

Securities and Exchange Commission

§ 240.15c1-7

other fraudulent device or contrivance” contained in other rules adopted pursuant to section 15(c)(1) of the act.

(Sec. 2, 52 Stat. 1075; 15 U.S.C. 78o)

CROSS REFERENCE: For regulation prohibiting employment of manipulative and deceptive devices as such term is used in section 15 of the Act, by any broker or dealer, see § 240.10b-3.

[13 FR 8205, Dec. 22, 1948]

§ 240.15c1-3 Misrepresentation by brokers, dealers and municipal securities dealers as to registration.

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 representation by a broker, dealer or municipal securities dealer that the registration of a broker or dealer, pursuant to section 15(b) of the Act, or the registration of a municipal securities dealer pursuant to section 15B(a) of the Act, or the failure of the Commission to deny or revoke such registration, indicates in any way that the Commission has passed upon or approved the financial standing, business, or conduct of such registered broker, dealer or municipal securities dealer or the merits of any security or any transaction or transactions therein.

[41 FR 22825, June 7, 1976]

§ 240.15c1-4 [Reserved]

§ 240.15c1-5 Disclosure of control.

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 act of any broker, dealer or municipal securities dealer controlled by, controlling, or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such security unless such broker, dealer or municipal securities dealer, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending of written dis-

closure at or before the completion of the transaction.

[41 FR 22825, June 7, 1976]

§ 240.15c1-6 Disclosure of interest in distribution.

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 act of any broker who is acting for a customer or for both such customer and some other person, or of any dealer or municipal securities dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the primary or secondary distribution of which such broker, dealer or municipal securities dealer is participating or is otherwise financially interested unless such broker, dealer or municipal securities dealer, at or before the completion of each such transaction gives or sends to such customer written notification of the existence of such participation or interest.

[41 FR 22826, June 7, 1976]

§ 240.15c1-7 Discretionary accounts.

(a) The term *manipulative, deceptive, or other fraudulent device or contrivance*, as used in section 15(c) of the Act, is hereby defined to include any act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or employee is vested with any discretionary power any transactions or purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(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 act of any broker, dealer or municipal securities dealer designed to effect with or for any customer's account in respect to which such broker, dealer or municipal securities dealer or his agent or

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employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker, dealer or municipal securities dealer makes a record of such transaction which record includes the name of such customer, the name, amount and price of the security, and the date and time when such transaction took place.

[41 FR 22826, June 7, 1976]

§ 240.15c1-8 Sales at the market.

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 representation made to a customer by a broker, dealer or municipal securities dealer who is participating or otherwise financially interested in the primary or secondary distribution of any security which is not admitted to trading on a national securities exchange that such security is being offered to such customer "at the market" or at a price related to the market price unless such broker, dealer or municipal securities dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person controlled by, controlling or under common control with him.

[41 FR 22826, June 7, 1976]

§ 240.15c1-9 Use of pro forma balance sheets.

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 the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

(Sec. 2, 52 Stat. 1075; 15 U.S.C. 78o)

[13 FR 8205, Dec. 22, 1948]

§ 240.15c2-1 Hypothecation of customers' securities.

(a) *General provisions.* The term *fraudulent, deceptive, or manipulative act or practice*, as used in section 15(c) (2) of the Act, is hereby defined to include the direct or indirect hypothecation by a broker or dealer, or his arranging for or permitting, directly or indirectly, the continued hypothecation of any securities carried for the account of any customer under circumstances:

(1) That will permit the commingling of securities carried for the account of any such customer with securities carried for the account of any other customer, without first obtaining the written consent of each such customer to such hypothecation;

(2) That will permit such securities to be commingled with securities carried for the account of any person other than a bona fide customer of such broker or dealer under a lien for a loan made to such broker or dealer; or

(3) That will permit securities carried for the account of customers to be hypothecated, or subjected to any lien or liens or claims or claims of the pledgee or pledgees, for a sum which exceeds the aggregate indebtedness of all customers in respect of securities carried for their accounts; except that this clause shall not be deemed to be violated by reason of an excess arising on any day through the reduction of the aggregate indebtedness of customers on such day, provided that funds or securities in an amount sufficient to eliminate such excess are paid or placed in transfer to pledgees for the purpose of reducing the sum of the liens or claims to which securities carried for the account of customers are subject as promptly as practicable after such reduction occurs, but before the lapse of one half hour after the commencement of banking hours on the next banking day at the place where the largest principal amount of loans of such broker or dealer are payable and, in any event, before such broker or dealer on such day has obtained or increased any bank loan collateralized by securities carried for the account of customers.

(b) *Definitions.* For the purposes of this section: