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(d) In any security of another issuer, the name of the issuer and title of that security, the amount to be paid or distributed, and the rate of the dividend or distribution and if that security is a right or a warrant, the subscription price,

(e) In any other property (including securities not covered under paragraphs (b)(1)(v) (b) through (d) of this section) the identity of the property and its value and basis for assigning that value;

(vi) Method of settlement of fractional interests;

(vii) Details of any condition which must be satisfied or Government approval which must be secured to enable payment of distribution; and in

(viii) The case of stock or reverse split in addition to the aforementioned information;

(a) The name and address of the transfer or exchange agent; or

(2) The Commission, upon written request or upon its own motion, exempts the issuer from compliance with paragraph (b)(1) of this section either unconditionally or on specified terms or conditions, as not constituting a manipulative or deceptive device or contrivance comprehended within the purpose of this section; or

(3) Given in accordance with procedures of the national securities exchange or exchanges upon which a security of such issuer is registered pursuant to section 12 of the Act which contain requirements substantially comparable to those set forth in paragraph (b)(1) of this section.

(c) The provisions of this rule shall not apply, however, to redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the Investment Company Act of 1940.

(Secs. 10(b), 23(a), 48 Stat. 891, as amended, 49 Stat. 1379, 15 U.S.C. 78j)

[36 FR 11514, June 15, 1971, as amended at 37 FR 4330, Mar. 2, 1972]

§ 240.10b-18 Purchases of certain equity securities by the issuer and others.

(a) Definitions. Unless the context otherwise requires, all terms used in this section shall have the same meaning as in the Act. In addition, unless

the context otherwise requires, the following definitions shall apply:

(1) The term *affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer;

(2) The term *affiliated purchaser* means:

(i) A person acting in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer or whose purchases are under common control with those of the issuer;

Provided, however, That the term "affiliated purchaser" shall not include a broker, dealer, or other person solely by reason of his making Rule 10b-18 bids or effecting Rule 10b-18 purchases on behalf of the issuer and for its account and shall not include an officer or director of the issuer solely by reason of his participation in the decision to authorize Rule 10b-18 bids or Rule 10b-18 purchases by or on behalf of the issuer;

(3) The term *Rule 10b-18 purchase* means a purchase of common stock of an issuer by or for the issuer or any affiliated purchaser of the issuer, but does not include any purchase of such stock

(i) Effected during the restricted period specified in §242.102 of this chapter, during a distribution (as defined in §242.100 of this chapter) of such common stock or a distribution for which such common stock is a reference security, by the issuer or any of its affiliated purchasers;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) If it is a fractional interest in a security, evidenced by a script certificate, order form, or similar document;

(iv) Pursuant to a merger, acquisition, or similar transaction involving a recapitalization;

(v) Which is subject to Rule 13e-1 under the Act [§240.13e-1];

(vi) Pursuant to a tender offer that is subject to Rule 13e-4 under the Act [§240.13e-4] or specifically excepted therefrom;

(vii) Pursuant to a tender offer that is subject to section 14(d) of the Act

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and the rules and regulations thereunder.

(4) The term *Rule 10b-18 bid* means (i) A bid for securities that, if accepted, or (ii) A limit order to purchase securities that, if executed, would result in a Rule 10b-18 purchase;

(5) The term *plan* has the meaning contained in §242.100 of this chapter;

(6) The term *agent independent of the issuer* has the meaning contained in §242.100 of this chapter;

(i) The agent is not an affiliate of the issuer; and

(ii) Neither the issuer nor any affiliate of the issuer exercises any direct or indirect control or influence over the times when, or the prices at which, the independent agent may purchase the issuer's common stock for the issuer plan, the amounts of the security to be purchased, the manner in which the security is to be purchased, or the selection of a broker or dealer (other than the independent agent itself) through which purchases may be executed;

Provided, however, That the issuer or its affiliate will not be deemed to have such control or influence solely because it revises not more than once in any three-month period the basis for determining the amount of its contributions to the issuer plan or the basis for determining the frequency of its allocations to the issuer plan, or any formula specified in the plan that determines the amount of shares to be purchased by the agent;

(7) The term *consolidated system* means the consolidated transaction reporting system contemplated by Rule 11Aa3-1 [§240.11Aa3-1];

(8) The term *reported security* means any security as to which last sale information is reported in the consolidated system;

(9) The term *exchange traded security* means any security, except a reported security, that is listed, or admitted to unlisted trading privileges, on a national securities exchange;

(10) The term *NASDAQ security* means any security, except a reported security, as to which bid and offer quotations are reported in the automated quotation system ("NASDAQ") operated by the National Association of Securities Dealers, Inc. ("NASD");

(11) The term *trading volume* means:

(i) With respect to a reported security, the average daily trading volume for the security reported in the consolidated system in the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

(ii) With respect to an exchange traded security, the average of the aggregate daily trading volume, including the daily trading volume reported on all exchanges on which the security is traded and, if such security is also a NASDAQ security, the daily trading volume for such security made available by the NASD, for the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

(iii) With respect to a NASDAQ security that is not an exchange traded security, the average daily trading volume for such security made available by the NASD for the four calendar weeks preceding the week in which the Rule 10b-18 purchase is to be effected or the Rule 10b-18 bid is to be made;

Provided, however, That such trading volume under paragraphs (a)(11) (i), (ii) and (iii) of this section shall not include any Rule 10b-18 purchase of a block by or for the issuer or any affiliated purchaser of the issuer;

(12) The term *purchase price* means the price paid per share

(i) For a reported security, or an exchange traded security on a national securities exchange, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer;

(ii) For a NASDAQ security, or a security that is not a reported security or a NASDAQ security, otherwise than on a national securities exchange, inclusive of any commission equivalent, mark-up, or differential paid to a dealer;

(13) The term *round lot* means 100 shares or other customary unit of trading for a security;

(14) The term *block* means a quantity of stock that either

(i) Has a purchase price of \$200,000 or more; or

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(ii) Is at least 5,000 shares and has a purchase price of at least \$50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate;

Provided, however, That a block under paragraphs (a)(14) (i), (ii) and (iii) of this section shall not include any amount that a broker or a dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

(15) The term *market-wide trading suspension* means either:

(i) A market-wide trading halt imposed pursuant to the rules of a national securities exchange or a registered national securities association, in response to a market-wide decline during a single trading session; or

(ii) A market-wide trading suspension ordered by the Commission pursuant to Section 12(k) of the Act, 15 U.S.C. 78l(k).

(b) *Conditions to be met.* In connection with a Rule 10b-18 purchase, or with a Rule 10b-18 bid that is made by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, an issuer, or an affiliated purchaser of the issuer, shall not be deemed to have violated section 9(a)(2) of the Act or Rule 10b-5 under the Act, solely by reason of the time or price at which its Rule 10b-18 bids or Rule 10b-18 purchases are made of the amount of such bids or purchases or the number of brokers or dealers used in connection with such bids or purchases if the issuer or affiliated purchaser of the issuer:

(1) (*One broker or dealer*) Effects all Rule 10b-18 purchases from or through only one broker on any single day, or, if a broker is not used, with only one dealer on a single day, and makes or causes to be made all Rule 10b-18 bids to or through only one broker on any single day, or, if a broker is not used, to only one dealer on a single day; *Provided, however,* That

(i) This paragraph (b)(1) shall not apply to Rule 10b-18 purchases which are not solicited by or on behalf of the issuer or affiliated purchaser; and

(ii) Where Rule 10b-18 purchases or Rule 10b-18 bids are made by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, this paragraph (b)(1) shall apply to all such bids and purchases in the aggregate; and

(2) (*Time of purchases*) Effects all Rule 10b-18 purchases from or through a broker or dealer

(i) In a reported security, (A) such that the purchase would not constitute the opening transaction in the security reported in the consolidated system; and (B) if the principal market of such security is an exchange, at a time other than during the one-half hour before the scheduled close of trading on the principal market; and (C) if the purchase is to be made on an exchange, at a time other than during the one-half hour before the scheduled close of trading on the national securities exchange on which the purchase is to be made; and (D) if the purchase is to be made otherwise than on a national securities exchange, at a time other than during the one-half hour before the termination of the period in which last sale prices are reported in the consolidated system;

(ii) In any exchange traded security, on any national securities exchange, (A) such that the Rule 10b-18 purchase would not constitute the opening transaction in the security on such exchange; and (B) at a time other than during the one-half hour before the scheduled close of trading on the exchange;

(iii) In any NASDAQ security, otherwise than on a national securities exchange, if a current independent bid

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quotation for the security is reported in Level 2 of NASDAQ; and

(3) (*Price of purchase*) Effects all Rule 10b-18 purchases from or through a broker or dealer at a purchase price, or makes or causes to be made all Rule 10b-18 bids to or through a broker or dealer at a price.

(i) For a reported security, that is not higher than the published bid, as that term is defined in Rule 11Ac1-1(a)(9) under the Act, that is the highest current independent published bid or the last independent sale price reported in the consolidated system, whichever is higher;

(ii) On a national securities exchange, for an exchange traded security, that is not higher than the current independent bid quotation or the last independent sale price on that exchange, whichever is higher;

(iii) Otherwise than on a national securities exchange for a NASDAQ security, that is not higher than the lowest current independent offer quotation reported in Level 2 of NASDAQ; or

(iv) Otherwise than on a national securities exchange, for a security that is not a reported security or a NASDAQ security, that is not higher than the lowest current independent offer quotation, determined on the basis of reasonable inquiry; and

(4) (*Volume of purchases*) Effects from or through a broker or dealer all Rule 10b-18 purchases other than block purchases

(i) Of a reported security, an exchange traded security or a NASDAQ security, in an amount that, when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any on that day, does not exceed the higher of (A) one round lot or (B) the number of round lots closet to 25 percent of the trading volume for the security;

(ii) Of any other security, in an amount that (A) when added to the amounts of all other Rule 10b-18 purchases, other than block purchases, from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer on that day, does not exceed one round lot or (B) when added to the amounts of all

other Rule 10b-18 purchases other than block purchases from or through a broker or dealer effected by or for the issuer or any affiliated purchaser of the issuer during that day and the preceding five business days, does not exceed 1/20th of one percent (0.0005) of the outstanding shares of the security, exclusive of shares known to be owned beneficially by affiliates.

(c) *Conditions following a market-wide trading suspension.* The conditions of paragraph (b) of this section shall apply in connection with a Rule 10b-18 bid or a Rule 10b-18 purchase effected during a trading session following the termination of a market-wide trading suspension, except that the time of purchase condition in paragraph (b)(2) of this section shall not apply, either:

(1) From the reopening of trading until the scheduled close of trading; or

(2) At the opening of trading on the next trading day, if a market-wide trading suspension is in effect at the scheduled close of a trading session.

(d) No presumption shall arise that an issuer or affiliated purchaser of an issuer has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act, 15 U.S.C. 78i(a)(2) or 78j(b), or § 240.10b-5, if the Rule 10b-18 bids or Rule 10b-18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraphs (b) or (c) of this section.

[47 FR 53339, Nov. 26, 1982, as amended at 62 FR 543, Jan. 3, 1997; 62 FR 11323, Mar. 12, 1997; 64 FR 52433, Sept. 29, 1999]

§ 240.10b-21 [Reserved]

REPORTS UNDER SECTION 10A

§ 240.10A-1 Notice to the Commission Pursuant to Section 10A of the Act.

(a)(1) If any issuer with a reporting obligation under the Act receives a report requiring a notice to the Commission in accordance with section 10A(b)(3) of the Act, 15 U.S.C. 78j-1(b)(3), the issuer shall submit such notice to the Commission's Office of the Chief Accountant within the time period prescribed in that section. The notice may be provided by facsimile, telegraph, personal delivery, or any other