

should not be purchased for the account, or that should be sold if held in the account; *Provided, however*, that nothing in this section requires that a client have the ability to require that particular securities or types of securities be purchased for the account.

(4) The sponsor or person designated by the sponsor provides each client with a statement, at least quarterly, containing a description of all activity in the client's account during the preceding period, including all transactions made on behalf of the account, all contributions and withdrawals made by the client, all fees and expenses charged to the account, and the value of the account at the beginning and end of the period.

(5) Each client retains, with respect to all securities and funds in the account, to the same extent as if the client held the securities and funds outside the program, the right to:

- (i) Withdraw securities or cash;
- (ii) Vote securities, or delegate the authority to vote securities to another person;
- (iii) Be provided in a timely manner with a written confirmation or other notification of each securities transaction, and all other documents required by law to be provided to security holders; and
- (iv) Proceed directly as a security holder against the issuer of any security in the client's account and not be obligated to join any person involved in the operation of the program, or any other client of the program, as a condition precedent to initiating such proceeding.

(b) As used in this section, the term sponsor refers to any person who receives compensation for sponsoring, organizing or administering the program, or for selecting, or providing advice to clients regarding the selection of, persons responsible for managing the client's account in the program. If a program has more than one sponsor, one person shall be designated the principal sponsor, and such person shall be considered the sponsor of the program under this section.

[62 FR 15109, Mar. 31, 1997]

**§ 270.3a-5 Exemption for subsidiaries organized to finance the operations of domestic or foreign companies.**

(a) A finance subsidiary will not be considered an investment company under section 3(a) of the Act (15 U.S.C. 80a-3(a)) and securities of a finance subsidiary held by the parent company or a company controlled by the parent company will not be considered "investment securities" under section 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(C)); *Provided, That*:

(1) Any debt securities of the finance subsidiary issued to or held by the public are unconditionally guaranteed by the parent company as to the payment of principal, interest, and premium, if any (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(2) Any non-voting preferred stock of the finance subsidiary issued to or held by the public is unconditionally guaranteed by the parent company as to payment of dividends, payment of the liquidation preference in the event of liquidation, and payments to be made under a sinking fund, if a sinking fund is to be provided (except that the guarantee may be subordinated in right of payment to other debt of the parent company);

(3) The parent company's guarantee provides that in the event of a default in payment of principal, interest, premium, dividends, liquidation preference or payments made under a sinking fund on any debt securities or non-voting preferred stock issued by the finance subsidiary, the holders of those securities may institute legal proceedings directly against the parent company (or, in the case of a partnership or joint venture, against the partners or participants in the joint venture) to enforce the guarantee without first proceeding against the finance subsidiary;

(4) Any securities issued by the finance subsidiary which are convertible or exchangeable are convertible or exchangeable only for securities issued by the parent company (and, in the case of a partnership or joint venture, for securities issued by the partners or participants in the joint venture) or for debt securities or non-voting preferred stock issued by the finance subsidiary

meeting the applicable requirements of paragraphs (a)(1) through (a)(3);

(5) The finance subsidiary invests in or loans to its parent company or a company controlled by its parent company at least 85% of any cash or cash equivalents raised by the finance subsidiary through an offering of its debt securities or non-voting preferred stock or through other borrowings as soon as practicable, but in no event later than six months after the finance subsidiary's receipt of such cash or cash equivalents;

(6) The finance subsidiary does not invest in, reinvest in, own, hold or trade in securities other than Government securities, securities of its parent company or a company controlled by its parent company (or in the case of a partnership or joint venture, the securities of the partners or participants in the joint venture) or debt securities (including repurchase agreements) which are exempted from the provisions of the Securities Act of 1933 by section 3(a)(3) of that Act; and

(7) Where the parent company is a foreign bank as the term is used in rule 3a-6 (17 CFR 270.3a-6 of this chapter), the parent company may, in lieu of the guaranty required by paragraph (a)(1) or (a)(2) of this section, issue, in favor of the holders of the finance subsidiary's debt securities or non-voting preferred stock, as the case may be, an irrevocable letter of credit in an amount sufficient to fund all of the amounts required to be guaranteed by paragraphs (a)(1) and (a)(2) of this section, *provided*, that:

(i) Payment on such letter of credit shall be conditional only upon the presentation of customary documentation, and

(ii) The beneficiary of such letter of credit is not required by either the letter of credit or applicable law to institute proceedings against the finance subsidiary before enforcing its remedies under the letter of credit.

(b) For purposes of this rule,

(1) A *finance subsidiary* shall mean any corporation—

(i) All of whose securities other than debt securities or non-voting preferred stock meeting the applicable requirements of paragraphs (a)(1) through (3) or directors' qualifying shares are

owned by its parent company or a company controlled by its parent company; and

(ii) The primary purpose of which is to finance the business operations of its parent company or companies controlled by its parent company;

(2) A *parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a-6 (17 CFR 270.3a-6 of this chapter); and

(iii) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(2)(i) and (ii).

(3) A *company controlled by the parent company* shall mean any corporation, partnership or joint venture:

(i) That is not considered an investment company under section 3(a) or that is excepted or exempted by order from the definition of investment company by section 3(b) or by the rules or regulations under section 3(a);

(ii) That is either organized or formed under the laws of the United States or of a state or that is a foreign private issuer, or that is a foreign bank or foreign insurance company as those terms are used in rule 3a-6; and

(iii) In the case of a corporation, more than 25 percent of whose outstanding voting securities are beneficially owned directly or indirectly by the parent company; or

(iv) In the case of a partnership or joint venture, each partner or participant in the joint venture meets the requirements of paragraphs (b)(3)(i) and (ii), and the parent company has the power to exercise a controlling influence over the management or policies of the partnership or joint venture.

(4) A *foreign private issuer* shall mean any issuer which is incorporated or organized under the laws of a foreign

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country, but not a foreign government or political subdivision of a foreign government.

[49 FR 49446, Dec. 20, 1984, as amended at 56 FR 56299, Nov. 4, 1991; 67 FR 43536, June 28, 2002]

### § 270.3a-6 Foreign banks and foreign insurance companies.

(a) Notwithstanding section 3(a)(1)(A) or section 3(a)(1)(C) of the Act (15 U.S.C. 80a-3(a)(1)(A) or 80a-3(a)(1)(C)), a foreign bank or foreign insurance company shall not be considered an investment company for purposes of the Act.

(b) For purposes of this section:

(1)(i) *Foreign bank* means a banking institution incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(A) Regulated as such by that country's or subdivision's government or any agency thereof;

(B) Engaged substantially in commercial banking activity; and

(C) Not operated for the purpose of evading the provisions of the Act;

(ii) The term *foreign bank* shall also include:

(A) A trust company or loan company that is:

(1) Organized or incorporated under the laws of Canada or a political subdivision thereof;

(2) Regulated as a trust company or a loan company by that country's or subdivision's government or any agency thereof; and

(3) Not operated for the purpose of evading the provisions of the Act; and

(B) A building society that is:

(1) Organized under the laws of the United Kingdom or a political subdivision thereof;

(2) Regulated as a building society by the country's or subdivision's government or any agency thereof; and

(3) Not operated for the purpose of evading the provisions of the Act.

(iii) Nothing in this section shall be construed to include within the definition of *foreign bank* a common or collective trust or other separate pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

(2) *Engaged substantially in commercial banking activity* means engaged regularly in, and deriving a substantial portion of its business from, extending commercial and other types of credit, and accepting demand and other types of deposits, that are customary for commercial banks in the country in which the head office of the banking institution is located.

(3) *Foreign insurance company* means an insurance company incorporated or organized under the laws of a country other than the United States, or a political subdivision of a country other than the United States, that is:

(i) Regulated as such by that country's or subdivision's government or any agency thereof;

(ii) Engaged primarily and predominantly in:

(A) The writing of insurance agreements of the type specified in section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)), except for the substitution of supervision by foreign government insurance regulators for the regulators referred to in that section; or

(B) The reinsurance of risks on such agreements underwritten by insurance companies; and

(iii) Not operated for the purpose of evading the provisions of the Act. Nothing in this section shall be construed to include within the definition of "foreign insurance company" a separate account or other pool of assets organized in the form of a trust or otherwise in which interests are separately offered.

NOTE: Foreign banks and foreign insurance companies (and certain of their finance subsidiaries and holding companies) relying on rule 3a-6 for exemption from the Act may be required by rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a et seq.) to file Form F-N with the Commission in connection with the filing of a registration statement under the Securities Act of 1933.

[56 FR 56299, Nov. 4, 1991, as amended at 67 FR 43536, June 28, 2002]

### § 270.3a-7 Issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in