

Securities and Exchange Commission

§ 240.10A-1

quotation for the security is reported in Level 2 of NASDAQ; and

(3) (*Price of purchase*) Effects all Rule 10b-18 purchases from or through a broker or dealer at a purchase price, or makes or causes to be made all Rule 10b-18 bids to or through a broker or dealer at a price.

(i) For a reported security, that is not higher than the published bid, as that term is defined in Rule 11Ac1-1(a)(9) under the Act, that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, that is not higher than the current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange for a NASDAQ security, that is not higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry; and

(4) (*Volume of purchases*) Effects from or through a broker or dealer all Rule 10b-18 purchases other than block purchases

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any on that day, does not exceed the higher of (A) one round lot or (B) the number of round lots closet to 25 percent of the trading volume for the security;

(ii) Of any other security, in an amount that (A) when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer on that day, does not exceed one round lot or (B) when added to the amounts of all

other Rule 10b-18 purchases other than block purchases from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer during that day and the preceding five business days, does not exceed 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(c) *Conditions following a market-wide trading suspension.* The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b-18 bid or a Rule 10b-18 purchase effected during a trading session following the termination of a market-wide trading suspension, except that the time of purchase condition in paragraph (b)(2) of this section shall not apply, either:

(1) From the reopening of trading until the scheduled close of trading; or

(2) At the opening of trading on the next trading day, if a market-wide trading suspension is in effect at the scheduled close of a trading session.

(d) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act, 15 U.S.C. 78i(a)(2) or 78j(b), or § 240.10b-5, if the Rule 10b-18 bids or Rule 10b-18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraphs (b) or (c) of this section.

[47 FR 53339, Nov. 26, 1982, as amended at 62 FR 543, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 64 FR 52433, Sept. 29, 1999]

§ 240.10b-21 [Reserved]

REPORTS UNDER SECTION 10A

§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j-1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other

§ 240.10A-1

17 CFR Ch. II (4-1-03 Edition)

means, *provided* it is received by the Office of the Chief Accountant within the required time period.

(2) The notice specified in paragraph (a)(1) of this section shall be in writing and:

(i) Shall identify the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings by the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office);

(ii) Shall state the date that the issuer received from the independent accountant the report specified in section 10A(b)(2) of the Act, 15 U.S.C. 78j-1(b)(2);

(iii) Shall provide, at the election of the issuer, either:

(A) A summary of the independent accountant's report, including a description of the act that the independent accountant has identified as a likely illegal act and the possible effect of that act on all affected financial statements of the issuer or those related to the most current three-year period, whichever is shorter; or

(B) A copy of the independent accountant's report; and

(iv) May provide additional information regarding the issuer's views of and response to the independent accountant's report.

(3) Reports of the independent accountant submitted by the issuer to the Commission's Office of the Chief Accountant in accordance with paragraph (a)(2)(iii)(B) of this section shall be deemed to have been made pursuant to section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), for purposes of the safe harbor provided by section 10A(c) of the Act, 15 U.S.C. 78j-1(c).

(4) Submission of the notice in paragraphs (a)(1) and (a)(2) of this section shall not relieve the issuer from its obligations to comply fully with all other reporting requirements, including, without limitation:

(i) The filing requirements of Form 8-K, § 249.308 of this chapter, and Form N-SAR, § 274.101 of this chapter, regarding a change in the issuer's certifying accountant and

(ii) The disclosure requirements of item 304 of Regulation S-B or item 304 of Regulation S-K, §§ 228.304 or 229.304 of this chapter.

(b)(1) Any independent accountant furnishing to the Commission a copy of a report (or the documentation of any oral report) in accordance with section 10A(b)(3) or section 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), shall submit that report (or documentation) to the Commission's Office of the Chief Accountant within the time period prescribed by the appropriate section of the Act. The report (or documentation) may be submitted to the Commission's Office of the Chief Accountant by facsimile, telegraph, personal delivery, or any other means, *provided* it is received by the Office of the Chief Accountant within the time period set forth in section 10A(b)(3) or 10A(b)(4) of the Act, 15 U.S.C. 78j-1(b)(3) or 78j-1(b)(4), whichever is applicable in the circumstances.

(2) If the report (or documentation) submitted to the Office of the Chief Accountant in accordance with paragraph (b)(1) of this section does not clearly identify both the issuer (including the issuer's name, address, phone number, and file number assigned to the issuer's filings with the Commission) and the independent accountant (including the independent accountant's name and phone number, and the address of the independent accountant's principal office), then the independent accountant shall place that information in a prominent attachment to the report (or documentation) and shall submit that attachment to the Office of the Chief Accountant at the same time and in the same manner as the report (or documentation) is submitted to that Office.

(3) Submission of the report (or documentation) by the independent accountant as described in paragraphs (b)(1) and (b)(2) of this section shall not replace, or otherwise satisfy the need for, the newly engaged and former accountants' letters under items 304(a)(2)(D) and 304(a)(3) of Regulation S-K, §§ 229.304(a)(2)(D) and 229.304(a)(3) of this chapter, respectively, and under items 304(a)(2)(D) and 304(a)(3) of Regulation S-B, §§ 228.304(a)(2)(D) and 228.304(a)(3) of this chapter, respectively, and shall not limit, reduce, or

Securities and Exchange Commission

§ 240.11a-1

affect in any way the independent accountant's obligations to comply fully with all other legal and professional responsibilities, including, without limitation, those under generally accepted auditing standards and the rules or interpretations of the Commission that modify or supplement those auditing standards.

(c) A notice or report submitted to the Office of the Chief Accountant in accordance with paragraphs (a) and (b) of this section shall be deemed to be an investigative record and shall be non-public and exempt from disclosure pursuant to the Freedom of Information Act to the same extent and for the same periods of time that the Commission's investigative records are non-public and exempt from disclosure under, among other applicable provisions, 5 U.S.C. 552(b)(7) and § 200.80(b)(7) of this chapter. Nothing in this paragraph, however, shall relieve, limit, delay, or affect in any way, the obligation of any issuer or any independent accountant to make all public disclosures required by law, by any Commission disclosure item, rule, report, or form, or by any applicable accounting, auditing, or professional standard.

Instruction to Paragraph (c)

Issuers and independent accountants may apply for additional bases for confidential treatment for a notice, report, or part thereof, in accordance with § 200.83 of this chapter. That section indicates, in part, that any person who, pursuant to any requirement of law, submits any information or causes or permits any information to be submitted to the Commission, may request that the Commission afford it confidential treatment by reason of personal privacy or business confidentiality, or for any other reason permitted by Federal law.

[62 FR 12749, Mar. 18, 1997]

§ 240.10A-2 Auditor independence.

It shall be unlawful for an auditor not to be independent under § 210.2-01(c)(2)(iii)(B), (c)(4), (c)(6), (c)(7), and § 210.2-07.

[68 FR 6048, Feb. 5, 2003]

EFFECTIVE DATE NOTE: At 68 FR 6048, Feb. 5, 2003, § 240.10A-2 was added effective May 6, 2003.

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

§ 240.11a-1 Regulation of floor trading.

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

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

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

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

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

(4) Any bona fide arbitrage transaction;

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

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

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