

## AMENDMENTS

2010—Par. (17). Pub. L. 111-203 added par. (17) and struck out former par. (17) which read as follows: “The terms ‘Securities Act of 1933,’ ‘Securities Exchange Act of 1934,’ and ‘Public Utility Holding Company Act of 1935’ shall be deemed to refer, respectively, to such Acts, as amended, whether amended prior to or after the enactment of this subchapter.”

1998—Pars. (2), (3). Pub. L. 105-353 substituted “section 2(a)” for “section 2”.

1990—Par. (8). Pub. L. 101-550 inserted “section 77eee of this title or” after “provided for in”.

1987—Par. (4). Pub. L. 100-181, §501, substituted “undertaking” for “undertakng”.

Par. (12). Pub. L. 100-181, §502, inserted “(including a guarantor)” after “person” in two places.

1978—Par. (18). Pub. L. 95-598 substituted “Bankruptcy Act or title 11” for “Act entitled ‘An Act to establish a uniform system of bankruptcy throughout the United States’, approved July 1, 1898, as amended, whether amended prior to or after August 3, 1939”.

1954—Pars. (1) to (4). Act Aug. 10, 1954, made formal changes in order to conform to amendments made by act Aug. 10, 1954, to sections 77b, 77e, and 77j of this title.

**Statutory Notes and Related Subsidiaries**

## EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

## EFFECTIVE DATE OF 1978 AMENDMENT

Amendment effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598 set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

## EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

**Executive Documents**

## TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

**§ 77ddd. Exempted securities and transactions****(a) Specific securities exempted**

The provisions of this subchapter shall not apply to any of the following securities:

(1) any security other than (A) a note, bond, debenture, or evidence of indebtedness, whether or not secured, or (B) a certificate of interest or participation in any such note, bond, debenture, or evidence of indebtedness, or (C) a temporary certificate for, or guarantee of, any such note, bond, debenture, evidence of indebtedness, or certificate;

(2) any certificate of interest or participation in two or more securities having substantially different rights and privileges, or a temporary certificate for any such certificate;

(3) Repealed. Pub. L. 101-550, title IV, §403(1)(A), Nov. 15, 1990, 104 Stat. 2722.

(4)(A) any security exempted from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] by paragraphs (2) to (8), (11), or (13) of section 3(a) thereof [15 U.S.C. 77c(a)];

(B) any security exempted from the provisions of the Securities Act of 1933, as amended [15 U.S.C. 77a et seq.], by paragraph (2) of subsection 3(a) thereof, as amended by section 401 of the Employment Security Amendments of 1970 [15 U.S.C. 77c(a)(2)];

(5) any security issued under a mortgage indenture as to which a contract of insurance under the National Housing Act [12 U.S.C. 1701 et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2) of such Act [15 U.S.C. §77c(a)(2)];

(6) any note, bond, debenture, or evidence of indebtedness issued or guaranteed by a foreign government or by a subdivision, department, municipality, agency, or instrumentality thereof;

(7) any guarantee of any security which is exempted by this subsection;

(8) any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 [15 U.S.C. 77c(b)] limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations;

(9) any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to \$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations, but this exemption shall not be applied within a period of thirty-six consecutive months to more than \$10,000,000 aggregate principal amount of securities of the same issuer, or such lesser amount as the Commission may establish by its rules and regulations; or

(10) any security issued under a mortgage or trust deed indenture as to which a contract of insurance under title XI of the National Housing Act [12 U.S.C. 1749aaa et seq.] is in effect; and any such security shall be deemed to be exempt from the provisions of the Securities Act of 1933 [15 U.S.C. 77a et seq.] to the same extent as though such security were specifically enumerated in section 3(a)(2), as amended, of the Securities Act of 1933 [15 U.S.C. 77c(a)(2)].

In computing the aggregate principal amount of securities to which the exemptions provided by paragraphs (8) and (9) of this subsection may be applied, securities to which the provisions of sections 77eee and 77fff of this title would not have applied, irrespective of the provisions of those paragraphs, shall be disregarded.

**(b) Application of sections 77eee and 77fff**

The provisions of sections 77eee and 77fff of this title shall not apply (1) to any of the transactions exempted from the provisions of section 5 of the Securities Act of 1933 [15 U.S.C. 77e] by section 4 thereof [15 U.S.C. 77d] or (2) to any transaction which would be so exempted but for the last sentence of paragraph (11) of section 2(a) of such Act [15 U.S.C. 77b(a)].

**(c) Securities issued or proposed to be issued under indenture**

The Commission shall, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more provisions of this subchapter any security issued or proposed to be issued under any indenture under which, at the time such application is filed, securities referred to in paragraph (3) of subsection (a) of this section are outstanding or on January 1, 1959, such securities were outstanding, if and to the extent that the Commission finds that compliance with such provision or provisions, through the execution of a supplemental indenture or otherwise—

(1) would require, by reason of the provisions of such indenture, or the provisions of any other indenture or agreement made prior to August 3, 1939, or the provisions of any applicable law, the consent of the holders of securities outstanding under any such indenture or agreement; or

(2) would impose an undue burden on this issuer, having due regard to the public interest and the interests of investors.

**(d) Exemptions in public interest**

The Commission may, by rules or regulations upon its own motion, or by order on application by an interested person, exempt conditionally or unconditionally any person, registration statement, indenture, security or transaction, or any class or classes of persons, registration statements, indentures, securities, or transactions, from any one or more of the provisions of this subchapter, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by this subchapter. The Commission shall by rules and regulations determine the procedures under which an exemption under this subsection shall be granted, and may, in its sole discretion, decline to entertain any application for an order of exemption under this subsection.

**(e) Securities issued by small investment company**

The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] if it finds, having regard to the purposes of that Act, that the enforcement of this subchapter with respect to such securities is not necessary in the public interest and for the protection of investors.

(May 27, 1933, ch. 38, title III, § 304, as added Aug. 3, 1939, ch. 411, 53 Stat. 1153; amended Aug. 10, 1954, ch. 667, title III, § 302, 68 Stat. 687; Pub. L. 85-699, title III, § 307(b), Aug. 21, 1958, 72 Stat. 694; Pub. L. 86-760, Sept. 13, 1960, 74 Stat. 902; Pub. L. 89-754, title V, § 504(b), Nov. 3, 1966, 80 Stat. 1278; Pub. L. 91-567, § 6(c), Dec. 22, 1970, 84 Stat. 1499; Pub. L. 96-477, title III, § 302, Oct. 21, 1980, 94 Stat. 2291; Pub. L. 101-550, title IV, § 403, Nov. 15, 1990, 104 Stat. 2722; Pub. L. 104-290, title V, § 508(e), Oct. 11, 1996, 110 Stat. 3448; Pub. L.

105-353, title III, § 301(e)(2), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 111-203, title IX, § 985(c)(1), July 21, 2010, 124 Stat. 1934.)

**Editorial Notes**

**REFERENCES IN TEXT**

The Securities Act of 1933, referred to in subsec. (a)(4), (5), and (10), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of this chapter. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The National Housing Act, referred to in subsec. (a)(5), is act June 27, 1934, ch. 847, 48 Stat. 1246, which is classified generally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. Provisions of that act relating to insurance of mortgages are contained in section 1707 et seq. of Title 12. Title XI of the National Housing Act, is classified to subchapter IX-B (§ 1749aaa et seq.) of chapter 13 of Title 12. For complete classification of this Act to the Code, see References in Text note set out under section 1701 of Title 12 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (e), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

**AMENDMENTS**

2010—Subsec. (b). Pub. L. 111-203 substituted “section 2(a) of such Act” for “section 2 of such Act”.

1998—Subsec. (a)(4)(A). Pub. L. 105-353 substituted “(13) of section” for “(14) of subsection”.

1996—Subsec. (a)(4)(A). Pub. L. 104-290 substituted “(11), or (14)” for “or (11)”.

1990—Subsec. (a)(3). Pub. L. 101-550, § 403(1)(A), struck out par. (3) which read as follows: “any security which, prior to or within six months after August 3, 1939, has been sold or disposed of by the issuer or bona fide offered to the public, but this exemption shall not apply to any new offering of any such security by an issuer subsequent to such six months;”.

Subsec. (a)(4)(A). Pub. L. 101-550, § 403(1)(B), struck out “, as heretofore amended,” after “1933”.

Subsec. (d). Pub. L. 101-550, § 403(2), added subsec. (d) and struck out former subsec. (d) which read as follows: “The Commission may, on application by the issuer and after opportunity for hearing thereon, by order exempt from any one or more of the provisions of this subchapter any security issued or proposed to be issued by a person organized and existing under the laws of a foreign government or a political subdivision thereof, if and to the extent that the Commission finds that compliance with such provision or provisions is not necessary in the public interest and for the protection of investors.”

1980—Subsec. (a)(8). Pub. L. 96-477, § 302(a), substituted “an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations” for “more than \$250,000 aggregate principal amount of any securities of the same issuer”.

Subsec. (a)(9). Pub. L. 96-477, § 302(b), substituted “\$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations” for “\$1,000,000 or less”, “more than \$10,000,000” for “more than \$1,000,000”, and inserted “, or such lesser amount as the Commission may establish by its rules and regulations” after “same issuer”.

1970—Subsec. (a)(4). Pub. L. 91-567 designated existing provisions as cl. (A) and added cl. (B).

1966—Subsec. (a)(10). Pub. L. 89-754 added par. (10).

1960—Subsec. (c). Pub. L. 86-760 inserted “or on January 1, 1959, such securities were outstanding”.

1958—Subsec. (e). Pub. L. 85-699 added subsec. (e).

1954—Subsec. (b). Act Aug. 10, 1954, struck out “as heretofore amended.”.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

##### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-567 applicable with respect to securities sold after Jan. 1, 1970, see section 6(d) of Pub. L. 91-567, set out as a note under section 77c of this title.

##### EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note under section 77b of this title.

#### Executive Documents

##### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

### § 77eee. Securities required to be registered under Securities Act

#### (a) Information required

Subject to the provisions of section 77ddd of this title, a registration statement relating to a security shall include the following information and documents, as though such inclusion were required by the provisions of section 7 of the Securities Act of 1933 [15 U.S.C. 77g]—

(1) such information and documents as the Commission may by rules and regulations prescribe in order to enable the Commission to determine whether any person designated to act as trustee under the indenture under which such security has been or is to be issued is eligible to act as such under subsection (a) of section 77jjj of this title; and

(2) an analysis of any provisions of such indenture with respect to (A) the definition of what shall constitute a default under such indenture, and the withholding of notice to the indenture security holders of any such default, (B) the authentication and delivery of the indenture securities and the application of the proceeds thereof, (C) the release or the release and substitution of any property subject to the lien of the indenture, (D) the satisfaction and discharge of the indenture, and (E) the evidence required to be furnished by the obligor upon the indenture securities to the trustee as to compliance with the conditions and covenants provided for in such indenture.

The information and documents required by paragraph (1) of this subsection with respect to the person designated to act as indenture trustee shall be contained in a separate part of such registration statement, which part shall be signed by such person. Such part of the registration statement shall be deemed to be a document filed pursuant to this subchapter, and the provisions of sections 11, 12, 17, and 24 of the Se-

curities Act of 1933 [15 U.S.C. 77k, 77l, 77q, 77x] shall not apply to statements therein or omissions therefrom.

#### (b) Refusal of registration statement

(1) Except as may be permitted by paragraph (2) of this subsection, the Commission shall issue an order prior to the effective date of registration refusing to permit such a registration statement to become effective, if it finds that—

(A) the security to which such registration statement relates has not been or is not to be issued under an indenture; or

(B) any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title;

but no such order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If and when the Commission deems that the objections on which such order was based have been met, the Commission shall enter an order rescinding such refusal order, and the registration shall become effective at the time provided in section 8(a) of the Securities Act of 1933 [15 U.S.C. 77h(a)], or upon the date of such rescission, whichever shall be the later.

(2) In the case of securities registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], which securities are eligible to be issued, offered, or sold on a delayed basis by or on behalf of the registrant, the Commission shall not be required to issue an order pursuant to paragraph (1) of subsection (b) of this section for failure to designate a trustee eligible to act under subsection (a) of section 77jjj of this title if, in accordance with such rules and regulations as may be prescribed by the Commission, the issuer of such securities files an application for the purpose of determining such trustee's eligibility under subsection (a) of section 77jjj of this title. The Commission shall issue an order prior to the effective date of such application refusing to permit the application to become effective, if it finds that any person designated as trustee under such indenture is not eligible to act as such under subsection (a) of section 77jjj of this title, but no order shall be issued except after notice and opportunity for hearing within the periods and in the manner required with respect to refusal orders pursuant to section 8(b) of the Securities Act of 1933 [15 U.S.C. 77h(b)]. If after notice and opportunity for hearing the Commission issues an order under this provision, the obligor shall within 5 calendar days appoint a trustee meeting the requirements of subsection (a) of section 77jjj of this title. No such appointment shall be effective and such refusal order shall not be rescinded by the Commission until a person eligible to act as trustee under subsection (a) of section 77jjj of this title has been appointed. If no order is issued, an application filed pursuant to this paragraph shall be effective the tenth day after filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of information provided therein, the public interest, and the protection of investors.