

## § 240.3b-14

(i) Listed on, or traded on or through, a national securities exchange or registered national securities association, or facility or market thereof; or

(ii) Except as otherwise determined by the Commission by order pursuant to § 240.15a-1(b)(2), one of a class of fungible instruments that are standardized as to their material economic terms.

(c) The Commission may issue an order pursuant to § 240.15a-1(b)(3) clarifying whether certain contracts, agreements, or transactions are within the scope of eligible OTC derivative instrument.

(d) For purposes of this section, the term *eligible forward contract* means a forward contract that provides for the purchase or sale of a security other than a government security, provided that, if such contract provides for the purchase or sale of margin stock (as defined in Regulation U of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR Part 221), such contract either:

(1) Provides for the purchase or sale of such stock by the issuer thereof (or an affiliate that is not a bank or a broker or dealer); or

(2) Provides for the transfer of transaction collateral in an amount that would satisfy the requirements, if any, that would be applicable assuming the OTC derivatives dealer party to such transaction were not eligible for the exemption from Regulation T of the Regulations of the Board of Governors of the Federal Reserve System, 12 CFR part 220, set forth in § 240.36a1-1.

[63 FR 59395, Nov. 3, 1998]

## § 240.3b-14 Definition of cash management securities activities.

The term *cash management securities activities* means securities activities that are limited to transactions involving:

(a) Any taking possession of, and any subsequent sale or disposition of, collateral provided by a counterparty, or any acquisition of, and any subsequent sale or disposition of, collateral to be provided to a counterparty, in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities of the dealer that involve eligible OTC deriva-

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

tive instruments or other financial instruments;

(b) Cash management, in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities of the dealer that involve eligible OTC derivative instruments or other financial instruments; or

(c) Financing of positions of the dealer acquired in connection with any securities activities of the dealer permitted under § 240.15a-1 or any non-securities activities that involve eligible OTC derivative instruments or other financial instruments.

[63 FR 59395, Nov. 3, 1998]

## § 240.3b-15 Definition of ancillary portfolio management securities activities.

(a) The term *ancillary portfolio management securities activities* means securities activities that:

(1) Are limited to transactions in connection with:

(i) Dealer activities in eligible OTC derivative instruments;

(ii) The issuance of securities by the dealer; or

(iii) Such other securities activities that the Commission designates by order pursuant to § 240.15a-1(b)(1); and

(2) Are conducted for the purpose of reducing the market or credit risk of the dealer or consist of incidental trading activities for portfolio management purposes; and

(3) Are limited to risk exposures within the market, credit, leverage, and liquidity risk parameters set forth in:

(i) The trading authorizations granted to the associated person (or to the supervisor of such associated person) who executes a particular transaction for, or on behalf of, the dealer; and

(ii) The written guidelines approved by the governing body of the dealer and included in the internal risk management control system for the dealer pursuant to § 240.15c3-4; and

(4) Are conducted solely by one or more associated persons of the dealer who perform substantial duties for, or on behalf of, the dealer in connection with its dealer activities in eligible OTC derivative instruments.

## Securities and Exchange Commission

## § 240.3b-17

(b) The Commission may issue an order pursuant to §240.15a-1(b)(4) clarifying whether certain securities activities are within the scope of ancillary portfolio management securities activities.

[63 FR 59395, Nov. 3, 1998]

### § 240.3b-16 Definitions of terms used in Section 3(a)(1) of the Act.

(a) An organization, association, or group of persons shall be considered to constitute, maintain, or provide “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,” as those terms are used in section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons:

(1) Brings together the orders for securities of multiple buyers and sellers; and

(2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

(b) An organization, association, or group of persons shall not be considered to constitute, maintain, or provide “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,” solely because such organization, association, or group of persons engages in one or more of the following activities:

(1) Routes orders to a national securities exchange, a market operated by a national securities association, or a broker-dealer for execution; or

(2) Allows persons to enter orders for execution against the bids and offers of a single dealer; and

(i) As an incidental part of these activities, matches orders that are not displayed to any person other than the dealer and its employees; or

(ii) In the course of acting as a market maker registered with a self-regulatory organization, displays the limit

orders of such market maker’s, or other broker-dealer’s, customers; and

(A) Matches customer orders with such displayed limit orders; and

(B) As an incidental part of its market making activities, crosses or matches orders that are not displayed to any person other than the market maker and its employees.

(c) For purposes of this section the term *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.

(d) For the purposes of this section, the terms *bid* and *offer* shall have the same meaning as under §240.11Ac1-1.

(e) The Commission may conditionally or unconditionally exempt any organization, association, or group of persons from the definition in paragraph (a) of this section.

[63 FR 70918, Dec. 22, 1998]

### § 240.3b-17 Definitions of terms used in Section 3(a)(4) of the Act.

For purposes of Section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)):

(a) The term *chiefly compensated* means that the “relationship compensation” received by a bank from a trust or fiduciary account exceeds the “sales compensation” received by the bank from such account during the immediately preceding year, which is either a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

(b) The term *flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers* means a fee that is no more than the amount a broker-dealer charged the bank for executing the transaction, plus the costs of any resources of the bank that are exclusively dedicated to transaction execution, comparison, and settlement for trust and fiduciary customers.

(c) The term *indenture trustee* means any trustee for an indenture to which the definition given in Section 303 of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc) applies, and any trustee