

## Securities and Exchange Commission

## § 240.10b-3

fail to deliver a security on the date delivery is due, if such broker or dealer knows or has reasonable grounds to believe that the sale was effected, or will be effected, pursuant to an order marked "long," unless such broker or dealer knows, or has been informed by the seller (1) that the security sold has been forwarded to the account for which the sale was effected, or (2) that the seller owns the security sold, that it is then impracticable to deliver to such account the security owned and that he will deliver such security to such account as soon as it is possible without undue inconvenience or expense.

(b) The provisions of paragraph (a) of this section shall not apply (1) to the lending of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange by a broker or dealer through the medium of a loan to another broker or dealer, or (2) to any loan, or arrangement for the loan, of any such security, or to any failure to deliver any such security if, prior to such loan, arrangement or failure to deliver, a national securities exchange, in the case of a sale effected thereon, or a national securities association, in the case of a sale not effected on an exchange, finds (i) that such sale resulted from a mistake made in good faith, (ii) that due diligence was used to ascertain that the circumstances specified in § 240.10a-1(d)(1) existed or to obtain the information specified in clause (2) thereof, and (iii) either that the condition of the market at the time the mistake was discovered was such that undue hardship would result from covering the transaction by a "purchase for cash" or that the mistake was made by the seller's broker and the sale was at a price permissible for a short sale under § 240.10a-1 (a) or (b).

(Sec. 10, 48 Stat. 891, as amended, 64 Stat. 1265, 15 U.S.C. 78j(a); sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 704, as amended, 49 Stat. 1379, as amended, Pub. L. 94-29 § 18 (June 4, 1975), 15 U.S.C. 78w(a))

CROSS REFERENCE: For interpretative release applicable to § 240.10a-2, see No. 1571 in tabulation, Part 241 of this chapter.

[40 FR 25445, June 16, 1975]

## MANIPULATIVE AND DECEPTIVE DEVICES AND CONTRIVANCES

### § 240.10b-1 Prohibition of use of manipulative or deceptive devices or contrivances with respect to certain securities exempted from registration.

The term *manipulative or deceptive device or contrivance*, as used in section 10(b) (48 Stat. 891; 15 U.S.C. 78j(b)), is hereby defined to include any act or omission to act with respect to any security exempted from the operation of section 12(a) (48 Stat. 892; 15 U.S.C. 78l(a)) pursuant to any section in this part which specifically provides that this section shall be applicable to such security if such act or omission to act would have been unlawful under section 9(a) (48 Stat. 889; 15 U.S.C. 78i(a)), or any rule or regulation heretofore or hereafter prescribed thereunder, if done or omitted to be done with respect to a security registered on a national securities exchange, and the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange to use or employ any such device or contrivance in connection with the purchase or sale of any such security is hereby prohibited.

(Secs. 10, 12, 48 Stat. 891, 892; 15 U.S.C. 78j, 78l)

CROSS REFERENCES: For applicability of this section, see §§ 240.12a-4 and 240.12a-5. For regulations relating to employment of manipulative and deceptive devices, see §§ 240.10b-3 and 240.10b-5.

[13 FR 8183, Dec. 22, 1948]

### § 240.10b-2 [Reserved]

### § 240.10b-3 Employment of manipulative and deceptive devices by brokers or dealers.

(a) It shall be unlawful for any broker or dealer, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, to use or employ, in connection with the purchase or sale of any security otherwise than on a national securities exchange, any act, practice, or course of business defined by the Commission to be included within the term "manipulative, deceptive,