

(2) The security is purchased or sold in a transaction that is effected on or through the facilities of the national securities exchange, or that is part of a distribution of the security;

except that a security that satisfies the requirements of this paragraph, but that does not otherwise satisfy the requirements of paragraph (a), (b), (c), or (d) of this section, shall be a penny stock for purposes of Section 15(b)(6) of the Act;

(f) That is authorized, or approved for authorization upon notice of issuance, for quotation in the National Association of Securities Dealers' Automated Quotation system (NASDAQ), provided that price and volume information with respect to transactions in that security is required to be reported on a current and continuing basis and is made available to vendors of market information pursuant to the rules of the National Association of Securities Dealers, Inc.;

except that a security that satisfies the requirements of this paragraph, but that does not otherwise satisfy the requirements of paragraphs (a), (b), (c), or (d) of this section, shall be a penny stock for purposes of section 15(b)(6) of the Act; or

(g) Whose issuer has:

(1) Net tangible assets (*i.e.*, total assets less intangible assets and liabilities) in excess of \$2,000,000, if the issuer has been in continuous operation for at least three years, or \$5,000,000, if the issuer has been in continuous operation for less than three years; or

(2) Average revenue of at least \$6,000,000 for the last three years.

(3) For purposes of paragraph (g) of this section, net tangible assets or average revenues must be demonstrated by financial statements dated less than fifteen months prior to the date of the transaction that the broker or dealer has reviewed and has a reasonable basis for believing are accurate in relation to the date of the transaction, and:

(i) If the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2-02; or

(ii) If the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the Commission or furnished to the Commission pursuant to 17 CFR 240.12g3-2(b); *provided, however*, that if financial statements for the issuer dated less than fifteen months prior to the date of the transaction have not been filed with or furnished to the Commission, financial statements dated within fifteen months prior to the transaction shall be prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

(4) The broker or dealer shall preserve, as part of its records, copies of the financial statements required by paragraph (g)(3) of this section for the period specified in 17 CFR 240.17a-4(b).

[57 FR 18032, Apr. 28, 1992, as amended at 58 FR 58101, Oct. 29, 1993]

DEFINITIONS

§ 240.3b-1 Definition of "listed".

The term *listed* means admitted to full trading privileges upon application by the issuer or its fiscal agent or, in the case of the securities of a foreign corporation, upon application by a banker engaged in distributing them; and includes securities for which authority to add to the list on official notice of issuance has been granted.

(Sec. 3, 48 Stat. 884; 15 U.S.C. 78c)

[13 FR 8179, Dec. 22, 1948]

§ 240.3b-2 Definition of "officer".

The term *officer* means a president, vice president, secretary, treasury or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

[47 FR 11464, Mar. 16, 1982; 47 FR 11819, Mar. 19, 1982]