

## Securities and Exchange Commission

## § 250.62

### **§ 250.61 Solicitations other than in connection with a reorganization or transaction which is the subject of an application or declaration.**

The solicitation of any authorization regarding any security of a registered holding company or subsidiary company thereof, except solicitations in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of any application or declaration filed with the Commission, shall be subject to all rules and regulations now or hereafter adopted pursuant to section 14(a) of the Securities Exchange Act of 1934 (48 Stat. 895; 15 U.S.C. 78n) that would be applicable to such solicitation if such security were registered on a national securities exchange: *Provided*, That unless such security is actually registered on a national securities exchange, no documents need be filed with any such exchange in connection with such solicitation.

[6 FR 5485, Oct. 28, 1941]

### **§ 250.62 Solicitations in connection with a reorganization or transaction which is the subject of an application or declaration.**

(a) *General provisions.* No solicitation of any authorization, regarding any security of a registered holding company or a subsidiary company thereof, in connection with any reorganization subject to the approval of the Commission, or in connection with any other transaction which is or will be the subject of an application or declaration filed with the Commission, shall be made except pursuant to a declaration with respect to such solicitation which has become effective in the manner prescribed in paragraph (d) of this section.

(b) *Exceptions*—(1) *Solicitations of a limited number.* Paragraph (a) of this section shall not apply to a solicitation of not more than 15 owners of securities or claims (or of such larger number as the Commission for cause shown may, by order, authorize in any case) by any person, either alone or in cooperation or conjunction with others. For the purpose of computing such number of owners, all persons having any legal or beneficial interest in any specific secu-

rity or claim shall be counted as only a single owner.

(2) *Depositaries.* Action merely as a depositary or custodian of securities solicited by others shall not be subject to paragraph (a) of this section and the depositary or custodian shall be under no duty to ascertain that there has been compliance with this section by others.

(c) *Contents of declaration.* Every declaration pursuant to this section shall, if in connection with any reorganization, be filed on Form U-R-1. Every other declaration subject to this section may be filed in connection with the application or declaration with respect to the proposed transaction, and shall contain, in addition to the information otherwise specified in such application or declaration, copies of any letters of solicitation proposed to be used, copies of all other documents proposed to be transmitted with such letter of solicitation, and a full statement of the manner in which the solicitation is proposed to be made.

(d) *Effective date.* A declaration as to a solicitation in connection with a reorganization shall, unless the Commission shall order a hearing thereon, become effective on (1) the 11th day after the filing thereof, or the 4th day (excluding Saturdays, Sundays and holidays) after the filing of the last amendment thereto, whichever is the later; or (2) such earlier date as the Commission may, upon a showing of unusual circumstances, permit in writing or otherwise; or (3) such later date as declarant may designate in such declaration, in any amendment thereto, or in written notice to the Commission. Any other declaration shall, unless otherwise ordered by the Commission or unless the Commission shall order a hearing thereon, become effective at the same time as the application or declaration with respect to the proposed transaction; post-amendments to such declarations shall become effective on the 4th day (excluding Saturdays, Sundays and holidays) after the filing thereof unless otherwise therein provided or unless an order for hearing is issued by the Commission.

(e) *Order for hearing.* If the Commission shall issue an order for hearing on a declaration under this section, such

declaration shall become effective only pursuant to the further order of the Commission and subject to such terms and conditions as the Commission may prescribe.

(f) *Supplementary solicitations.* The text of any supplementary or follow-up letters of solicitation or reports, or statements of account shall be filed as post-amendments to a declaration and shall be subject to the same requirements as other amendments to declarations, except that no declaration or post-amendment need be filed with respect to supplementary or follow-up letters which do not include financial or other information or representations and which merely call attention to prior solicitations and urge action in accordance therewith, or with respect to replies to persons making specific inquiries asking for further explanation as to details of such solicitation.

(g) *Conditions imposed on persons making solicitations.* (1) All persons who make any solicitation subject to this section shall submit, if so directed by the Commission annual reports and statements of accounts to the persons from whom authorizations are procured.

(2) No securities of the company or companies in reorganization, or of any subsidiary of such company, or of any other associate company thereof which may be affected by the reorganization, shall be bought or sold by or for the account of (whether as principal, agent, trustee, or otherwise) any of the persons specified in paragraphs (g)(2) (i) to (v) of this section, or in any transaction in which any such person has any beneficial interest, direct or indirect; nor shall any investment advice with respect to any such securities be given, directly or indirectly, by:

(i) Any person who makes any solicitation subject to this section; or

(ii) Any person connected with any committee or other organization formed to act under the authorization so solicited; or

(iii) Any company as defined in section 2(a)(2) (49 Stat. 804; 15 U.S.C. 79b) of the act controlled by any person specified in paragraph (g)(2) (i) or (ii) of this section; or

(iv) Any company as so defined of which any person specified in paragraph (g)(2) (i) or (ii) of this section is an officer, director, partner, or employee; or

(v) Any person who is a partner or employer of any person specified in paragraph (g)(2) (i) or (ii) of this section. No person shall make any solicitation subject to this section, or act in connection with any committee or other organization formed to act under the authorization so solicited, in the event of noncompliance with the conditions of paragraph (g)(2) of this section on the part of any such person or of any company having the relation to such person specified in paragraphs (g)(2) (iii) and (iv) of this section, or of any partner or employer of such person.

(h) *Required terms of authorizations.* No authorization shall be solicited in connection with a reorganization unless the document evidencing such authorization:

(1) Provides for compliance by the person soliciting with paragraph (g) of this section; and

(2) Except as otherwise prescribed by order of the Commission, provides for the unconditional right to revoke or cancel the authority granted, without expense, at any time before such authority has been conclusively exercised; and

(3) Except in the case of a document which only evidences consent to or dissent from a specific reorganization plan, provides that no authority is granted with respect to consenting to or dissenting from any reorganization plan.

(i) *Deposits.* No solicitation of deposits of securities shall be made except in accordance with an order of the Commission pursuant to an application showing the necessity for such deposits and of any terms and conditions imposed in the deposit agreement.

(j) *Solicitation of several classes of security holders.* The solicitation of authorizations by one person, group of persons, or committee shall not be made for more than one class of securities without the approval of the Commission, by order upon application, which

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application shall set forth facts showing that no material conflict of interest exists between the different classes of security holders concerning the subject matter of the solicitation.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 6 FR 3085, June 25, 1941; 6 FR 5485, Oct. 28, 1941; 10 FR 11283, Sept. 5, 1945; 59 FR 21928, Apr. 28, 1994]

### § 250.63 Approval of reorganization fees.

All fees, expenses and remuneration, whether interim or final, to whomsoever paid for services rendered or to be rendered in connection with any reorganization, dissolution, liquidation, bankruptcy, or receivership of a registered holding company or subsidiary thereof, in any court of the United States, shall be subject to approval by the Commission as to the maximum amount that may be paid for such services. This section shall not apply to any payments approved by a court of the United States, in any proceeding in which the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)).

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

### § 250.64 Scope of applications for approval of reorganization plans.

Any application for approval of a plan of reorganization under section 11 (49 Stat. 820; 15 U.S.C. 79k), or otherwise, shall be deemed to include all applications and declarations under the act which would otherwise be required as to any action necessary to consummate such plan. (See § 250.24(c)(3).)

### § 250.65 Expenditures in connection with solicitation of proxies.

(a) *General provision.* Except pursuant to a declaration notifying the Commission of the proposed transaction, which has become effective in accordance with the procedure specified in § 250.23 and pursuant to the order of the Commission with respect to such declaration under the applicable provisions of the act, no registered holding company or subsidiary thereof shall expend any money or other consideration in connection with the solicitation of any

proxy, consent, or authorization regarding any security of such company.

(b) *Exceptions.* This section shall not apply to:

(1) Ordinary expenditures in connection with preparing, assembling, and mailing proxies, proxy statements, and accompanying data; or

(2) Other expenditures not in excess of \$100,000 during any one calendar year.

(c) *Scope of declaration.* A declaration with respect to any matter within the scope of this section shall state the amounts and purposes of the sums proposed to be expended, and set forth any information available to the company as to any contest which has arisen, or may arise, with respect to the subject matter of such solicitation. Any such declaration may be included in any application or declaration filed with the Commission as to any related matter.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 59 FR 21928, Apr. 28, 1994]

## OFFICERS, DIRECTORS AND REPRESENTATIVES OF REGISTERED HOLDING COMPANIES AND THEIR SUBSIDIARIES<sup>5</sup>

### § 250.70 Exemptions from section 17(c) of the Act.

Notwithstanding the prohibitions contained in section 17(c) of the Act,

(a) A registered holding company may have up to 75% of the members of its board of directors comprised of affiliated persons of commercial banking institutions that have their principal places of business located within the state or states served by the holding company system, *Provided, That:*

(1) Those affiliated persons do not also serve as officers or employees of those local commercial banking institutions; and

(2) No more than one director or 25% of the members of the board of directors of the holding company, whichever is greater, is affiliated with the same local commercial banking institution.

(b) A registered holding company may have up to 25% of the members of

<sup>5</sup>The statements which section 17(a) requires to be filed by officers and directors of registered holding company systems are filed on the forms prescribed under section 16(a) of the Securities Exchange Act of 1934.