

§ 240.36a1-1

exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or the Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

(a) The following shall be exempt from section 31 of the Act:

(1) Transactions in securities offered pursuant to an effective registration statement under the Securities Act of 1933 (except transactions in put or call options issued by the Options Clearing Corporation) or offered in accordance with an exemption from registration afforded by section 3(a) or 3(b) thereof (15 U.S.C. 77c(a) or 77c(b)), or a rule thereunder.

(2) Transactions by an issuer not involving any public offering within the meaning of section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2));

(3) The purchase or sale of securities pursuant to and in consummation of a tender or exchange offer;

(4) The purchase or sale of securities upon the exercise of a warrant or right (except a put or call), or upon the conversion of a convertible security; and

(5) Transactions which are executed outside the United States and are not reported, or required to be reported, to a transaction reporting association as defined in §240.11Aa3-1 (Rule 11Aa3-1 under the Act) and any approved plan filed thereunder;

(b) Over-the-counter ("OTC") transactions in OTC securities which are subject to unlisted trading privileges on a national securities exchange shall be exempt only from section 31(c) of the Act. 7.

[Revised and amended at 61 FR 68594, Dec. 30, 1996]

§ 240.36a1-1 Exemption from Section 7 for OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-

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regulatory organization (§240.15b9-2), regular broker-dealer margin rules (§240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-1), specified internal risk management control systems (§240.15c3-4), recordkeeping obligations (§240.17a-3(a)(10)), and reporting responsibilities (§240.17a-12). They are also subject to alternative net capital treatment (§240.15c3-1(a)(5)).

(a) Except as otherwise provided in paragraph (b) of this section, transactions involving the extension of credit by an OTC derivatives dealer shall be exempt from the provisions of section 7(c) of the Act (15 U.S.C. 78g(c)), provided that the OTC derivatives dealer complies with Section 7(d) of the Act (15 U.S.C. 78g(d)).

(b) The exemption provided under paragraph (a) of this section shall not apply to extensions of credit made directly by a registered broker or dealer (other than an OTC derivatives dealer) in connection with transactions in eligible OTC derivative instruments for which an OTC derivatives dealer acts as counterparty.

[63 FR 59404, Nov. 3, 1998]

§ 240.36a1-2 Exemption from SIPA for OTC derivatives dealers.

PRELIMINARY NOTE: OTC derivatives dealers are a special class of broker-dealers that are exempt from certain broker-dealer requirements, including membership in a self-regulatory organization (§240.15b9-2), regular broker-dealer margin rules (§240.36a1-1), and application of the Securities Investor Protection Act of 1970 (§240.36a1-2). OTC derivative dealers are subject to special requirements, including limitations on the scope of their securities activities (§240.15a-1), specified internal risk management control systems (§240.15c3-4), recordkeeping obligations (§240.17a-3(a)(10)), and reporting responsibilities (§240.17a-12). They are also subject to alternative net capital treatment (§240.15c3-1(a)(5)).

OTC derivatives dealers, as defined in §240.3b-12, shall be exempt from the provisions of the Securities Investor