

Securities and Exchange Commission

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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 pay-in 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:

(1) *Direct participation program* shall mean a program financed through the sale of securities, other than securities that are listed on an exchange, quoted on NASDAQ, or will otherwise be actively traded during the pay-in period as a result of efforts by the issuer, underwriter, or other participants in the initial distribution of such securities, that provides for flow-through tax consequences to its investors; *Provided, however*, That the term “direct participation program” does not include real estate investment trusts, Subchapter S corporate offerings, tax qualified pension and profit sharing plans under sections 401 and 403(a) of the Internal Revenue Code (“Code”), tax shelter annuities under section 403(b) of the Code, individual retirement plans under section 408 of the Code, and any issuer, including a separate account, that is reg-

istered under the Investment Company Act of 1940.

(2) *Business development plan* shall mean a specific plan describing the program’s anticipated economic development and the amounts of future capital contributions, in the form of mandatory deferred payments, to be required at specified times or upon the occurrence of certain events.

(3) *Specified property program* shall mean a direct participation program in which, at the date of effectiveness, more than 75 percent of the net proceeds from the sale of program securities are committed to specific purchases or expenditures. *Non-specified property program* shall mean any other direct participation program.

[51 FR 8801, Mar. 14, 1986]

§ 240.3a12-10 Exemption of certain securities issued by the Resolution Funding Corporation.

Securities that are issued by the Resolution Funding Corporation pursuant to section 21B(f) of the Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.) are exempt from the operation of all provisions of the Act that by their terms do not apply to any “exempted security” or to “exempted securities.”

[54 FR 37789, Sept. 13, 1989]

§ 240.3a12-11 Exemption from sections 8(a), 14(a), 14(b), and 14(c) for debt securities listed on a national securities exchange.

(a) Debt securities that are listed for trading on a national securities exchange shall be exempt from the restrictions on borrowing of section 8(a) of the Act (15 U.S.C. 78h(a)).

(b) Debt securities registered pursuant to the provisions of section 12(b) of the Act (15 U.S.C. 78l(b)) shall be exempt from sections 14(a), 14(b), and 14(c) of the Act (15 U.S.C. 78n(a), (b), and (c)), *except that* §§ 240.14a-1, 240.14a-2(a), 240.14a-9, 240.14a-13, 240.14b-1, 240.14b-2, 240.14c-1, 240.14c-6 and 240.14c-7 shall continue to apply.

(c) For purposes of this section, *debt securities* is defined to mean any securities that are not “equity securities” as defined in section 3(a)(11) of the Act (15

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U.S.C. 78c(a)(11)) and § 240.3a11-1 thereunder.

[59 FR 55347, Nov. 7, 1994]

§ 240.3a12-12 Exemption from certain provisions of section 16 of the Act for asset-backed securities.

Asset-backed securities, as defined in § 229.1101 of this chapter, are exempt from section 16 of the Act (15 U.S.C. 78p).

[70 FR 1620, Jan. 7, 2005]

§ 240.3a40-1 Designation of financial responsibility rules.

The term *financial responsibility rules* for purposes of the Securities Investor Protection Act of 1970 shall include:

(a) Any rule adopted by the Commission pursuant to sections 8, 15(c)(3), 17(a) or 17(e)(1)(A) of the Securities Exchange Act of 1934;

(b) Any rule adopted by the Commission relating to hypothecation or lending of customer securities;

(c) Any rule adopted by any self-regulatory organization relating to capital, margin, recordkeeping, hypothecation or lending requirements; and

(d) Any other rule adopted by the Commission or any self-regulatory organization relating to the protection of funds or securities.

(Secs. 3, 15(c)(3), 17(a) and 23 (15 U.S.C. 78c, 78o, 78q(a) and 78u))

[44 FR 28318, May 15, 1979]

§ 240.3a43-1 Customer-related government securities activities incidental to the futures-related business of a futures commission merchant registered with the Commodity Futures Trading Commission.

(a) A futures commission merchant registered with the Commodity Futures Trading Commission ("CFTC") is not a government securities broker or government securities dealer solely because such futures commission merchant effects transactions in government securities that are defined in paragraph (b) of this section as incidental to such person's futures-related business.

(b) Provided that the futures commission merchant maintains in a regulated account all funds and securities associated with such government secu-

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rities transactions (except funds and securities associated with transactions under paragraph (b)(1)(i) of this section and does not advertise that it is in the business of effecting transactions in government securities otherwise than in connection with futures or options on futures trading or the investment of margin or excess funds related to such trading or the trading of any other instrument subject to CFTC jurisdiction, the following transactions in government securities are incidental to the futures-related business of such a futures commission merchant:

(1) Transactions as agent for a customer—

(i) To effect delivery pursuant to a futures contract; or

(ii) For risk reduction or arbitrage of existing or contemporaneously created positions in futures or options on futures;

(2) Transactions as agent for a customer for investment of margin and excess funds related to futures or options on futures trading or the trading of other instruments subject to CFTC jurisdiction, provided further that,

(i) Such transactions involve Treasury securities with a maturity of less than 93 days at the time of the transaction.

(ii) Such transactions generate no monetary profit for the futures commission merchant in excess of the costs of executing such transactions, or

(iii) Such transactions are unsolicited, and commissions and other income generated on transactions pursuant to this paragraph (b)(2)(iii) (including transactional fees paid by the futures commission merchant and charged to its customer) do not exceed 2% of such futures commission merchant's total commission revenues;

(3) Exchange of futures for physicals transactions as agent for or as principal with a customer; and

(4) Any transaction or transactions that the Commission exempts, either unconditionally or on specified terms and conditions, as incidental to the futures-related business of a specified futures commission merchant, a specified category of futures commission merchants, or futures commission merchants generally.