PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citation:

Authority: Sec. 23. 48 Stat. 901, as amended (15 U.S.C. 78w) * * * § 240.15a-4. also issued under secs. 3, 10, 15, and 17, 15 U.S.C. 78c, 78j, 78o, and 78q; * * *

2. By adding § 240.15a-4 after the undesignated heading as follows:

Registration of Brokers and Dealers

§ 240.15a-4. Exemption of certain foreign brokers or dealers.

(a) A foreign broker or dealer shall be exempt from the registration requirements of sections 15(a)(1) or 15A(a)(1) of this Act, with respect to the extent that the foreign broker or dealer:

(i) Effects transactions in securities with or for persons that have not been solicited by the foreign broker or dealer; or

(ii) Furnishes research reports to major U.S. institutional investors, and effects transactions in the securities discussed in the research reports with or for those major U.S. institutional investors, provided that:

(A) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security; and

(B) The foreign broker or dealer does not initiate contact with those major U.S. institutional investors to follow up on the research reports, and does not otherwise induce or attempt to induce the purchase or sale of any security by those major U.S. institutional investors;

(iii) If the foreign broker or dealer has a relationship with a registered broker or dealer that satisfies the requirements of paragraph (a)(3) of this section, any transactions with the foreign broker or dealer in securities discussed in the research reports are effected only through that registered broker or dealer, pursuant to the provisions of paragraph (a)(3) of this section; and

(iv) The foreign broker or dealer does not provide research to U.S. persons pursuant to any express or implied understanding that those U.S. persons will direct commission income to the foreign broker or dealer; or

(B) Induces or attempts to induce the purchase or sale of any security by a U.S. institutional investor or a major U.S. institutional investor, provided that:

(A) The foreign broker or dealer:

(1) Effects any resulting transactions with or for the U.S. institutional investor or the major U.S. institutional investor through a registered broker or dealer in the manner described by paragraph (a)(3)(iii) of this section; and

(B) Provides the Commission upon request or pursuant to agreement reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(3) of the Act, and the Commission or the U.S. Government, with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(ii) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section;

(ii) The foreign associated person of the foreign broker or dealer affecting the transactions with the U.S. institutional investor or the major U.S. institutional investor:

(A) Conducts all securities activities from outside the U.S., except that the foreign associated person may conduct visits to U.S. institutional investors and major U.S. institutional investors within the United States, provided that:

(1) The foreign associated person is accompanied on these visits by an associated person of a registered broker or dealer that accepts responsibility for the foreign associated person's communications with the U.S. institutional investor or the major U.S. institutional investor; and

(2) Transactions in any securities discussed during the visit by the foreign associated person are effected only through the registered broker or dealer, pursuant to paragraph (a)(3) of this section; and

(B) Is determined by the registered broker or dealer to:

(1) Not be subject to a statutory disqualification specified in section 3(a)(39) of the Act, or any substantially equivalent foreign law; and

(2) Is not provided research to the U.S. institutional investor or the major U.S. institutional investor, provided that:

(A) The research reports do not recommend the use of the foreign broker or dealer to effect trades in any security; and

(B) The foreign associated person of the foreign broker or dealer does not initiate contact with any foreign securities authority, including any foreign government, as specified in section 3(a)(3) of the Act, and the Commission or the U.S. Government, with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section, except that if, after the foreign broker or dealer has exercised its best efforts to provide the information, documents, testimony, or assistance, including requesting the appropriate governmental body and, if legally necessary, its customers (with respect to customer information) to permit the foreign broker or dealer to provide the information, documents, testimony, or assistance to the Commission, the foreign broker or dealer is prohibited from providing this information, documents, testimony, or assistance by applicable foreign law or regulations, then this paragraph (a)(3)(ii) shall not apply and the foreign broker or dealer will be subject to paragraph (c) of this section.

(iii) The registered broker or dealer through which the transaction with the U.S. institutional investor or the major U.S. institutional investor is effected:

(A) Is responsible for:

(1) Effecting the transactions conducted under paragraph (a)(2) of this section, other than negotiating their terms;

(2) Issuing all required confirmations and statements to the U.S. institutional investor or the major U.S. institutional investor;

(B) As between the foreign broker or dealer and the registered broker or dealer, extending or arranging for the extension of any credit to the U.S. institutional investor or the major U.S. institutional investor in connection with the transactions;

(C) Maintaining required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 17a-4); and

(iv) Not to have been convicted of any foreign offense, enjoined from any foreign activity, conduct, or practice, or found to have committed any foreign activity substantially equivalent to any of those listed in sections 15(b)(4) (B), (C), (D), or (E) of the Act; and

(iv) Not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 17(a)(5) of the Act.

(B) Provides the Commission upon request or pursuant to agreement reached between any foreign securities authority, including any foreign government, as specified in section 3(a)(3) of the Act, and the Commission or the U.S. Government, with any information or documents within the possession, custody, or control of the foreign broker or dealer, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the Commission requests and that relates to transactions under paragraph (a)(3) of this section; and

(iv) Not to have been found to have made or caused to be made any false foreign statement or omission substantially equivalent to any of those listed in section 17(a)(5) of the Act.
The term "United States" shall mean the United States of America, including the States and any territories and other areas subject to its jurisdiction.

(7) The term "U.S. institutional investor" shall mean a person that is:

(i) An investment company registered with the Commission under section 8 of the Investment Company Act of 1940;


(c) The Commission, by order after notice and opportunity for hearing, may withdraw the exemption provided in paragraph (a)(3) of this section with respect to the subsequent activities of a foreign broker or dealer or class of foreign brokers or dealers conducted from a foreign country, if the Commission finds that the laws or regulations of that foreign country have prohibited the foreign broker or dealer, or one or a class of foreign brokers or dealers, from providing, in response to a request from the Commission, information or documents within its possession, custody, or control, testimony of foreign associated persons, or assistance in taking the evidence of foreign associated persons, or assistance in taking the evidence of foreign associated persons.

(8) By the Commission.

Jonathan G. Katz,
Secretary.

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