(2) Whole or fractional securities issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution for the sole purpose of qualifying a borrower for membership in the issuer, and which are to be redeemed or repurchased by the issuer when the borrower’s loan is terminated, shall not be included as held of record by any person.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.


§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

Issuers shall be exempt from the provisions of section 12(g) of the Act with respect to the following securities:

(a) Any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian. For purposes of this paragraph (b), the term “common trust fund” shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; Provided, That:

(1) The common trust fund is operated in compliance with the same state and Federal regulatory requirements as would apply if the bank maintaining such fund as any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group;

(c) Any class of equity security which would not be outstanding 60 days after a registration statement would be required to be filed with respect thereto;

(d) Any standardized option, as that term is defined in section 240.9b–1(a)(4), that is issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q–1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78t–3(a));

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78t–3(a)) and cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78s–1(a)).

§ 240.12g5–2 Definition of “total assets”.

For the purpose of section 12(g)(1) of the Act, the term “total assets” shall mean the total assets as shown on the issuer’s balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is larger, as required to be filed on the form prescribed for registration under this section and prepared in accordance with the pertinent provisions of Regulation S-X (17 CFR part 210). Where the security is a certificate of deposit, voting trust certificate, or certificate or other evidence of interest in a similar trust or agreement, the “total assets” of the issuer of the security held under the trust or agreement shall be deemed to be the “total assets” of the issuer of such certificate or evidence of interest.


[30 FR 484, Jan. 14, 1965]