

mailing would be contrary to the best interests of the indenture security holders or would be in violation of applicable law. Such written statement shall specify the basis of such opinion. After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by such trustee or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, such trustee shall mail copies of such material to all such indenture security holders with reasonable promptness after the entry of such order and the renewal of such tender.

(c) Disclosure of information deemed not violative of any law

The disclosure of any such information as to the names and addresses of the indenture security holders in accordance with the provisions of this section, regardless of the source from which such information was derived, shall not be deemed to be a violation of any existing law, or of any law hereafter enacted which does not specifically refer to this section, nor shall such trustee be held accountable by reason of mailing any material pursuant to a request made under subsection (b) of this section.

(May 27, 1933, ch. 38, title III, §312, as added Aug. 3, 1939, ch. 411, 53 Stat. 1164; amended Pub. L. 101-550, title IV, §410, Nov. 15, 1990, 104 Stat. 2728.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §410(1), (2), substituted “Each obligor” for “The indenture to be qualified shall contain provisions requiring each obligor” and “indenture securities shall” for “indenture securities to”.

Subsec. (b). Pub. L. 101-550, §410(3), substituted “Within” for “The indenture to be qualified shall also contain provisions requiring that, within”.

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.

§ 77mmm. Reports by indenture trustee

(a) Report to security holders; time; contents

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, at stated intervals of not more than 12 months, a brief report with respect to any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):—¹

- (1) any change to its eligibility and its qualifications under section 77jjj of this title;

- (2) the creation of or any material change to a relationship specified in paragraph² (1) through (10) of section 77jjj(b) of this title;

- (3) the character and amount of any advances made by it, as indenture trustee, which remain unpaid on the date of such report, and for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on property or funds held or collected by it as such trustee, if such advances so remaining unpaid aggregate more than one-half of 1 per centum of the principal amount of the indenture securities outstanding on such date;

- (4) any change to the amount, interest rate, and maturity date of all other indebtedness owing to it in its individual capacity, on the date of such report, by the obligor upon the indenture securities, with a brief description of any property held as collateral security therefor, except an indebtedness based upon a creditor relationship arising in any manner described in paragraphs (2), (3), (4), or (6) of subsection (b) of section 77kkk of this title;

- (5) any change to the property and funds physically in its possession as indenture trustee on the date of such report;

- (6) any release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) which it has not previously reported;

- (7) any additional issue of indenture securities which it has not previously reported; and

- (8) any action taken by it in the performance of its duties under the indenture which it has not previously reported and which in its opinion materially affects the indenture securities or the trust estate, except action in respect of a default, notice of which has been or is to be withheld by it in accordance with an indenture provision authorized by subsection (b) of section 77ooo of this title.

(b) Additional reports to security holders

The indenture trustee shall transmit to the indenture security holders as hereinafter provided, within the times hereinafter specified, a brief report with respect to—

- (1) the release, or release and substitution, of property subject to the lien of the indenture (and the consideration therefor, if any) unless the fair value of such property, as set forth in the certificate or opinion required by paragraph (1) of subsection (d) of section 77nnn of this title, is less than 10 per centum of the principal amount of indenture securities outstanding at the time of such release, or such release and substitution, such report to be so transmitted within 90 days after such time; and

- (2) the character and amount of any advances made by it as such since the date of the last report transmitted pursuant to the provisions of subsection (a) of this section (or if no such report has yet been so transmitted, since the date of execution of the indenture), for the reimbursement of which it claims or may claim a lien or charge, prior to that of the indenture securities, on the trust estate or on

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

² So in original. Probably should be “paragraphs”.

property or funds held or collected by it as such trustee, and which it has not previously reported pursuant to this paragraph, if such advances remaining unpaid at any time aggregate more than 10 per centum of the principal amount of indenture securities outstanding at such time, such report to be so transmitted within 90 days after such time.

(c) Additional parties to whom reports to be transmitted

Reports pursuant to this section shall be transmitted by mail—

(1) to all registered holders of indenture securities, as the names and addresses of such holders appear upon the registration books of the obligor upon the indenture securities;

(2) to such holders of indenture securities as have, within the two years preceding such transmission, filed their names and addresses with the indenture trustee for that purpose; and

(3) except in the case of reports pursuant to subsection (b) of this section, to all holders of indenture securities whose names and addresses have been furnished to or received by the indenture trustee pursuant to section 77lll of this title.

(d) Filing of report with stock exchanges

A copy of each such report shall, at the time of such transmission to indenture security holders, be filed with each stock exchange upon which the indenture securities are listed, and also with the Commission.

(May 27, 1933, ch. 38, title III, § 313, as added Aug. 3, 1939, ch. 411, 53 Stat. 1165; amended Pub. L. 101-550, title IV, §§ 411, 412, Nov. 15, 1990, 104 Stat. 2729; Pub. L. 105-353, title III, § 301(e)(3), Nov. 3, 1998, 112 Stat. 3237.)

AMENDMENTS

1998—Subsec. (a)(4). Pub. L. 105-353, § 301(e)(3)(A), inserted “any change to” before “the amount”.

Subsec. (a)(6). Pub. L. 105-353, § 301(e)(3)(B), struck out “any change to” before “any release”.

1990—Subsec. (a). Pub. L. 101-550, § 411(1), (2), substituted “The indenture trustee shall” for “The indenture to be qualified shall contain provisions requiring the indenture trustee to” and inserted “any of the following events which may have occurred within the previous 12 months (but if no such event has occurred within such period no report need be transmitted):” after “a brief report with respect to”.

Subsec. (a)(1). Pub. L. 101-550, § 411(3), (4), inserted “any change to” before “its eligibility” and struck out “, or in lieu thereof, if to the best of its knowledge it has continued to be eligible and qualified under such section, a written statement to such effect” after “of this title”.

Subsec. (a)(2). Pub. L. 101-550, § 411(5), added par. (2) and redesignated former par. (2) as (3).

Subsec. (a)(3), (4). Pub. L. 101-550, § 411(5)(A), redesignated pars. (2) and (3) as (3) and (4), respectively. Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 101-550, § 411(5)(A), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 101-550, § 411(3), inserted “any change to” after the paragraph designation.

Subsec. (a)(6). Pub. L. 101-550, § 411(5)(A), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 101-550, § 411(3), inserted “any change to” after the paragraph designation.

Subsec. (a)(7), (8). Pub. L. 101-550, § 411(5)(A), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (b). Pub. L. 101-550, § 412(1), substituted “The indenture trustee shall” for “The indenture to be qualified shall also contain provisions requiring the indenture trustee to”.

Subsec. (c). Pub. L. 101-550, § 412(2), substituted “Reports” for “The indenture to be qualified shall also provide that reports”.

Subsec. (d). Pub. L. 101-550, § 412(3), substituted “A copy” for “The indenture to be qualified shall also provide that a copy”.

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.

§ 77nnn. Reports by obligor; evidence of compliance with indenture provisions

(a) Periodic reports

Each person who, as set forth in the registration statement or application, is or is to be an obligor upon the indenture securities covered thereby shall—

(1) file with the indenture trustee copies of the annual reports and of the information, documents, and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which such obligor is required to file with the Commission pursuant to section 78m or 78o(d) of this title; or, if the obligor is not required to file information, documents, or reports pursuant to either of such sections, then to file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such of the supplementary and periodic information, documents, and reports which may be required pursuant to section 78m of this title, in respect of a security listed and registered on a national securities exchange as may be prescribed in such rules and regulations;

(2) file with the indenture trustee and the Commission, in accordance with rules and regulations prescribed by the Commission, such additional information, documents, and reports with respect to compliance by such obligor with the conditions and covenants provided for in the indenture, as may be required by such rules and regulations, including, in the case of annual reports, if required by such rules and regulations, certificates or opinions of independent public accountants, conforming to the requirements of subsection (e) of this section, as to compliance with conditions or covenants, compliance with which is subject to verification by accountants, but no such certificate or opinion shall be required as to any matter specified in clauses (A), (B), or (C) of paragraph (3) of subsection (c) of this section;

(3) transmit to the holders of the indenture securities upon which such person is an obligor, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, such summaries of any information, documents, and reports required to be filed by such obligor pursuant to the provisions of paragraph (1) or (2) of this subsection as may be required by rules and regulations prescribed by the Commission; and