall not be considered "final" unless such person has exhausted their administrative remedies at the security-based swap execution facility with respect to such matter.

(c) A notice required by paragraph (a) of this section shall provide the following information:

(1) The name of the member and its last known address, as reflected in the security-based swap execution facility's records;

(2) The name of the person, committee, or other organizational unit of

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the security-based swap execution facility that initiated the disciplinary action or access restriction;

(3) In the case of a final disciplinary action:

(i) A description of the acts or practices, or omissions to act, upon which the sanction is based, including, as appropriate, the specific rules that the security-based swap execution facility has found to have been violated;

(ii) A statement describing the respondent's answer to the charges; and

(iii) A statement of the sanction imposed and the reasons therefor;

(4) In the case of a final action with respect to a denial or conditioning of membership, or a denial or limitation of access:

(i) The financial or operating difficulty of the member or prospective member (as the case may be) upon which the security-based swap execution facility determined that the member or prospective member could not be permitted to do, or continue to do, business with safety to investors, creditors, other members, or the security-based swap execution facility;

(ii) The pertinent failure to meet qualification requirements or other prerequisites for membership or access and the basis upon which the security-based swap execution facility determined that the person concerned could not be permitted to have membership or access with safety to investors, creditors, other members, or the security-based swap execution facility; or

(iii) The default of any delivery of funds or securities to a clearing agency by the member;

(5) The effective date of the final disciplinary action, or final action with respect to a denial or conditioning of membership, or a denial or limitation of access; and

(6) Any other information that the security-based swap execution facility may deem relevant.

**REGULATION SBSR—REGULATORY REPORTING AND PUBLIC DISSEMINATION OF SECURITY-BASED SWAP INFORMATION**

SOURCE: 80 FR 14728, Mar. 19, 2015, unless otherwise noted.

**§ 242.900 Definitions.**

Terms used in §§242.900 through 242.909 that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act and the rules or regulations thereunder. In addition, for purposes of Regulation SBSR (§§242.900 through 242.909), the following definitions shall apply:

(a) *Affiliate* means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

(b) *Asset class* means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(c) [Reserved].

(d) *Branch ID* means the UIC assigned to a branch or other unincorporated office of a participant.

(e) *Broker ID* means the UIC assigned to a person acting as a broker for a participant.

(f) *Business day* means a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.

(g) *Clearing transaction* means a security-based swap that has a registered clearing agency as a direct counterparty.

(h) *Control* means, for purposes of §§242.900 through 242.909, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to control another person if the person:

(1) Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);

(2) Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or

(3) In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(i) *Counterparty* means a person that is a direct counterparty or indirect counterparty of a security-based swap.

(j) *Counterparty ID* means the UIC assigned to a counterparty to a security-based swap.

(k) *Direct counterparty* means a person that is a primary obligor on a security-based swap.

(l) *Direct electronic access* has the same meaning as in §240.13n-4(a)(5) of this chapter.

(m) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), as amended.

(n) *Execution agent ID* means the UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a direct counterparty.

(o) *Foreign branch* has the same meaning as in §240.3a71-3(a)(1) of this chapter.

(p) *Indirect counterparty* means a guarantor of a direct counterparty's performance of any obligation under a security-based swap such that the direct counterparty on the other side can exercise rights of recourse against the indirect counterparty in connection with the security-based swap; for these purposes a direct counterparty has rights of recourse against a guarantor on the other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.

(q) *Life cycle event* means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under §242.901(c), (d), or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the secu-

rity-based swap is based (e.g., a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

(r) *Non-mandatory report* means any information provided to a registered security-based swap data repository by or on behalf of a counterparty other than as required by §§242.900 through 242.909.

(s) *Non-U.S. person* means a person that is not a U.S. person.

(t) *Parent* means a legal person that controls a participant.

(u) *Participant*, with respect to a registered security-based swap data repository, means:

(1) A counterparty, that meets the criteria of §242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under §242.901(a);

(2) A platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under §242.901(a);

(3) A registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to §242.901(e)(1)(ii); or

(4) A registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by §242.901(a).

(v) *Platform* means a national securities exchange or security-based swap execution facility that is registered or exempt from registration.

(w) *Platform ID* means the UIC assigned to a platform on which a security-based swap is executed.

(x) *Post-trade processor* means any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.

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(y) *Pre-enactment security-based swap* means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111-203, H.R. 4173)), the terms of which had not expired as of that date.

(z) *Price* means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

(aa) *Product* means a group of security-based swap contracts each having the same material economic terms except those relating to price and size.

(bb) *Product ID* means the UIC assigned to a product.

(cc) *Publicly disseminate* means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

(dd) [Reserved].

(ee) *Registered clearing agency* means a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1) and any rules or regulations thereunder.

(ff) *Registered security-based swap data repository* means a person that is registered with the Commission as a security-based swap data repository pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

(gg) *Reporting side* means the side of a security-based swap identified by § 242.901(a)(2).

(hh) *Side* means a direct counterparty and any guarantor of that direct counterparty's performance who meets the definition of indirect counterparty in connection with the security-based swap.

(ii) *Time of execution* means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

(jj) *Trader ID* means the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.

(kk) *Trading desk* means, with respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells security-based swaps for the account of the participant or an affiliate thereof.

(ll) *Trading desk ID* means the UIC assigned to the trading desk of a participant.

(mm) *Transaction ID* means the UIC assigned to a specific security-based swap transaction.

(nn) *Transitional security-based swap* means a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.

(oo) *Ultimate parent* means a legal person that controls a participant and that itself has no parent.

(pp) *Ultimate parent ID* means the UIC assigned to an ultimate parent of a participant.

(qq) *Unique Identification Code* or *UIC* means a unique identification code assigned to a person, unit of a person, product, or transaction.

(rr) *United States* has the same meaning as in § 240.3a71-3(a)(5) of this chapter.

(ss) *U.S. person* has the same meaning as in § 240.3a71-3(a)(4) of this chapter.

(tt) *Widely accessible*, as used in paragraph (cc) of this section, means widely available to users of the information on a non-fee basis.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53653, Aug. 12, 2016]

§ 242.901 Reporting obligations.

(a) *Assigning reporting duties.* A security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported as follows:

(1) *Platform-executed security-based swaps that will be submitted to clearing.* If a security-based swap is executed on a platform and will be submitted to clearing, the platform on which the transaction was executed shall report to a registered security-based swap data repository the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the

platform need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(2) *All other security-based swaps.* For all security-based swaps other than platform-executed security-based swaps that will be submitted to clearing, the reporting side shall provide the information required by §§ 242.900 through 242.909 to a registered security-based swap data repository. The reporting side shall be determined as follows:

(i) *Clearing transactions.* For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

(ii) *Security-based swaps other than clearing transactions.* (A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant:

(1) If both sides include a U.S. person, the sides shall select the reporting side.

(2) If one side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person and the other side includes a non-U.S. person that falls within § 242.908(b)(5), the sides shall select the reporting side.

(3) If one side includes only non-U.S. persons that do not fall within § 242.908(b)(5) and the other side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person, the side including a non-U.S. person

that falls within § 242.908(b)(5) or a U.S. person shall be the reporting side.

(4) If neither side includes a U.S. person and neither side includes a non-U.S. person that falls within § 242.908(b)(5) but the security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility), the registered broker-dealer (including a registered security-based swap execution facility) shall report the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the registered broker-dealer (including a registered security-based swap execution facility) need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(3) *Notification to registered clearing agency.* A person who, under paragraph (a)(1) or (a)(2)(ii) of this section, has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.

(b) *Alternate recipient of security-based swap information.* If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.

(c) *Primary trade information.* The reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The product ID, if available. If the security-based swap has no product ID, or if the product ID does not include the following information, the reporting side shall report:

(i) Information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference

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asset(s), reference issuer(s), or reference index;

- (ii) The effective date;
- (iii) The scheduled termination date;
- (iv) The terms of any standardized fixed or floating rate payments, and the frequency of any such payments; and

(v) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, a flag to that effect;

(2) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(3) The price, including the currency in which the price is expressed and the amount(s) and currenc(ies) of any upfront payments;

(4) The notional amount(s) and the currenc(ies) in which the notional amount(s) is expressed;

(5) If both sides of the security-based swap include a registered security-based swap dealer, an indication to that effect;

(6) Whether the direct counterparties intend that the security-based swap will be submitted to clearing; and

(7) If applicable, any flags pertaining to the transaction that are specified in the policies and procedures of the registered security-based swap data repository to which the transaction will be reported.

(d) *Secondary trade information.* In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting side, the reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The counterparty ID or the execution agent ID of each counterparty, as applicable;

(2) As applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side;

(3) To the extent not provided pursuant to paragraph (c)(1) of this section, the terms of any fixed or floating rate

payments, or otherwise customized or non-standard payment streams, including the frequency and contingencies of any such payments;

(4) For a security-based swap that is not a clearing transaction and that will not be allocated after execution, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract;

(5) To the extent not provided pursuant to paragraph (c) of this section or other provisions of this paragraph (d), any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction;

(6) If applicable, and to the extent not provided pursuant to paragraph (c) of this section, the name of the clearing agency to which the security-based swap will be submitted for clearing;

(7) If the direct counterparties do not intend to submit the security-based swap to clearing, whether they have invoked the exception in Section 3C(g) of the Exchange Act (15 U.S.C. 78c-3(g));

(8) To the extent not provided pursuant to the other provisions of this paragraph (d), if the direct counterparties do not submit the security-based swap to clearing, a description of the settlement terms, including whether the security-based swap is cash-settled or physically settled, and the method for determining the settlement value;

(9) The platform ID, if applicable, or if a registered broker-dealer (including a registered security-based swap execution facility) is required to report the security-based swap by § 242.901(a)(2)(ii)(E)(4), the broker ID of that registered broker-dealer (including a registered security-based swap execution facility); and

(10) If the security-based swap arises from the allocation, termination, novation, or assignment of one or more existing security-based swaps, the transaction ID of the allocated, terminated, assigned, or novated security-based swap(s), except in the case of a clearing transaction that results from the netting or compression of other clearing transactions.



(e) *Reporting of life cycle events.* (1)(i) *Generally.* A life cycle event, and any adjustment due to a life cycle event, that results in a change to information previously reported pursuant to paragraph (c), (d), or (i) of this section shall be reported by the reporting side, except that the reporting side shall not report whether or not a security-based swap has been accepted for clearing.

(ii) *Acceptance for clearing.* A registered clearing agency shall report whether or not it has accepted a security-based swap for clearing.

(2) All reports of life cycle events and adjustments due to life cycle events shall, within the timeframe specified in paragraph (j) of this section, be reported to the entity to which the original security-based swap transaction will be reported or has been reported and shall include the transaction ID of the original transaction.

(f) *Time stamping incoming information.* A registered security-based swap data repository shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.

(g) *Assigning transaction ID.* A registered security-based swap data repository shall assign a transaction ID to each security-based swap, or establish or endorse a methodology for transaction IDs to be assigned by third parties.

(h) *Format of reported information.* A person having a duty to report shall electronically transmit the information required under this section in a format required by the registered security-based swap data repository to which it reports.

(i) *Reporting of pre-enactment and transitional security-based swaps.* With respect to any pre-enactment security-based swap or transitional security-based swap in a particular asset class, and to the extent that information about such transaction is available, the reporting side shall report all of the information required by paragraphs (c) and (d) of this section to a registered security-based swap data repository that accepts security-based swaps in that asset class and indicate whether the security-based swap was open as of the date of such report.

(j) *Interim timeframe for reporting.* The reporting timeframe for paragraphs (c) and (d) of this section shall be 24 hours after the time of execution (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a)(1)(ii)), or, if 24 hours after the time of execution or acceptance, as applicable, would fall on a day that is not a business day, by the same time on the next day that is a business day. The reporting timeframe for paragraph (e) of this section shall be 24 hours after the occurrence of the life cycle event or the adjustment due to the life cycle event.

APPENDIX TO 17 CFR 242.901 REPORTS REGARDING THE ESTABLISHMENT OF BLOCK THRESHOLDS AND REPORTING DELAYS FOR REGULATORY REPORTING OF SECURITY-BASED SWAP TRANSACTION DATA

This appendix sets forth guidelines applicable to reports that the Commission has directed its staff to make in connection with the determination of block thresholds and reporting delays for security-based swap transaction data. The Commission intends to use these reports to inform its specification of the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public in order to implement regulatory requirements under Section 13 of the Act (15 U.S.C. 78m). In producing these reports, the staff shall consider security-based swap data collected by the Commission pursuant to other Title VII rules, as well as any other applicable information as the staff may determine to be appropriate for its analysis.

(a) *Report topics.* As appropriate, based on the availability of data and information, the reports should address the following topics for each asset class:

(1) *Price impact.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the effect of notional amount and observed reporting delay on price impact of trades in the security-based swap market.

(2) *Hedging.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should consider potential relationships between observed reporting delays and the incidence and cost of

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hedging large trades in the security-based swap market, and whether these relationships differ for interdealer trades and dealer to customer trades.

(3) *Price efficiency.* In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the relationship between reporting delays and the speed with which transaction information is impounded into market prices, estimating this relationship for trades of different notional amounts.

(4) *Other topics.* Any other analysis of security-based swap data and information, such as security-based swap market liquidity and price volatility, that the Commission or the staff deem relevant to the specification of:

(i) The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and

(ii) The appropriate time delay for reporting large notional security-based swap transactions (block trades).

(b) *Timing of reports.* Each report shall be complete no later than two years following the initiation of public dissemination of security-based swap transaction data by the first registered SDR in that asset class.

(c) *Public comment on the report.* Following completion of the report, the report shall be published in the FEDERAL REGISTER for public comment.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53653, Aug. 12, 2016]

### § 242.902 Public dissemination of transaction reports.

(a) *General.* Except as provided in paragraph (c) of this section, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository's policies and procedures that are required by § 242.907.

(b) [Reserved].

(c) *Non-disseminated information.* A registered security-based swap data repository shall not disseminate:

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(1) The identity of any counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to the registered security-based swap data repository, any information disclosing the business transactions and market positions of any person;

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i);

(4) Any non-mandatory report;

(5) Any information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2);

(6) Any information regarding a clearing transaction that arises from the acceptance of a security-based swap for clearing by a registered clearing agency or that results from netting other clearing transactions;

(7) Any information regarding the location of a security-based swap; or

(8) Any information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated.

(d) *Temporary restriction on other market data sources.* No person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is sent to a registered security-based swap data repository.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53654, Aug. 12, 2016]

### § 242.903 Coded information.

(a) If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or

has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty's performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

(b) A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available to users of the information on a non-fee basis.

**§ 242.904 Operating hours of registered security-based swap data repositories.**

A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.909, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A

registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an *ad hoc* basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during periods when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository's inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.

**§ 242.905 Correction of errors in security-based swap information.**

(a) *Duty to correct.* Any counterparty or other person having a duty to report a security-based swap that discovers an

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error in information previously reported pursuant to §§242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error; and

(2) If the person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction report. If the person having the duty to report reported the initial transaction to a registered security-based swap data repository, such person shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by §242.907(a)(3).

(b) *Duty of security-based swap data repository to correct.* A registered security-based swap data repository shall:

(1) Upon discovery of an error or receipt of a notice of an error, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information relates to a security-based swap that the registered security-based swap data repository previously disseminated and falls into any of the categories of information enumerated in §242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53654, Aug. 12, 2016]

§ 242.906 Other duties of participants.

(a) *Identifying missing UIC information.* A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered security-based swap data repository lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.

(b) *Duty to provide ultimate parent and affiliate information.* Each participant of a registered security-based swap data repository that is not a platform, a registered clearing agency, an externally managed investment vehicle, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under §242.901(a)(2)(ii)(E)(4) shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) *Policies and procedures to support reporting compliance.* Each participant of a registered security-based swap data repository that is a registered security-based swap dealer, registered

major security-based swap participant, registered clearing agency, platform, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§ 242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

[81 FR 53654, Aug. 12, 2016]

**§ 242.907 Policies and procedures of registered security-based swap data repositories.**

(a) *General policies and procedures.* With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.909, a registered security-based swap data repository shall establish and maintain written policies and procedures:

(1) That enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

(2) That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

(3) For specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by § 242.905(b)(2), or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by § 242.902(a);

(4) For:

(i) Identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap,

that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s), to receive a distorted view of the market;

(ii) Establishing flags to denote such characteristic(s) or circumstance(s);

(iii) Directing participants that report security-based swaps to apply such flags, as appropriate, in their reports to the registered security-based swap data repository; and

(iv) Applying such flags:

(A) To disseminated reports to help to prevent a distorted view of the market; or

(B) In the case of a transaction referenced in § 242.902(c), to suppress the report from public dissemination entirely, as appropriate;

(5) For assigning UICs in a manner consistent with § 242.903; and

(6) For periodically obtaining from each participant other than a platform, registered clearing agency, externally managed investment vehicle, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

(b) [Reserved].

(c) *Public availability of policies and procedures.* A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.909 publicly available on its Web site.

(d) *Updating of policies and procedures.* A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.909 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

(e) A registered security-based swap data repository shall provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to §§ 242.900

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through 242.909 and the registered security-based swap data repository's policies and procedures thereunder.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53655, Aug. 12, 2016]

§ 242.908 Cross-border matters.

(a) Application of Regulation SBSR to cross-border transactions. (1) A security-based swap shall be subject to regulatory reporting and public dissemination if:

- (i) There is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction;
- (ii) The security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States;
- (iii) The security-based swap is executed on a platform having its principal place of business in the United States;
- (iv) The security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility); or
- (v) The transaction is connected with a non-U.S. person's security-based swap dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

(2) A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.

(b) Limitation on obligations. Notwithstanding any other provision of §§ 242.900 through 242.909, a person shall not incur any obligation under §§ 242.900 through 242.909 unless it is:

- (1) A U.S. person;
- (2) A registered security-based swap dealer or registered major security-based swap participant;
- (3) A platform;
- (4) A registered clearing agency; or
- (5) A non-U.S. person that, in connection with such person's security-based

swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office.

(c) Substituted compliance—(1) General. Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m-1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.

(2) Procedure. (i) The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting and public dissemination of security-based swaps with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting and public dissemination of security-based swaps are comparable to otherwise applicable requirements. The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting of security-based swaps that are subject to § 242.908(a)(2) with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting of security-based swaps are comparable to otherwise applicable requirements.

(ii) A party that potentially would comply with requirements under §§ 242.900 through 242.909 pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application, pursuant to the procedures set forth in § 240.0-13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps.

(iii) In making such a substituted compliance determination, the Commission shall take into account such factors as the Commission determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to § 242.901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909 (or, in the case of transactions that are subject to § 242.908(a)(2) but not to § 242.908(a)(1), the rules of the foreign jurisdiction require the security-based swap to be reported in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and

(D) Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories by the Commission's rules and regulations.

(iv) Before issuing a substituted compliance order pursuant to this section, the Commission shall have entered into

memoranda of understanding and/or other arrangements with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.

(v) The Commission may, on its own initiative, modify or withdraw such order at any time, after appropriate notice and opportunity for comment.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53655, Aug. 12, 2016]

**§ 242.909 Registration of security-based swap data repository as a securities information processor.**

A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR (§ 249.1500 of this chapter).

**Regulation SCI—Systems Compliance and Integrity**

SOURCE: 79 FR 72436, Dec. 5, 2014, unless otherwise noted.

**§ 242.1000 Definitions.**

For purposes of Regulation SCI (§§ 242.1000 through 242.1007), the following definitions shall apply:

*Critical SCI systems* means any SCI systems of, or operated by or on behalf of, an SCI entity that:

(1) Directly support functionality relating to:

(i) Clearance and settlement systems of clearing agencies;

(ii) Openings, reopenings, and closings on the primary listing market;

(iii) Trading halts;

(iv) Initial public offerings;

(v) The provision of market data by a plan processor; or

(vi) Exclusively-listed securities; or

(2) Provide functionality to the securities markets for which the availability of alternatives is significantly limited or nonexistent and without which there would be a material impact on fair and orderly markets.

*Electronic signature* has the meaning set forth in § 240.19b-4(j) of this chapter.

*Exempt clearing agency subject to ARP* means an entity that has received from the Commission an exemption from

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registration as a clearing agency under Section 17A of the Act, and whose exemption contains conditions that relate to the Commission's Automation Review Policies (ARP), or any Commission regulation that supersedes or replaces such policies.

*Indirect SCI systems* means any systems of, or operated by or on behalf of, an SCI entity that, if breached, would be reasonably likely to pose a security threat to SCI systems.

*Major SCI event* means an SCI event that has had, or the SCI entity reasonably estimates would have:

(1) Any impact on a critical SCI system; or

(2) A significant impact on the SCI entity's operations or on market participants.

*Plan processor* has the meaning set forth in §242.600(b)(67).

*Responsible SCI personnel* means, for a particular SCI system or indirect SCI system impacted by an SCI event, such senior manager(s) of the SCI entity having responsibility for such system, and their designee(s).

*SCI alternative trading system* or *SCI ATS* means an alternative trading system, as defined in §242.300(a), which during at least four of the preceding six calendar months:

(1) Had with respect to NMS stocks:

(i) Five percent (5%) or more in any single NMS stock, and one-quarter percent (0.25%) or more in all NMS stocks, of the average daily dollar volume reported by applicable transaction reporting plans; or

(ii) One percent (1%) or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans; or

(2) Had with respect to equity securities that are not NMS stocks and for which transactions are reported to a self-regulatory organization, five percent (5%) or more of the average daily dollar volume as calculated by the self-regulatory organization to which such transactions are reported;

(3) Provided, however, that such SCI ATS shall not be required to comply with the requirements of Regulation SCI until six months after satisfying any of paragraphs (1) or (2) of this definition, as applicable, for the first time.

*SCI competing consolidator* means:

(1) Any competing consolidator, as defined in §242.600, which, during at least four of the preceding six calendar months, accounted for five percent (5%) or more of consolidated market data gross revenue paid to the effective national market system plan or plans required under §242.603(b), for NMS stocks:

(i) Listed on the New York Stock Exchange LLC;

(ii) Listed on The Nasdaq Stock Market LLC; or

(iii) Listed on exchanges other than the New York Stock Exchange LLC or The Nasdaq Stock Market LLC, as reported by such plan or plans pursuant to the terms thereof.

(2) Provided, however, that such SCI competing consolidator shall not be required to comply with the requirements of this section and §§242.1001 through 242.1007 (Regulation SCI) until six months after satisfying any of paragraph (1) of this definition, as applicable, for the first time; and

(3) Provided, however, that such SCI competing consolidator shall not be required to comply with the requirements of Regulation SCI prior to one year after the compliance date for §242.614(d)(3).

*SCI entity* means an SCI self-regulatory organization, SCI alternative trading system, plan processor, exempt clearing agency subject to ARP, or SCI competing consolidator.

*SCI event* means an event at an SCI entity that constitutes:

(1) A systems disruption;

(2) A systems compliance issue; or

(3) A systems intrusion.

*SCI review* means a review, following established procedures and standards, that is performed by objective personnel having appropriate experience to conduct reviews of SCI systems and indirect SCI systems, and which review contains:

(1) A risk assessment with respect to such systems of an SCI entity; and

(2) An assessment of internal control design and effectiveness of its SCI systems and indirect SCI systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.



*SCI self-regulatory organization* or *SCI SRO* means any national securities exchange, registered securities association, or registered clearing agency, or the Municipal Securities Rulemaking Board; *provided however*, that for purposes of this section, the term SCI self-regulatory organization shall not include an exchange that is notice registered with the Commission pursuant to 15 U.S.C. 78f(g) or a limited purpose national securities association registered with the Commission pursuant to 15 U.S.C. 78o-3(k).

*SCI systems* means all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.

*Senior management* means, for purposes of Rule 1003(b), an SCI entity's Chief Executive Officer, Chief Technology Officer, Chief Information Officer, General Counsel, and Chief Compliance Officer, or the equivalent of such employees or officers of an SCI entity.

*Systems compliance issue* means an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the Act and the rules and regulations thereunder or the entity's rules or governing documents, as applicable.

*Systems disruption* means an event in an SCI entity's SCI systems that disrupts, or significantly degrades, the normal operation of an SCI system.

*Systems intrusion* means any unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity.

[79 FR 72436, Dec. 5, 2014, as amended at 80 FR 81454, Dec. 30, 2015; 83 FR 58429, Nov. 19, 2018; 86 FR 18814, Apr. 9, 2021]

**§ 242.1001 Obligations related to policies and procedures of SCI entities.**

(a) *Capacity, integrity, resiliency, availability, and security.* (1) Each SCI entity shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to

maintain the SCI entity's operational capability and promote the maintenance of fair and orderly markets.

(2) Policies and procedures required by paragraph (a)(1) of this section shall include, at a minimum:

(i) The establishment of reasonable current and future technological infrastructure capacity planning estimates;

(ii) Periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner;

(iii) A program to review and keep current systems development and testing methodology for such systems;

(iv) Regular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters;

(v) Business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption;

(vi) Standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and

(vii) Monitoring of such systems to identify potential SCI events.

(3) Each SCI entity shall periodically review the effectiveness of the policies and procedures required by this paragraph (a), and take prompt action to remedy deficiencies in such policies and procedures.

(4) For purposes of this paragraph (a), such policies and procedures shall be deemed to be reasonably designed if they are consistent with current SCI industry standards, which shall be comprised of information technology practices that are widely available to information technology professionals in the financial sector and issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. Compliance with such current

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SCI industry standards, however, shall not be the exclusive means to comply with the requirements of this paragraph (a).

(b) *Systems compliance.* (1) Each SCI entity shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Act and the rules and regulations thereunder and the entity's rules and governing documents, as applicable.

(2) Policies and procedures required by paragraph (b)(1) of this section shall include, at a minimum:

(i) Testing of all SCI systems and any changes to SCI systems prior to implementation;

(ii) A system of internal controls over changes to SCI systems;

(iii) A plan for assessments of the functionality of SCI systems designed to detect systems compliance issues, including by responsible SCI personnel and by personnel familiar with applicable provisions of the Act and the rules and regulations thereunder and the SCI entity's rules and governing documents; and

(iv) A plan of coordination and communication between regulatory and other personnel of the SCI entity, including by responsible SCI personnel, regarding SCI systems design, changes, testing, and controls designed to detect and prevent systems compliance issues.

(3) Each SCI entity shall periodically review the effectiveness of the policies and procedures required by this paragraph (b), and take prompt action to remedy deficiencies in such policies and procedures.

(4) Safe harbor from liability for individuals. Personnel of an SCI entity shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by an SCI entity of this paragraph (b) if the person:

(i) Has reasonably discharged the duties and obligations incumbent upon such person by the SCI entity's policies and procedures; and

(ii) Was without reasonable cause to believe that the policies and procedures relating to an SCI system for which such person was responsible, or had supervisory responsibility, were

not established, maintained, or enforced in accordance with this paragraph (b) in any material respect.

(c) *Responsible SCI personnel.* (1) Each SCI entity shall establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying responsible SCI personnel, the designation and documentation of responsible SCI personnel, and escalation procedures to quickly inform responsible SCI personnel of potential SCI events.

(2) Each SCI entity shall periodically review the effectiveness of the policies and procedures required by paragraph (c)(1) of this section, and take prompt action to remedy deficiencies in such policies and procedures.

**§ 242.1002 Obligations related to SCI events.**

(a) *Corrective action.* Upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, each SCI entity shall begin to take appropriate corrective action which shall include, at a minimum, mitigating potential harm to investors and market integrity resulting from the SCI event and devoting adequate resources to remedy the SCI event as soon as reasonably practicable.

(b) *Commission notification and record-keeping of SCI events.* Each SCI entity shall:

(1) Upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, notify the Commission of such SCI event immediately;

(2) Within 24 hours of any responsible SCI personnel having a reasonable basis to conclude that the SCI event has occurred, submit a written notification pertaining to such SCI event to the Commission, which shall be made on a good faith, best efforts basis and include:

(i) A description of the SCI event, including the system(s) affected; and

(ii) To the extent available as of the time of the notification: The SCI entity's current assessment of the types and number of market participants potentially affected by the SCI event; the potential impact of the SCI event on the market; a description of the steps the SCI entity has taken, is taking, or

plans to take, with respect to the SCI event; the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; and any other pertinent information known by the SCI entity about the SCI event;

(3) Until such time as the SCI event is resolved and the SCI entity's investigation of the SCI event is closed, provide updates pertaining to such SCI event to the Commission on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, to correct any materially incorrect information previously provided, or when new material information is discovered, including but not limited to, any of the information listed in paragraph (b)(2)(ii) of this section;

(4)(i)(A) If an SCI event is resolved and the SCI entity's investigation of the SCI event is closed within 30 calendar days of the occurrence of the SCI event, then within five business days after the resolution of the SCI event and closure of the investigation regarding the SCI event, submit a final written notification pertaining to such SCI event to the Commission containing the information required in paragraph (b)(4)(ii) of this section.

(B)(I) If an SCI event is not resolved or the SCI entity's investigation of the SCI event is not closed within 30 calendar days of the occurrence of the SCI event, then submit an interim written notification pertaining to such SCI event to the Commission within 30 calendar days after the occurrence of the SCI event containing the information required in paragraph (b)(4)(ii) of this section, to the extent known at the time.

(2) Within five business days after the resolution of such SCI event and closure of the investigation regarding such SCI event, submit a final written notification pertaining to such SCI event to the Commission containing the information required in paragraph (b)(4)(ii) of this section.

(ii) Written notifications required by paragraph (b)(4)(i) of this section shall include:

(A) A detailed description of: The SCI entity's assessment of the types and number of market participants affected

by the SCI event; the SCI entity's assessment of the impact of the SCI event on the market; the steps the SCI entity has taken, is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved; the SCI entity's rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and any other pertinent information known by the SCI entity about the SCI event;

(B) A copy of any information disseminated pursuant to paragraph (c) of this section by the SCI entity to date regarding the SCI event to any of its members or participants; and

(C) An analysis of parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.

(5) The requirements of paragraphs (b)(1) through (4) of this section shall not apply to any SCI event that has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity's operations or on market participants. For such events, each SCI entity shall:

(i) Make, keep, and preserve records relating to all such SCI events; and

(ii) Submit to the Commission a report, within 30 calendar days after the end of each calendar quarter, containing a summary description of such systems disruptions and systems intrusions, including the SCI systems and, for systems intrusions, indirect SCI systems, affected by such systems disruptions and systems intrusions during the applicable calendar quarter.

(c) *Dissemination of SCI events.* (1) Each SCI entity shall:

(i) Promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event that is a systems disruption or systems compliance issue has occurred, disseminate the following information about such SCI event:

(A) The system(s) affected by the SCI event; and

(B) A summary description of the SCI event; and

(ii) When known, promptly further disseminate the following information about such SCI event:

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(A) A detailed description of the SCI event;

(B) The SCI entity’s current assessment of the types and number of market participants potentially affected by the SCI event; and

(C) A description of the progress of its corrective action for the SCI event and when the SCI event has been or is expected to be resolved; and

(iii) Until resolved, provide regular updates of any information required to be disseminated under paragraphs (c)(1)(i) and (ii) of this section.

(2) Each SCI entity shall, promptly after any responsible SCI personnel has a reasonable basis to conclude that a SCI event that is a systems intrusion has occurred, disseminate a summary description of the systems intrusion, including a description of the corrective action taken by the SCI entity and when the systems intrusion has been or is expected to be resolved, unless the SCI entity determines that dissemination of such information would likely compromise the security of the SCI entity’s SCI systems or indirect SCI systems, or an investigation of the systems intrusion, and documents the reasons for such determination.

(3) The information required to be disseminated under paragraphs (c)(1) and (2) of this section promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event has occurred, shall be promptly disseminated by the SCI entity to those members or participants of the SCI entity that any responsible SCI personnel has reasonably estimated may have been affected by the SCI event, and promptly disseminated to any additional members or participants that any responsible SCI personnel subsequently reasonably estimates may have been affected by the SCI event; *provided, however*, that for major SCI events, the information required to be disseminated under paragraphs (c)(1) and (2) of this section shall be promptly disseminated by the SCI entity to all of its members or participants.

(4) The requirements of paragraphs (c)(1) through (3) of this section shall not apply to:

(i) SCI events to the extent they relate to market regulation or market surveillance systems; or

(ii) Any SCI event that has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity’s operations or on market participants.

§ 242.1003 Obligations related to systems changes; SCI review.

(a) *Systems changes.* Each SCI entity shall:

(1) Within 30 calendar days after the end of each calendar quarter, submit to the Commission a report describing completed, ongoing, and planned material changes to its SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters, including the dates or expected dates of commencement and completion. An SCI entity shall establish reasonable written criteria for identifying a change to its SCI systems and the security of indirect SCI systems as material and report such changes in accordance with such criteria.

(2) Promptly submit a supplemental report notifying the Commission of a material error in or material omission from a report previously submitted under this paragraph (a).

(b) *SCI review.* Each SCI entity shall:

(1) Conduct an SCI review of the SCI entity’s compliance with Regulation SCI not less than once each calendar year; *provided, however*, that:

(i) Penetration test reviews of the network, firewalls, and production systems shall be conducted at a frequency of not less than once every three years; and

(ii) Assessments of SCI systems directly supporting market regulation or market surveillance shall be conducted at a frequency based upon the risk assessment conducted as part of the SCI review, but in no case less than once every three years; and

(2) Submit a report of the SCI review required by paragraph (b)(1) of this section to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review; and

(3) Submit to the Commission, and to the board of directors of the SCI entity

or the equivalent of such board, a report of the SCI review required by paragraph (b)(1) of this section, together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity.

**§ 242.1004 SCI entity business continuity and disaster recovery plans testing requirements for members or participants.**

With respect to an SCI entity's business continuity and disaster recovery plans, including its backup systems, each SCI entity shall:

(a) Establish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans;

(b) Designate members or participants pursuant to the standards established in paragraph (a) of this section and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months; and

(c) Coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

**§ 242.1005 Recordkeeping requirements related to compliance with Regulation SCI.**

(a) An SCI SRO shall make, keep, and preserve all documents relating to its compliance with Regulation SCI as prescribed in § 240.17a-1 of this chapter.

(b) An SCI entity that is not an SCI SRO shall:

(1) Make, keep, and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other such records, relating to its compliance with Regulation SCI, including, but not limited to, records relating to any changes to its SCI systems and indirect SCI systems;

(2) Keep all such documents for a period of not less than five years, the first two years in a place that is read-

ily accessible to the Commission or its representatives for inspection and examination; and

(3) Upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (b)(1) and (2) of this section.

(c) Upon or immediately prior to ceasing to do business or ceasing to be registered under the Securities Exchange Act of 1934, an SCI entity shall take all necessary action to ensure that the records required to be made, kept, and preserved by this section shall be accessible to the Commission and its representatives in the manner required by this section and for the remainder of the period required by this section.

**§ 242.1006 Electronic filing and submission.**

(a) Except with respect to notifications to the Commission made pursuant to § 242.1002(b)(1) or updates to the Commission made pursuant to paragraph § 242.1002(b)(3), any notification, review, description, analysis, or report to the Commission required to be submitted under Regulation SCI shall be filed electronically on Form SCI (§ 249.1900 of this chapter), include all information as prescribed in Form SCI and the instructions thereto, and contain an electronic signature; and

(b) The signatory to an electronically filed Form SCI shall manually sign a signature page or document, in the manner prescribed by Form SCI, authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time Form SCI is electronically filed and shall be retained by the SCI entity in accordance with § 242.1005.

**§ 242.1007 Requirements for service bureaus.**

If records required to be filed or kept by an SCI entity under Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity shall ensure that the records are

available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service, signed by a duly authorized person at such service bureau or other recordkeeping service. Such a written undertaking shall include an agreement by the service bureau to permit the Commission and its representatives to examine such records at any time or from time to time during business hours, and to promptly furnish to the Commission and its representatives true, correct, and current electronic files in a form acceptable to the Commission or its representatives or hard copies of any or all or any part of such records, upon request, periodically, or continuously and, in any case, within the same time periods as would apply to the SCI entity for such records. The preparation or maintenance of records by a service bureau or other recordkeeping service shall not relieve an SCI entity from its obligation to prepare, maintain, and provide the Commission and its representatives access to such records.

## PART 243—REGULATION FD

Sec.

243.100 General rule regarding selective disclosure.

243.101 Definitions.

243.102 No effect on antifraud liability.

243.103 No effect on Exchange Act reporting status.

AUTHORITY: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

SOURCE: 65 FR 51738, Aug. 24, 2000, unless otherwise noted.

### § 243.100 General rule regarding selective disclosure.

(a) Whenever an issuer, or any person acting on its behalf, discloses any material nonpublic information regarding that issuer or its securities to any person described in paragraph (b)(1) of this section, the issuer shall make public disclosure of that information as provided in § 243.101(e):

(1) Simultaneously, in the case of an intentional disclosure; and

(2) Promptly, in the case of a non-intentional disclosure.

(b)(1) Except as provided in paragraph (b)(2) of this section, paragraph (a) of this section shall apply to a disclosure made to any person outside the issuer:

(i) Who is a broker or dealer, or a person associated with a broker or dealer, as those terms are defined in Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a));

(ii) Who is an investment adviser, as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)); an institutional investment manager, as that term is defined in Section 13(f)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)(6)), that filed a report on Form 13F (17 CFR 249.325) with the Commission for the most recent quarter ended prior to the date of the disclosure; or a person associated with either of the foregoing. For purposes of this paragraph, a “person associated with an investment adviser or institutional investment manager” has the meaning set forth in Section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)), assuming for these purposes that an institutional investment manager is an investment adviser;

(iii) Who is an investment company, as defined in Section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3), or who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a-3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a-3(c)(7)) thereof, or an affiliated person of either of the foregoing. For purposes of this paragraph, “affiliated person” means only those persons described in Section 2(a)(3)(C), (D), (E), and (F) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)(3)(C), (D), (E), and (F)), assuming for these purposes that a person who would be an investment company but for Section 3(c)(1) (15 U.S.C. 80a-3(c)(1)) or Section 3(c)(7) (15 U.S.C. 80a-3(c)(7)) of the Investment Company Act of 1940 is an investment company; or

(iv) Who is a holder of the issuer’s securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer’s