

Acquisition Order and any and all other orders of the Commission applicable to LG&E Energy.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29763 Filed 11-28-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48817; File No. SR-CSE-2003-10]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. To Eliminate Market Order Exposure Requirements

November 21, 2003.

I. Introduction

On August 7, 2003, The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend CSE Rule 11.9(u) to eliminate Interpretation .01, concerning market order exposure requirements ("Market Order Exposure Requirement").³ The proposed rule change would also amend CSE Rule 8.15 to remove a reference to Interpretation .01 of Rule 11.9(u). The proposed rule change was published for comment in the **Federal Register** on September 19, 2003.⁴

The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵ In particular, the

Commission believes that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is reasonably designed to accomplish these ends because the elimination of the CSE's Market Order Exposure Requirement is consistent with the narrowing of spreads since the advent of decimal pricing. The Commission notes, and the CSE acknowledges, that the best execution responsibilities of preferencing designated dealers will continue to apply. Moreover, the proposed rule change is the second of two filings intended by the CSE to codify existing CSE practices set forth in various regulatory circulars⁸ and conform its rules to industry standards.⁹ The Commission notes that, while it is approving the proposed rule change at the present time, the Commission makes no determination as to whether it would have approved the proposed rule change had it been filed at the time that the regulatory circulars setting forth the CSE's practices with respect to the Market Order Exposure Requirement were issued.

III. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-CSE-2003-10), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29801 Filed 11-28-03; 8:45 am]

BILLING CODE 8010-01-P

impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

⁸ See *supra* note 3.

⁹ See also Securities Exchange Act Release No. 48388 (August 21, 2003), 68 FR 51820 (August 28, 2003) (SR-CSE-2003-09).

¹⁰ 15 U.S.C. 78(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48823; File No. SR-NASD-2003-154]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Concerning Late Trade Reports, Reports of Trades Executed Outside Normal Market Hours, and Clarifying NASD Rule 6420

November 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq amended the proposed rule change on November 12, 2003.³ On November 20, 2003, Nasdaq again amended the proposed rule change.⁴ Nasdaq filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act,⁵ and Rule 19b-4(f)(1) thereunder,⁶ as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective upon filing with the Commission. The Commission is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See November 10, 2003 letter from Peter R. Geraghty, Associate Vice President ("AVP") and Associate General Counsel ("AGC"), Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq added language to the proposed rule indicating that Nasdaq will append the .T modifier automatically in the circumstances described in the filing, and clarifies that the language governs the appending of the .T and .SLD modifiers in the circumstances described in the instant proposed rule change as well as in SR-NASD-2003-83. Securities Exchange Act Release No. 48120 (July 2, 2003), 68 FR 41032 (July 9, 2003).

⁴ See November 19, 2003 letter from Peter R. Geraghty, AVP and AGC, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission ("Amendment No. 2"). Amendment No. 2 does not propose any substantive modifications to the proposed rule change. It provides in a single document the proposed rule language, as modified by Amendment No. 1. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have begun on November 20, 2003, the day Nasdaq filed Amendment No. 2.

⁵ 15 U.S.C. 78s(b)(3)(A)(i).

⁶ 17 CFR 240.19b-4(f)(1).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The CSE has represented that the Commission's approval of the proposed rule change will constitute the repeal of the interpretations and policies with respect to the Market Order Exposure Requirement set forth in CSE Regulatory Circulars 01-07, 99-03, 98-06, 97-07, 96-04.

⁴ Securities Exchange Act Release No. 48491 (September 12, 2003), 68 FR 54924.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the Automated Confirmation Transaction Service ("ACT") to append the .T modifier automatically to trade reports erroneously submitted to ACT without the modifier. In addition, Nasdaq is proposing to codify guidance that members must report on the following day on an "as/of" basis pre-open trades not reported before 9:30 a.m. Eastern Time. Finally, Nasdaq is making a non-substantive language change to NASD Rule 6420 to clarify that the term "executed during the trading hours of the Consolidated Tape" means between the hours of 9:30 a.m. to 4 p.m. Eastern Time. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

5430. Transaction Reporting

(a) When and How Transactions are Reported

* * * * *

(4) Transaction Reporting Outside Normal Market Hours

(A)(i) Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in designated securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution; trades executed and reported after 4 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(ii) *Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 p.m. Eastern Time not reported to ACT prior to 9:30 a.m. shall be reported the following day on an "as/of" basis and include the time of execution. The requirements of this paragraph (ii) apply only to those trades that are required to be, or are voluntarily, reported to ACT pursuant to Rule 5430(b).*

(B) Last sale reports of transactions in designated securities executed outside the hours of 8:00 a.m. and 6:30 p.m.

Eastern Time shall be reported as follows:

(i)a. Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time shall be reported between 8 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ".T" trades to denote their execution outside normal market hours, and be accompanied by the time of execution.

b. *Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time not reported to ACT between 8 a.m. and 9:30 a.m. Eastern Time on trade date shall be reported to ACT the following day on an "as/of" basis and include the time of execution. The requirements of this paragraph b. apply only to those trades that are required to be, or are voluntarily, reported to ACT pursuant to Rule 5430(b).*

(ii) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time, be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution.

* * * * *

(10) Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to ACT that contain the time of execution, but that do not contain the appropriate modifier.

6400. Reporting Transactions In Listed Securities

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time [during the trading hours of the Consolidated Tape] otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90

seconds after execution must include the time of execution on the trade report.

(2)(A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or if ACT is unavailable due to system or transmission failure by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time [during the trading hours of the Consolidated Tape] otherwise than on a national securities exchange.

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6600. Over-The-Counter Equity Securities

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) through (6) No Changes.

(7) *Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to ACT that contain the time of execution, but that do not contain the appropriate modifier.*

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD trade reporting rules are designed to ensure timely and accurate reports of executed trades, including trades executed before and after normal trading hours. To distinguish trades executed during the pre and after hours sessions from trades executed during normal market hours (i.e., between 9:30 a.m. and 4 p.m. Eastern Time), NASD members generally are required to append the .T modifier to reports of trades executed outside of normal market hours.⁷ Trade reports that do not

⁷ Some trades executed outside normal market hours are not reported with the .T modifier, but

include the .T modifier, or any other modifier, are assumed to be timely reports of normal market hours trades and are included in the last sale, high price, and low price calculations for a security, which calculations are designed to provide information about the current trading of a security during normal market hours.⁸ Therefore, when reports of trades executed outside normal market hours erroneously do not include the .T modifier, the trades appear as normal market hours trades, which can distort the market because the price being reported may be significantly different from the prices in the normal market hours. These erroneously reported trades can cause confusion for members, issuers, and investors and can lead to investment decisions being made based upon inaccurate information. Automatically appending the .T modifier in these circumstances will prevent this market confusion.

In some circumstances today, ACT appends the .T modifier automatically. If a trade is executed and reported at or after 4:01:30 p.m. and up until 6:30 p.m., ACT automatically appends the .T modifier.⁹ However, if the submission to ACT is a report of a trade executed between midnight and 9:30 a.m., or between 4 p.m. and 4:01:30 p.m., ACT does not append the .T modifier automatically; the member must submit the report with the .T modifier attached. As described earlier, members occasionally fail to include the .T modifier on these reports. While NASD can, and does, bring disciplinary actions against members when they do not properly report trades, the immediate result of an improperly reported trade is that potentially misleading information is disseminated. Therefore, to prevent this result, Nasdaq is proposing to modify ACT to append the .T modifier automatically to any transaction report that contains an execution time between

midnight and 9:30 a.m., or between 4 p.m. and 4:01:30 p.m.¹⁰

To append the .T modifier automatically, ACT must be reprogrammed to include a validation parameter that compares the time of execution and the modifier field.¹¹ Once the validation parameter is operative, if the time of execution on a submission to ACT indicates a trade was executed between midnight and 9:30 a.m. or between 4 p.m. and 4:01:30 p.m., and the .T modifier is not included in the report, ACT will append the .T modifier automatically.¹²

The validation parameter relies on the time of execution to identify improperly reported trades and to append the .T modifier. Today, nearly all trades reported to Nasdaq include the time of execution, but some trades are still reported without this information.¹³ Therefore, a small number of improperly reported trades will not be corrected automatically and thus will continue to be included in the last sale, high price, and low price calculations. However, Nasdaq staff will continue to conduct surveillance for these instances and manually correct the calculations when such errors are discovered. To eliminate the small number of incidences in which ACT cannot identify and correct improperly reported trades, Nasdaq soon will file a proposal to require the time of execution on all trade reports.

Nasdaq also is proposing to codify a requirement that members must report on the following day on an "as/of" basis trades executed between midnight and 9:30 a.m., but not reported before 9:30 a.m. on trade date. This guidance has been given to members in the past, but Nasdaq believes it is necessary to codify the requirement at this time so that the rules clearly state a member's obligations.¹⁴ Nasdaq believes that requiring members to report these trades the following day is necessary to prevent members from reporting pre-open trades during the normal or after-hours sessions, which could distort the prices in these time periods due to the potential differences in prices between

the pre open session and these other sessions.¹⁵

Finally, Nasdaq is proposing non-substantive language changes to NASD Rule 6420(a)(1) to clarify the meaning of the phrase "executed during the trading hours of the Consolidated Tape." Until recently, this phrase was commonly understood to mean between the hours of 9:30 a.m. and 4 p.m. Eastern Time. However, the Consolidated Tape recently began disseminating trades executed on an exchange whose normal market hours are from 8 a.m. to 8 p.m. Thus, some members have sought clarification of their trade reporting responsibilities.

The proposed language change does not modify members' trade reporting obligations. Paragraphs (a)(1), (a)(2)(B), and (a)(3)(A) of NASD Rule 6420 specifically articulate members' reporting obligations between 4 p.m. and 6:30 p.m., and outside the hours of 9:30 a.m. and 6:30 p.m., which leads to the logical conclusion that the only time period that could be governed by the phrase "executed during the trading hours of the Consolidated Tape" is the period between 9:30 a.m. and 4 p.m. However, to prevent any further confusion, Nasdaq is proposing to replace the phrase at issue with the phrase "executed between 9:30 a.m. and 4:00 p.m. Eastern Time."

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁶ which requires that NASD's rules, among other things, protect investors and public interest. Nasdaq believes the proposal to append the .T modifier automatically to trade reports submitted to ACT is consistent with this obligation because it will prevent nearly all reports of trades executed outside normal market hours from being included in the calculations designed to inform investors of the current market for a security during normal market hours. As a result, members and the public will possess more accurate information when making investment decisions. In

instead are required to be reported as "as/of" trades on the day following the date of execution. For example, Rule 5430(a) requires members to report a trade on an "as/of" basis if the trade is executed between 6:30 p.m. and midnight. A trade executed during this time period must be reported the following day as an "as/of" trade. The current proposal to append the .T modifier automatically does not change members "as/of" reporting obligations.

⁸ Nasdaq's systems assume that trades reported without the .T modifier have been executed during normal market hours and are indicative of the current market for the security.

⁹ *Id.* Trades executed between 6:30 p.m. and midnight must be reported the following day on an "as/of" basis.

¹⁰ A trade executed at 9:30 a.m. or 4 p.m. Eastern Time is considered executed during normal market hours, and thus not reported with a .T modifier.

¹¹ Nasdaq intends to implement the ACT program changes on, or about, November 3, 2003.

¹² *Supra* note 8. The .T modifier will not be appended to a trade report that contains a time of execution of 9:30 a.m. or 4 p.m. Eastern Time.

¹³ Today, over 99% of the trades submitted to ACT include the time of execution.

¹⁴ The proposed requirement would apply only to those NASD members that are required to report trades to ACT or that choose to report trades to ACT, as specified in NASD Rule 5430(b).

¹⁵ While members have been informed of this position in the past, there is no written guidance on the issue. As such, pre-open trades sometimes are reported during normal market hours. Once the current proposal is implemented, the .T modifier will be appended automatically to any report of a pre-open trade that contains the time of execution. For example, if a member attempts to report a pre-open trade during normal market hours, ACT will append the .T modifier. However, ACT also will reject the trade, because during normal market hours ACT rejects any report containing the .T modifier, even a report that contains a .T appended by ACT itself. In these circumstances, the member must resubmit the report the following day.

¹⁶ 15 U.S.C. 78o-3(b)(6).

addition, specifically including language in NASD Rule 5420 concerning the obligation to report on the following day pre-open trades not reported before 9:30 a.m. on trade date will clarify members' trade reporting responsibilities and should facilitate proper reporting of trades. Finally, modifying the language in NASD Rule 6420 also clarifies members' trade reporting responsibilities and should facilitate proper reporting of trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,¹⁷ and Rule 19b-4(f)(1)¹⁸ thereunder, in that it constitutes a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The programming changes that will append the .T modifier automatically are scheduled for implementation on, or about, November 3, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-154 and should be submitted by December 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-29800 Filed 11-28-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48821; File No. SR-NASD-2003-134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4710 to Allow Nasdaq National Market Execution System Order Entry Firms To Automatically Internalize in SuperMontage

November 21, 2003.

On August 22, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Rule 4710 to allow the Nasdaq National Market Execution System ("NNMS" or "SuperMontage") to automatically match any non-directed buy and sell quotes/orders entered by an NNMS Order Entry Firm against the quotes/orders of that same NNMS Order Entry Firm on the other side of the market if such a quote/order on the other side of the market is at the best bid/offer in

Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.³

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on October 16, 2003.⁴ The Commission received no comments on the proposal, as amended. On November 19, 2003, Nasdaq filed Amendment No. 2 to the proposed rule change.⁵ This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2.⁶

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁷ In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b) of the Act⁸ in general, and furthers the objectives of Section 15A(b)(6)⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. Specifically, the Commission finds that Nasdaq's proposal, as amended, provides NNMS Order Entry Firms with the same opportunity as other Nasdaq market participants to have their quotes/orders on opposite sides of the market match off against each other.

For the foregoing reasons, the Commission finds that the proposed

³ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated September 25, 2003 ("Amendment No. 1").

⁴ See Securities Exchange Act Release No. 48606 (October 8, 2003), 68 FR 59659 ("Notice").

⁵ See letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated November 19, 2003 ("Amendment No. 2"). In Amendment No. 2, Nasdaq revised the text of the proposed rule change to correct a typographical error and to clarify that there would be no change to paragraphs (b)(1)(B)(iv)(c), (b)(1)(C) or (b)(1)(D) of NASD Rule 4710. This was a technical amendment and is not subject to notice and comment.

⁶ Nasdaq represented that it would implement the proposed rule change, as amended, within 60 days after approval by the Commission. See Notice, *supra* note 4.

⁷ In approving the proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁸ 15 U.S.C. 78o-3(b).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁸ 17 CFR 240.19b-4(f)(1).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.