

(15 U.S.C. 78c(a)(4)(B)(ii)) that is received directly from a customer or beneficiary, or directly from the assets of the trust or fiduciary account, and consists solely of an administration or annual fee (payable on a monthly, quarterly, or other basis), a percentage of assets under management fee, or a 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 trust and fiduciary accounts, or any combination of such fees.

(j) The term *sales compensation* means any compensation received by a bank in connection with activities for which the bank relies on an exception under Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) that:

(1) Is a fee for effecting a transaction in securities that is not a 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;

(2) Is compensation that if paid to a broker or dealer would be payment for order flow, as defined in §240.10b-10;

(3) Is a finders' fee received in connection with a securities transaction or account, except a fee received pursuant to Section 3(a)(4)(B)(i) of the Act (15 U.S.C. 78c(a)(4)(B)(i));

(4) Is a fee paid for an offering of securities that is not received directly from a customer or beneficiary, or directly from the assets of the trust or fiduciary account;

(5) Is a fee paid pursuant to a Rule 12b-1 plan under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*); or

(6) Is a fee paid by an investment company for personal service or the maintenance of shareholder accounts, except a fee that is not part of a Rule 12b-1 plan under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) for:

(i) Transfer agent and subtransfer agent services for beneficial owners of shares in the investment company;

(ii) Aggregating and processing purchase and redemption orders;

(iii) Providing beneficial owners with statements showing their positions in the investment companies;

(iv) Processing dividend payments;

(v) Providing subaccounting services for shares in the investment company held beneficially;

(vi) Forwarding shareholder communications, such as proxies, shareholder reports, dividend and tax notices, and updating prospectuses to beneficial owners; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners.

(k) The term *trustee capacity* in Section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)) includes an indenture trustee or a trustee for a tax-deferred account described in Sections 401(a), 408, and 408A under subchapter D and in Section 457 under subchapter E of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

[66 FR 27798, May 18, 2001]

§ 240.3b-18 Definitions of terms used in Section 3(a)(5) of the Act.

For the purposes of section 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(5)(C)):

(a) The term *affiliate* means any company that controls, is controlled by, or is under common control with another company.

(b) The term *consumer-related receivable* means any obligation incurred by any natural person to pay money arising out of a transaction in which the money, property, insurance, or services (being purchased) are primarily for personal, family, or household purposes.

(c) The term *member* as it relates to the term "syndicate of banks" means a bank that is a participant in a syndicate of banks and together with its affiliates, other than its broker or dealer affiliates, originates no less than 10% of the value of the obligations in a pool of obligations used to back the securities issued through a grantor trust or other separate entity.

(d) The term *obligation* means any note, draft, acceptance, loan, lease, receivable, or other evidence of indebtedness that is not a security issued by a person other than the bank.

(e) The term *originated* means:

(1) Funding an obligation at the time that the obligation is created; or

(2) Initially approving and underwriting the obligation, or initially agreeing to purchase the obligation, provided that:

(i) The obligation conforms to the underwriting standards or is evidenced by the loan documents of the bank or its affiliates, other than its broker or dealer affiliates; and

(ii) The bank or its affiliates, other than its broker or dealer affiliates, fund the obligation in a timely manner, not to exceed six months after the obligation is created.

§ 240.6a-1

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

(f) The term *pool* means more than one obligation or type of obligation grouped together to provide collateral for a securities offering.

(g) The term *predominantly originated* means that no less than 85% of the value of the obligations in any pool were originated by:

(1) The bank or its affiliates, other than its broker or dealer affiliates; or

(2) Banks that are members of a syndicate of banks and affiliates of such banks, other than their broker or dealer affiliates, if the obligations or pool of obligations consist of mortgage obligations or consumer-related receivables.

(3) For this purpose, the bank and its affiliates include any financial institution with which the bank or its affiliates have merged but does not include the purchase of a pool of obligations or the purchase of a line of business.

(h) The term *syndicate of banks* means a group of banks that acts jointly, on a temporary basis, to issue through a grantor trust or other separate entity, securities backed by obligations originated by each of the individual banks or their affiliates, other than their broker or dealer affiliates.

[68 FR 8700, Feb. 24, 2003]

REGISTRATION AND EXEMPTION OF EXCHANGES

§ 240.6a-1 Application for registration as a national securities exchange or exemption from registration based on limited volume.

(a) An application for registration as a national securities exchange, or for exemption from such registration based on limited volume, shall be filed on Form 1 (§249.1 of this chapter), in accordance with the instructions contained therein.

(b) Promptly after the discovery that any information filed on Form 1 was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(c) Promptly after the discovery that any information in the statement, any exhibit, or any amendment was inaccurate when filed, the exchange shall file with the Commission an amendment correcting such inaccuracy.

(d) Whenever the number of changes to be reported in an amendment, or the number of amendments filed, are so great that the purpose of clarity will be promoted by the filing of a new complete statement and exhibits, an ex-

change may, at its election, or shall, upon request of the Commission, file as an amendment a complete new statement together with all exhibits which are prescribed to be filed in connection with Form 1.

(Secs. 5, 6, 17, 48 Stat. 885, 897, as amended; 15 U.S.C. 78e, 78f, 78q)

[14 FR 7759, Dec. 29, 1949, as amended at 63 FR 70918, Dec. 22, 1998]

§ 240.6a-2 Amendments to application.

(a) A national securities exchange, or an exchange exempted from such registration based on limited volume, shall file an amendment to Form 1, (§249.1 of this chapter), which shall set forth the nature and effective date of the action taken and shall provide any new information and correct any information rendered inaccurate, on Form 1, (§249.1 of this chapter), within 10 days after any action is taken that renders inaccurate, or that causes to be incomplete, any of the following:

(1) Information filed on the Execution Page of Form 1, or amendment thereto; or

(2) Information filed as part of Exhibits C, F, G, H, J, K or M, or any amendments thereto.

(b) On or before June 30 of each year, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall file, as an amendment to Form 1, the following:

(1) Exhibits D and I as of the end of the latest fiscal year of the exchange; and

(2) Exhibits K, M, and N, which shall be up to date as of the latest date practicable within 3 months of the date the amendment is filed.

(c) On or before June 30, 2001 and every 3 years thereafter, a national securities exchange, or an exchange exempted from such registration based on limited volume, shall file, as an amendment to Form 1, complete Exhibits A, B, C and J. The information filed under this paragraph (c) shall be current as of the latest practicable date, but shall, at a minimum, be up to date within 3 months as of the date the amendment is filed.

(d)(1) If an exchange, on an annual or more frequent basis, publishes, or operates in the publication of, any of