

(ii) Solely to the extent necessary to effect an orderly cessation or transfer of these functions.

(e)(1)(i) If you are a broker or dealer that is not operationally capable because you have or are presumed to have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission and your designated examining authority a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(A) You are in the process of remediating your material Year 2000 problem;

(B) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(C) The date by which you anticipate completing remediation of the material Year 2000 problem in your mission critical systems, and will therefore be operationally capable; and

(D) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem in your mission critical systems will impair your ability, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities; and you anticipate that the steps referred to in paragraphs (e)(1)(i)(A) through (C) of this section will result in remedying the material Year 2000 problem on or before November 15, 1999.

(ii) If the information contained in any certificate provided to the Commission pursuant to paragraph (e) of this section is or becomes misleading or inaccurate for any reason, you must promptly file an updated certificate correcting such information. In addition to the information contained in the certificate, you may provide the Commission with any other information necessary to establish that your mission critical systems will not have material Year 2000 problems on or after November 15, 1999.

(2) If you have submitted a certificate pursuant to paragraph (e)(1) of this section, you must submit a certificate to the Commission and your designated examining authority signed by your chief executive officer (or an individual with similar authority) on or before November 15, 1999, stating that, based on inquiries and to the best of the chief executive officer's knowledge, you have remediated your Year 2000 problem or that you will cease operations. This certificate must be sent to the Commission by overnight delivery to the Division of Market Regulation, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-1002 Attention: Y2K Compliance.

(f) Notwithstanding paragraph (d)(2) of this section, you must comply with the requirements of paragraph (d)(1) of this section if you have been so ordered by the Commission or by a court.

(g) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities; and

(2) The term *customer* includes a broker or dealer.

(h) This temporary section will expire on July 1, 2001.

[64 FR 42023, Aug. 3, 1999]

**§ 240.15b9-1 Exemption for certain exchange members.**

(a) Any broker or dealer required by section 15(b)(8) of the Act to become a member of a registered national securities association shall be exempt from such requirement if it: (1) Is a member of a national securities exchange, (2) carries no customer accounts, and (3) has annual gross income derived from purchases and sales of securities otherwise than on a national securities exchange of which it is a member in an amount no greater than \$1,000.

(b) The gross income limitation contained in paragraph (a) of this section, shall not apply to income derived from

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transactions (1) for the dealer's own account with or through another registered broker or dealer or (2) through the Intermarket Trading System.

(c) For purposes of this section, the term *Intermarket Trading System* shall mean the intermarket communications linkage operated jointly by certain self-regulatory organizations pursuant to a plan filed with, and approved by, the Commission pursuant to § 240.11Aa3-2 (Rule 11Aa3-2 under the Act).

(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, 78o, 78s and 78w))

[48 FR 53691, Nov. 29, 1983]

**§ 240.15b9-2 Exemption from SRO membership for OTC derivatives dealers.**

An OTC derivatives dealer, as defined in § 240.3b-12, shall be exempt from any requirement under section 15(b)(8) of the Act (15 U.S.C. 78o(b)(8)) to become a member of a registered national securities association.

[63 FR 59397, Nov. 3, 1998]

**RULES RELATING TO OVER-THE-COUNTER MARKETS**

**§ 240.15c1-1 Definitions.**

As used in any rule adopted pursuant to section 15(c)(1) of the Act:

(a) The term *customer* shall not include a broker or dealer or a municipal securities dealer; provided, however, that the term "customer" shall include a municipal securities dealer (other than a broker or dealer) with respect to transactions in securities other than municipal securities.

(b) The term *the completion of the transaction* means:

(1) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer, except as provided in paragraph (b)(2) of this section, the time when such customer pays the broker, dealer or municipal securities dealer any part of the purchase price, or, if payment is effected by a bookkeeping entry, the time when such bookkeeping entry is made by the broker, dealer or municipal securities dealer for any part of the purchase price;

(2) In the case of a customer who purchases a security through or from a broker, dealer or municipal securities dealer and who makes payment therefor prior to the time when payment is requested or notification is given that payment is due, the time when such broker, dealer or municipal securities dealer delivers the security to or into the account of such customer;

(3) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer except as provided in paragraph (b)(4) of this section, if the security is not in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the security is delivered to the broker, dealer or municipal securities dealer, and if the security is in the custody of the broker, dealer or municipal securities dealer at the time of sale, the time when the broker, dealer or municipal securities dealer transfers the security from the account of such customer;

(4) In the case of a customer who sells a security through or to a broker, dealer or municipal securities dealer and who delivers such security to such broker, dealer or municipal securities dealer prior to the time when delivery is requested or notification is given that delivery is due, the time when such broker, dealer or municipal securities dealer makes payment to or into the account of such customer.

[41 FR 22825, June 7, 1976]

**§ 240.15c1-2 Fraud and misrepresentation.**

(a) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act (section 2, 52 Stat. 1075; 15 U.S.C. 78o(c)(1)), is hereby defined to include any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(b) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c)(1) of the Act, is hereby defined to include any untrue statement of a material fact and any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, which statement or omission