§240.11d2–1 Exemption from Section 11(d)(2) for certain broker-dealers effecting transactions for customers security futures products in futures accounts.

A broker or dealer registered pursuant to section 15(b)(1) of the Act (15 U.S.C. 78*o*(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in §240.15c3–3(a)(15)), is exempt from section 11(d)(2) of the Act (15 U.S.C. 78k(d)(2)).

[67 FR 58313, Sept. 13, 2002]

REGISTRATION OF SECURITIES INFORMATION PROCESSORS

§240.11Aa2–1 Designation of national market system securities.

The term *national market system security* shall mean any reported security as defined in Rule 11Aa3–1.

[52 FR 24153, June 29, 1987]

§240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

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

(1) The term *transaction report* shall mean 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 (''transaction'').

(2) The term *transaction reporting plan* shall mean any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in reported securities filed with the Commission pursuant to, and meeting the requirements of, this section.

(3) The term *effective transaction reporting plan* shall mean any transaction reporting plan approved by the Commission pursuant to this section.

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(5) The term *listed equity security* shall mean any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange (''exchange'').

(6) The term *NASDAQ security* shall mean any registered equity security for which quotation information is disseminated in the National Association of Securities Dealers Automated Quotation system (''NASDAQ'').

(7) The term *transaction reporting association* shall mean any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under paragraph (b) of this section.

(8) The term *interrogation device* shall mean any securities information retrieval system capable of displaying transaction reports or last sale data, upon inquiry, on a current basis on a terminal or other device.

(9) The term *moving ticker* shall mean any continuous real-time moving display of transaction reports or last sale data (other than a market minder) provided on an interrogation or other display device.

(10) The term *market minder* shall mean any service provided by a vendor on an interrogation device or other display which (i) permits real-time monitoring, on a dynamic basis, of transaction reports or last sale data with respect to a particular security, and (ii) displays the most recent transaction report or last sale data with respect to that security until such report or data has been superseded or supplemented by the display of a new transaction report or last sale data reflecting the next reported transaction in that security.

(11) The term *vendor* shall mean any securities information processor engaged in the business of disseminating transaction reports or last sale data with respect to transactions in reported 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.

(12) The term *last sale data* shall mean any price or volume data associated with a transaction.

(b)(1) Every exchange shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ security executed through its facilities, and every association shall file a transaction reporting plan regarding transactions in listed equity and NASDAQ securities executed by its members otherwise than on an 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 paragraphs (b) and (c) of § 240.11Aa3–2 governing national market system plans. 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 repect 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 such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from exchanges and associations reported pursuant to any other effective transaction reporting plan;

(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 § 240.11Aa3–2 (Rule 11Aa3–2 under the Act) governing national market system plans.

(c) *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 reported security,

(i) On or through the facilities of an 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 an exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on an exchange by such broker or dealer.

(2) No exchange or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed through the facilities of such exchange except pursuant to an effective transaction reporting plan filed by such exchange (either individually or jointly with other persons).

(3) No association or member thereof shall make available or disseminate, on a current and continuing basis, transaction reports or last sale data with respect to transactions in any reported security executed by a member of such association otherwise than on an exchange except pursuant to an effective transaction reporting plan filed by such association (either individually or jointly with other persons).

(4) Every broker or dealer who is a member of an exchange or 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).

(d) *Retransmission of transaction reports or last sale data.* On and after July 5, 1980, notwithstanding any provision of any effective transaction reporting plan, no exchange or 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 an exchange or 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 (e) of this section are collected.

(e) *Charges.* Nothing in this section shall preclude any exchange or 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.

(f) *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 paragraph (e) of §240.11Aa3–2.

(g) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, 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.

(Secs. 2, 3, 6, 9, 10, 15, 17 and 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 889, 891, 895, 897 and 901, as amended by secs. 2, 3, 4, 11, 14 and 18, Pub. L. 94–29, 89 Stat. 97, 104, 121, 137 and 155 (15 U.S.C. 78b, 78c, 78f, 78i, 78j, 78o, 78q and 78w); sec. 15A, as added by sec. 1, Pub. L. 75–719, 52 Stat. 1070, as amended by sec. 12, Pub. L. 94–29, 89 Stat. 127 (15 U.S.C. 78–3); sec. 11A, as added by sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1); 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84–29 (June 4, 1975) and by Pub. L. 98–38 (June 6, 1983), particularly secs. 11A, 15, 19 and 23 thereof (15 U.S.C. 78k–1, 78*o*, 78s and 78w))

[45 FR 12388, Feb. 26, 1980, as amended at 46 FR 14006, Feb. 25, 1981; 46 FR 15872, Mar. 10, 1981; 48 FR 53690, Nov. 29, 1983; 50 FR 38518, Sept. 23, 1985; 52 FR 24153, June 29, 1987; 61 FR 48328, Sept. 12, 1996]

§240.11Aa3–2 Filing and amendment of national market system plans.

(a) *Definitions.* For purposes of this section, (1) The term *national market system plan* shall mean 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 subpart promulgated pursuant to section 11A of the Act.

(2) The term *effective national market system plan* shall mean any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to this section.

(3) The term *self-regulatory organization* shall mean any national securities exchange (''exchange'') or national securities association (''association'').

(4) The term *joint self-regulatory organization plan* shall mean a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.