

§240.11Ac1-2

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

(2) Its published quotation size; and
(B) Revise its bid or offer.
(4) Notwithstanding paragraph (d)(3) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraph (c)(2) of this section if:

(i) Any of the circumstances in paragraph (c)(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.

(e) *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, exchange, or 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.

[61 FR 48328, Sept. 12, 1996, as amended at 63 FR 70919, Dec. 22, 1998; 65 FR 75461, Dec. 1, 2000]

§240.11Ac1-2 Display of transaction reports, last sale data and quotation information.

(a) *Definitions.* For purposes of this section, (1) The terms *transaction report*, *effective transaction reporting plan*, *moving ticker*, *last sale data*, *market minder* and *interrogation device* shall have the meaning provided in §240.11Aa3-1 (Rules 11Aa3-1 under the Act).

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

(3) The term *NASDAQ* shall mean the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(4) The term *subject security* shall mean,

(i) Any reported security; and
(ii) Any other equity security as to which transaction reports, last sale data or quotation information is disseminated through NASDAQ.

(5) The terms *quotations* and *quotation information* shall mean bids, offers and, where applicable, quotation sizes and aggregate quotation sizes.

(6) The terms *bid* and *offer* shall,

(i) In the case of a reported security, have the meaning provided in §240.11Ac1-1 (Rule 11Ac1-1 under the Act); and

(ii) In the case of any subject security other than a reported security, mean the most recent bid price or offer price of an over-the-counter market maker disseminated through Level 2 or 3 of NASDAQ.

(7) The terms *quotation size*, *aggregate quotation size*, *third market maker* and *make available* shall have the meaning provided in §240.11Ac1-1 (Rule 11Ac1-1 under the Act).

(8) The term *consolidated display* shall mean, with respect to a particular reported security,

(i) Any display (other than a moving ticker or market minder) of transaction reports for such security from all reporting market centers;

(ii) Any display (other than a moving ticker or market minder) of last sale data for such security, or information derived therefrom, based on transaction reports from all reporting market centers; or

(iii) Any display of quotation information for that security based on quotations from all reporting market centers.

(9) The term *consolidated price*, when used with respect to a particular reported security, shall mean the price of the most recent transaction report for that security reported pursuant to any effective transaction reporting plan.

(10) The term *consolidated volume*, when used with respect to a particular reported security, shall mean the volume of the most recent transaction report for that security reported pursuant to any effective transaction reporting plan.

(11) The term *cumulative consolidated volume*, when used with respect to a particular reported security, shall mean the cumulative volume of all

Securities and Exchange Commission

§ 240.11Ac1-2

transaction reports for that security reported pursuant to any effective transaction reporting plan during a particular trading day.

(12) The term *individual market center display* shall mean, with respect to a particular reported security,

(i) Any display (other than a moving ticker or market minder) of transaction reports for such security from a particular market center;

(ii) Any display (other than a moving ticker or market minder) of last sale data for such security, or information derived therefrom, based on transaction reports from a particular reporting market center; or

(iii) Any display of quotation information for that security based on quotations from a particular reporting market center.

(13) The term *over-the-counter market maker* shall mean, with respect to any subject security other than a reported security, any broker or dealer which holds itself out as being willing to buy and sell such security on a regular and continuous basis otherwise than on an exchange in amounts of less than block size.

(14) The term *reporting market center* shall mean, (i) with respect to a reported security,

(A) Any national securities exchange ("exchange") on which, or through whose facilities, transactions in such security are executed and which collects, processes and makes available transaction reports with respect to transactions in such security on a current basis pursuant to § 240.11Aa3-1 (Rule 11Aa3-1 under the Act); and

(B) Any person acting in the capacity of a third market maker with respect to such security which reports transactions in such security to a national securities association on a current basis pursuant to § 240.11Aa3-1 (Rule 11Aa3-1 under the Act) and disseminates quotations in such security pursuant to § 240.11Ac1-1 (Rule 11Ac1-1 under the Act); and

(ii) With respect to a subject security other than a reported security, any person acting in the capacity of an over-the-counter market maker who is authorized to disseminate quotations in such security, through NASDAQ, and who makes such quotations avail-

able through that system on a regular and continuous basis.

(15) The terms *best bid* and *best offer* shall mean,

(i) With respect to quotations for a reported security, the highest bid or lowest offer for that security made available by any reporting market center pursuant to § 240.11Ac1-1 (Rule 11Ac1-1 under the Act) (excluding any bid or offer made available by an exchange during any period such exchange is relieved of its obligations under paragraphs (b) (1) and (2) of § 240.11Ac1-1 by virtue of paragraph (b)(3)(i) thereof); *Provided, however*, That in the event two or more reporting market centers make available identical bids or offers for a reported security, the best bid or best offer (as the case may be) shall be computed 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), then by time (giving the highest ranking to the bid or offer received first in time); and

(ii) With respect to quotations for a subject security other than a reported security, the highest bid or lowest offer (as the case may be) for such security disseminated by an over-the-counter market maker in Level 2 or 3 of NASDAQ.

(16) The term *quotation montage* shall mean, with respect to a particular subject security, a display on an interrogation device which disseminates simultaneously quotations in that security from all reporting market centers.

(17) The term *representative bid or offer* shall mean any number representing a bid price or an offer price (as the case may be) for a particular subject security which is (i) the mean, median, mode or weighted average of two or more bids or offers of reporting market centers in such security, (ii) calculated with reference to or derived from any such mean, median, mode or weighted average, or (iii) calculated by adding to or subtracting from the bid or offer of any reporting market center in such security any number representing a commission, commission equivalent, mark-up or differential.

(18) The term *market information*, when used with respect to an individual market center display or a consolidated display for a particular reported security, shall mean (i) any transaction reports or last sale data, or information derived therefrom, contained in any such display, (ii) any quotation information contained in any such display, and (iii) any other category of information contained in any such display which relates to the particular reported security involved, including, but not limited to, annual or periodic dividend, ex-dividend date, time of most recent trade and news dissemination.

(19) The term *market linkage system* shall mean any communications and data processing facility which permits orders for the purchase and sale of a subject security to be transmitted from one reporting market center to another such reporting market center.

(20) 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.

(b) *Display requirements for transaction reports and last sale data.* (1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, transaction reports, last sale data or market information in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of transaction reports, last sale data or market information with respect to reported securities:

(i) If transaction reports or last sale data with respect to a particular reported security are provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of transaction reports or last sale data for such security which shall include, at a minimum, (A) the consolidated price for such security, (B) the consolidated volume or cumulative consolidated volume for such security, and (C) an identifier indi-

cating the reporting market center associated with such consolidated price and consolidated volume (the “consolidated last sale display”).

(ii) The consolidated last sale display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center display of transaction reports or last sale data provided on that device for such security; *Provided, however,* That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated last sale display and any such individual market center displays made available for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated last sale display is the most prominent.

(iii) Subject to the provisions of paragraph (b)(2)(ii) of this section, a vendor may provide on an interrogation device an individual market center display of transaction reports or last sale data for a particular reported security for any reporting market center in such security.

(iv) No moving ticker may include an identifier indicating the reporting market center associated with a particular transaction report with respect to a reported security unless such moving ticker includes identifiers for all transaction reports for such security (or an identifiable subset of all such transaction reports) from all reporting market centers in that security in a non-discriminatory manner.

(v) No moving ticker or consolidated last sale display may exclude any transaction report or last sale data based upon the market center in which a transaction has been executed.

(vi) No vendor may provide any category of market information in an individual market center display for a particular subject security unless that category of market information is also provided, on a consolidated basis, as part of the consolidated last sale display for that security; *Provided, however,* That a vendor may delete from such consolidated last sale display up to three categories of information if

Securities and Exchange Commission

§ 240.11Ac1-2

such deletion is necessary to accommodate the display of any market identifiers required by this section.

(vii) Transaction reports and last sale data from all reporting market centers which are third market makers may be identified in a consolidated last sale display or a moving ticker by a single identifier without identification of the individual third market maker associated with such transaction report or last sale data.

(c) *Display requirements for quotation information.* (1) No vendor shall distribute, publish, display or otherwise provide to brokers and dealers on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker or interrogation device, quotation information with respect to subject securities in contravention of the provisions of this section.

(2) On and after the effective date of this section, the following requirements shall be applicable to the display of quotation information with respect to subject securities:

(i) If quotation information with respect to a particular subject security is provided by a vendor on an interrogation device, such vendor shall provide on that device a consolidated display of quotation information for such security (the "consolidated quotation display") which shall include, at a minimum,

(A) The best bid and best offer for such security and, in the case of a reported security, (1) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer and (2) the quotation size or aggregate quotation size associated with such best bid and the quotation size or aggregate quotation size associated with such best offer, or

(B) A quotation montage for that security.

(ii) The consolidated quotation display shall be accessed by means of retrieval instructions involving a number of key strokes which is fewer than the number of strokes required to access any individual market center quotation display provided on that device by such vendors for such security:

Provided, however, That, notwithstanding the above requirement, a vendor may provide on that device both the consolidated quotation display and any individual market center display of quotation information provided for such security by means of retrieval instructions involving an equal number of key strokes if the information request or transmit key for the consolidated quotation display is the most prominent.

(iii) Subject to the provisions of paragraph (c)(2)(ii) of this section, a vendor may provide on an interrogation device

(A) An individual market center display of quotation information for a particular subject security for any reporting market center in such security; or

(B) Either separately or as the consolidated quotation display, a quotation montage for that security.

(iv) No consolidated quotation display or separate quotation montage provided on an interrogation device may exclude any quotation information based upon the market center making available such information: *Provided, however,* That for purposes of providing the consolidated quotation display or a separate quotation montage for any reported security, quotation information from all reporting market centers which are third market makers may be consolidated to derive a best bid and offer for all such market centers if such interrogation device is capable of displaying, either separately or as part of the consolidated quotation display or separate quotation montage, (A) identifiers indicating the reporting market center making available such best bid and the reporting market center making available such best offer, and (B) the quotation size associated with both such best bid and best offer.

(v) Each individual market center display of quotation information or separate quotation montage for a particular reported security shall include the quotation size or aggregate quotation size associated with each bid or offer disseminated as part of such display or montage.

(vi) No vendor may provide on any interrogation device a representative

§240.11Ac1-3

bid or offer with respect to any subject security.

(d) *Joint display of transaction reports and quotation information.* Subject to the provisions of paragraphs (b)(2)(ii) and (c)(2)(ii) of this section regarding the means of access to consolidated last sale displays and consolidated quotation displays, a vendor may combine the consolidated last sale display and the consolidated quotation display for a particular subject security.

(e) *Applicability to brokers and dealers.* Subject to the provisions of paragraph (f) of this section, no broker or dealer may operate or maintain any display of transaction reports, last sale data, quotation information or market information which would not be permitted to be provided by a vendor under paragraph (b) or (c) of this section.

(f) *Exchange or market linkage system displays.* The provisions of this section shall not apply to: (1) The dissemination or display of transactions reports, last sale data, quotation information or market information on the trading floor or through the facilities of an exchange, (2) any display of transaction reports, last sale data, quotation information or market information operated or maintained by a self-regulatory organization for monitoring or surveillance purposes, or (3) any display of transaction reports, last sale data or quotation information in connection with the operation of a market linkage system implemented in accordance with a plan approved by the Commission pursuant to section 11A(a)(3)(B) of the Act.

(g) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any securities information processor, self-regulatory organization, broker, dealer or specified subject 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.

(h) *Effective date.* The effective date of this section shall be April 5, 1980, except for paragraph (c)(2)(vi), which shall become effective on July 5, 1980, and paragraphs (b)(2)(ii), (vi) and

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

(c)(2)(i), (ii), (iv), (v) which shall become effective on October 1, 1981.

(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, 78g 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. 94-29 (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, 78o, 78s and 78w))

[45 FR 12405, Feb. 26, 1980, as amended at 46 FR 43962, Sept. 2, 1981; 48 FR 53691, Nov. 29, 1983]

§240.11Ac1-3 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 subject security as defined in §240.11Ac1-2 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 as defined in §240.10b-10(e)(9), from any broker or dealer, national securities exchange, registered 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 as defined in §240.10b-10(e)(9) absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the best bid or best offer as defined in §240.11Ac1-2.