

Subsec. (e). Pub. L. 101-550, §414(1), substituted “The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to” for “The indenture to be qualified may”.

§ 77ppp. Directions and waivers by bondholders; prohibition of impairment of holder’s right to payment; record date

(a) Directions and waivers by bondholders

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77000 of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common control with any such obligor, shall be disregarded, except that for the purposes of determining whether the indenture trustee shall be protected in relying on any such direction or consent, only indenture securities which such trustee knows are so owned shall be so disregarded.

(b) Prohibition of impairment of holder’s right to payment

Notwithstanding any other provision of the indenture to be qualified, the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except as to a postponement of an interest payment consented to as provided in paragraph (2) of subsection (a) of this section, and except that such indenture may contain provisions limiting or denying the right of any such holder to institute any such suit, if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under

applicable law, result in the surrender, impairment, waiver, or loss of the lien of such indenture upon any property subject to such lien.

(c) Record date

The obligor upon any indenture qualified under this subchapter may set a record date for purposes of determining the identity of indenture security holders entitled to vote or consent to any action by vote or consent authorized or permitted by subsection (a) of this section. Unless the indenture provides otherwise, such record date shall be the later of 30 days prior to the first solicitation of such consent or the date of the most recent list of holders furnished to the trustee pursuant to section 77777 of this title prior to such solicitation.

(May 27, 1933, ch. 38, title III, §316, as added Aug. 3, 1939, ch. 411, 53 Stat. 1172; amended Pub. L. 101-550, title IV, §415, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §415(1)–(3), in introductory provisions struck out “may contain provisions” after “qualified”, in par. (1) inserted “shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions” before “authorizing the holders” and “or if expressly specified in such indenture, of any series of securities” after “principal amount of the indenture securities”, and in par. (2) inserted “may contain provisions” before “authorizing the holders” and “or if expressly specified in such indenture, of any series of securities” after “principal amount of the indenture securities”.

Subsec. (b). Pub. L. 101-550, §415(5), which directed the substitution of “of the indenture to be qualified” for “thereof”, was executed by making the substitution for “thereof” the first time appearing, as the probable intent of Congress.

Subsec. (c). Pub. L. 101-550, §415(6), added subsec. (c).

§ 77qqq. Special powers of trustee; duties of paying agents

(a) The indenture trustee shall be authorized—

(1),¹ in the case of a default in payment of the principal of any indenture security, when and as the same shall become due and payable, or in the case of a default in payment of the interest on any such security, when and as the same shall become due and payable and the continuance of such default for such period as may be prescribed in such indenture, to recover judgment, in its own name and as trustee of an express trust, against the obligor upon the indenture securities for the whole amount of such principal and interest remaining unpaid; and

(2) to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of such trustee and of the indenture security holders allowed in any judicial proceedings relative to the obligor upon the indenture securities, its creditors, or its property.

(b) Each paying agent shall hold in trust for the benefit of the indenture security holders or the indenture trustee all sums held by such paying agent for the payment of the principal of or

¹ So in original. The comma probably should not appear.

interest on the indenture securities, and shall give to such trustee notice of any default by any obligor upon the indenture securities in the making of any such payment.

(May 27, 1933, ch. 38, title III, §317, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101-550, title IV, §416, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §416(1)–(3), in introductory provisions, substituted “trustee shall be authorized” for “to be qualified shall contain provisions”, in par. (1) struck out “authorizing the indenture trustee” after the paragraph designation, and in par. (2) struck out “authorizing such trustee” after the paragraph designation.

Subsec. (b). Pub. L. 101-550, §416(4), substituted “Each” for “The indenture to be qualified shall provide that each”.

§ 77rrr. Effect of prescribed indenture provisions

(a) Imposed duties to control

If any provision of the indenture to be qualified limits, qualifies, or conflicts with the duties imposed by operation of subsection (c) of this section, the imposed duties shall control.

(b) Additional provisions

The indenture to be qualified may contain, in addition to provisions specifically authorized under this subchapter to be included therein, any other provisions the inclusion of which is not in contravention of any provision of this subchapter.

(c) Provisions governing qualified indentures

The provisions of sections 77jjj to and including 77qqq of this title that impose duties on any person (including provisions automatically deemed included in an indenture unless the indenture provides that such provisions are excluded) are a part of and govern every qualified indenture, whether or not physically contained therein, shall be deemed retroactively to govern each indenture heretofore qualified, and prospectively to govern each indenture hereafter qualified under this subchapter and shall be deemed retroactively to amend and supersede inconsistent provisions in each such indenture heretofore qualified. The foregoing provisions of this subsection shall not be deemed to effect the inclusion (by retroactive amendment or otherwise) in the text of any indenture heretofore qualified of any of the optional provisions contemplated by section 77jjj(b)(1), 77kkk(b), 77nnn(d), 77ooo(a), 77ooo(b), 77ooo(d), 77ooo(e), or 77ppp(a)(1) of this title.

(May 27, 1933, ch. 38, title III, §318, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; amended Pub. L. 101-550, title IV, §417, Nov. 15, 1990, 104 Stat. 2731.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §417(1), added subsec. (a) and struck out former subsec. (a) which read as follows: “The indenture to be qualified shall provide that if any provision thereof limits, qualifies, or conflicts with another provision which is required to be included in such indenture by any of sections 77jjj to 77qqq of this title, inclusive, such required provision shall control.”

Subsec. (c). Pub. L. 101-550, §417(2), added subsec. (c).

§ 77sss. Rules, regulations, and orders

(a) Authority of Commission; subject matter of rules, etc.

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as it may deem necessary or appropriate in the public interest or for the protection of investors to carry out the provisions of this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, (1) by rules and regulations, to prescribe for the purposes of section 77jjj(b) of this title the method (to be fixed in indentures to be qualified under this subchapter) of calculating percentages of voting securities and other securities; (2) by rules and regulations, to prescribe the definitions of the terms “cash transaction” and “self-liquidating paper” which shall be included in indentures to be qualified under this subchapter, which definitions shall include such of the creditor relationships referred to in paragraphs (4) and (6) of subsection (b) of section 77kkk of this title as to which the Commission determines that the application of subsection (a) of section 77kkk of this title is not necessary in the public interest or for the protection of investors, having due regard for the purposes of such subsection; and (3) for the purposes of this subchapter, to prescribe the form or forms in which information required in any statement, application, report, or other document filed with the Commission shall be set forth. For the purpose of its rules or regulations the Commission may classify persons, securities, indentures, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, indentures, or matters.

(b) Rules and regulations effective upon publication

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(c) Exemption from liability for any acts taken in good faith in conformity with rules, etc.

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(May 27, 1933, ch. 38, title III, §319, as added Aug. 3, 1939, ch. 411, 53 Stat. 1173; Pub. L. 105-353, title III, §301(e)(4), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-353 substituted “chapter 15 of title 44” for “the Federal Register Act”.