

## Securities and Exchange Commission

## § 240.3a12-7

the purchaser or a co-signer or guarantor on the debt obligation other than the issuer, its affiliates, or any broker or dealer offering such securities;

(2) Is to be repaid by periodic payments of principal and interest pursuant to an amortization schedule established by the governing instruments: *Provided, however,* That this provision shall not prevent the extension of credit on terms which require the payment of interest only, if extended in compliance with the other provisions of this rule; and

(3) Is extended by a lender which is not, directly or indirectly controlling, controlled by, or under common control with the broker or dealer or the issuer of the securities or affiliates thereof.

(b) For purposes of this rule:

(1) *Residential real property* shall mean real property containing living accommodations, whether used on a permanent or transient basis, and may include furniture or fixtures if required as a condition of purchase of the investment contract or if subject to the approval of the issuer.

(2) *Direct ownership* shall mean ownership of a fee or leasehold estate or a beneficial interest in a trust the purchase of which, under applicable local law, is financed and secured by a security interest therein similar to a mortgage or deed of trust, but it shall not include an interest in a real estate investment trust, an interest in a general or limited partnership, or similar indirect interest in the ownership of real property.

(Sec. 3(a)(12), 48 Stat. 882, as amended 84 Stat. 718, 1435, 1499 (15 U.S.C. 78c(12)); sec. 7(c), 48 Stat. 886, as amended 82 Stat. 452 (15 U.S.C. 78g(c)); sec. 11(d)(1), 48 Stat. 891 as amended 68 Stat. 636 (15 U.S.C. 78k(d)(1)); sec. 15(c), 48 Stat. 895, as amended 52 Stat. 1075, 84 Stat. 1653 (15 U.S.C. 78o(c)); sec. 23(a), 48 Stat. 901, as amended 49 Stat. 704, 1379 (15 U.S.C. 78w(a)))

[40 FR 6646, Feb. 13, 1975]

### § 240.3a12-6 Definition of “common trust fund” as used in section 3(a)(12) of the Act.

The term *common trust fund* as used in section 3(a)(12) of the Act (15 U.S.C. 78c(a)(12)) 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 collective 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:

(a) 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 and any other contributing banks were the same entity; and

(b) 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.

(15 U.S.C. 78c(b))

[43 FR 2392, Jan. 17, 1978]

### § 240.3a12-7 Exemption for certain derivative securities traded otherwise than on a national securities exchange.

Any put, call, straddle, option, or privilege traded exclusively otherwise than on a national securities exchange and for which quotations are not disseminated through an automated quotation system of a registered securities association, which relates to any securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States, or securities issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to section 3(a)(12) of the Act, shall be exempt from all provisions of the Act which by their terms do not apply to any “exempted security” or “exempted securities,” provided that the securities underlying

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such put, call, straddle, option or privilege represent an obligation equal to or exceeding \$250,000 principal amount.

(15 U.S.C. 78a et seq., and particularly secs. 3(a)(12), 15(a)(2) and 23(a) (15 U.S.C. 78c(a)(12), 78o(a)(2) and 78w(a)))

[49 FR 5073, Feb. 10, 1984]

**§ 240.3a12-8 Exemption for designated foreign securities for purposes of futures trading.**

(a) When used in this Rule, the following terms shall have the meaning indicated:

(1) The term *designated foreign government security* shall mean a security not registered under the Securities Act of 1933 nor the subject of any American depositary receipt so registered, and representing a debt obligation of the government of

- (i) The United Kingdom of Great Britain and Northern Ireland;
- (ii) Canada;
- (iii) Japan;
- (iv) The Commonwealth of Australia;
- (v) The Republic of France;
- (vi) New Zealand;
- (vii) The Republic of Austria;
- (viii) The Kingdom of Denmark;
- (ix) The Republic of Finland;
- (x) The Kingdom of the Netherlands;
- (xi) Switzerland;
- (xii) The Federal Republic of Germany;
- (xiii) The Republic of Ireland;
- (xiv) The Republic of Italy;
- (xv) The Kingdom of Spain;
- (xvi) The United Mexican States;
- (xvii) The Federative Republic of Brazil;
- (xviii) The Republic of Argentina;
- (xix) The Republic of Venezuela;
- (xx) The Kingdom of Belgium; or
- (xxi) The Kingdom of Sweden.

(2) The term *qualifying foreign futures contracts* shall mean any contracts for the purchase or sale of a designated foreign government security for future delivery, as "future delivery" is defined in 7 U.S.C. 2, provided such contracts require delivery outside the United States, any of its possessions or territories, and are traded on or through a board of trade, as defined at 7 U.S.C. 2.

(b) Any designated foreign government security shall, for purposes only of the offer, sale or confirmation of

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sale of qualifying foreign futures contracts, be exempted from all provisions of the Act which by their terms do not apply to an "exempted security" or "exempted securities."

(15 U.S.C. 78a et seq., and particularly secs. 3(a)(12), and 23(a) 15 U.S.C. 78c(a)(12), and 78w(a))

[49 FR 8599, Mar. 8, 1984, as amended at 51 FR 25998, July 18, 1986; 52 FR 8877, Mar. 20, 1987; 52 FR 42279, Nov. 4, 1987; 53 FR 43863, Oct. 31, 1988; 57 FR 1378, Jan. 14, 1992; 59 FR 54815, Nov. 2, 1994; 60 FR 62326, Dec. 6, 1995; 61 FR 10274, Mar. 13, 1996; 64 FR 10567, Mar. 5, 1999; 64 FR 29553, June 2, 1999]

**§ 240.3a12-9 Exemption of certain direct participation program securities from the arranging provisions of sections 7(c) and 11(d)(1).**

(a) Direct participation program securities sold on a basis whereby the purchase price is paid to the issuer in one or more mandatory deferred payments shall be deemed to be exempted securities for purposes of the arranging provisions of sections 7(c) and 11(d)(1) of the Act, provided that:

(1) The securities are registered under the Securities Act of 1933 or are sold or offered exclusively on an intrastate basis in reliance upon section 3(a)(11) of that Act;

(2) The mandatory deferred payments bear a reasonable relationship to the capital needs and program objectives described in a business development plan disclosed to investors in a registration statement filed with the Commission under the Securities Act of 1933 or, where no registration statement is required to be filed with the Commission, as part of a statement filed with the relevant state securities administrator;

(3) Not less than 50 percent of the purchase price of the direct participation program security is paid by the investor at the time of sale;

(4) The total purchase price of the direct participation program security is due within three years in specified property programs or two years in non-specified property programs. Such payment periods are to be measured from the earlier of the completion of the offering or one year following the effective date of the offering.

(b) For purposes of this rule: