

## Securities and Exchange Commission

## § 240.3a11-1

(ii) Is not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis, unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

(3) *Purchaser* means a person who purchases an eligible security and who is not a U.S. person under 17 CFR 230.902(k).

(4) *Riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

[72 FR 56567, Oct. 3, 2007]

### § 240.3a5-3 Exemption from the definition of “dealer” for banks engaging in securities lending transactions.

(a) A bank is exempt from the definition of the term “dealer” under section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)), to the extent that, as a conduit lender, it engages in or effects securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be:

(1) A qualified investor as defined in section 3(a)(54)(A) of the Act (15 U.S.C. 78c(a)(54)(A)); or

(2) Any employee benefit plan that owns and invests, on a discretionary basis, not less than \$25,000,000 in investments.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) *Securities lending services* means:

(1) Selecting and negotiating with a borrower and executing, or directing

the execution of the loan with the borrower;

(2) Receiving, delivering, or directing the receipt or delivery of loaned securities;

(3) Receiving, delivering, or directing the receipt or delivery of collateral;

(4) Providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction;

(5) Investing, or directing the investment of, cash collateral; or

(6) Indemnifying the lender of securities with respect to various matters.

(d) For the purposes of this section, the term *conduit lender* means a bank that borrows or loans securities, as principal, for its own account, and contemporaneously loans or borrows the same securities, as principal, for its own account. A bank that qualifies under this definition as a conduit lender at the commencement of a transaction will continue to qualify, notwithstanding whether:

(1) The lending or borrowing transaction terminates and so long as the transaction is replaced within one business day by another lending or borrowing transaction involving the same securities; and

(2) Any substitutions of collateral occur.

[72 FR 56567, Oct. 3, 2007]

### DEFINITION OF “EQUITY SECURITY” AS USED IN SECTIONS 12(G) AND 16

### § 240.3a11-1 Definition of the term “equity security.”

The term *equity security* is hereby defined to include any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture, or certificate of interest in a business trust; any security future on any such security; or any security convertible, with or without consideration into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any put, call, straddle,

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or other option or privilege of buying such a security from or selling such a security to another without being bound to do so.

[67 FR 19673, Apr. 23, 2002]

### MISCELLANEOUS EXEMPTIONS

#### § 240.3a12-1 Exemption of certain mortgages and interests in mortgages.

Mortgages, as defined in section 302(d) of the Emergency Home Finance Act of 1970, which are or have been sold by the Federal Home Loan Mortgage Corporation are hereby exempted from the operation of such provisions of the Act as by their terms do not apply to an “exempted security” or to “exempted securities”.

(Sec. 3(a)(12), 48 Stat. 882, 15 U.S.C. 78(c))

[37 FR 25167, Nov. 28, 1972]

#### § 240.3a12-2 [Reserved]

#### § 240.3a12-3 Exemption from sections 14(a), 14(b), 14(c), 14(f) and 16 for securities of certain foreign issuers.

(a) Securities for which the filing of registration statements on Form 18 [17 CFR 249.218] are authorized shall be exempt from the operation of sections 14 and 16 of the Act.

(b) Securities registered by a foreign private issuer, as defined in Rule 3b-4 (§ 240.3b-4 of this chapter), shall be exempt from sections 14(a), 14(b), 14(c), 14(f) and 16 of the Act.

[44 FR 70137, Dec. 6, 1979, as amended at 47 FR 54780, Dec. 6, 1982; 56 FR 30067, July 1, 1991]

#### § 240.3a12-4 Exemptions from sections 15(a) and 15(c)(3) for certain mortgage securities.

(a) When used in this Rule the following terms shall have the meanings indicated:

(1) The term *whole loan mortgage* means an evidence of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or upon leasehold interests therein where the entire mortgage, deed or other lien is transferred with the entire evidence of indebtedness.

(2) The term *aggregated whole loan mortgage* means two or more whole loan mortgages that are grouped together

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and sold to one person in one transaction.

(3) The term *participation interest* means an undivided interest representing one of only two such interests in a whole loan mortgage or in an aggregated whole loan mortgage, provided that the other interest is retained by the originator of such participation interest.

(4) The term *commitment* means a contract to purchase a whole loan mortgage, an aggregated whole loan mortgage or a participation interest which by its terms requires that the contract be fully executed within 2 years.

(5) The term *mortgage security* means a whole loan mortgage, an aggregated whole loan mortgage, a participation interest, or a commitment.

(b) A mortgage security shall be deemed an “exempted security” for purposes of subsections (a) and (c)(3) of section 15 of the Act provided that, in the case of and at the time of any sale of the mortgage security by a broker or dealer, such mortgage security is not in default and has an unpaid principal amount of at least \$50,000.

[39 FR 19945, June 5, 1974]

#### § 240.3a12-5 Exemption of certain investment contract securities from sections 7(c) and 11(d)(1).

(a) An investment contract security involving the direct ownership of specified residential real property shall be exempted from the provisions of sections 7(c) and 11(d)(1) of the Act with respect to any transaction by a broker or dealer who, directly or indirectly, arranges for the extension or maintenance of credit on the security to or from a customer, if the credit:

(1) Is secured by a lien, mortgage, deed of trust, or any other similar security interest related only to real property: *Provided, however,* That this provision shall not prevent a lender from requiring (i) a security interest in the common areas and recreational facilities or furniture and fixtures incidental to the investment contract if the purchase of such furniture and fixtures is required by, or subject to the approval of, the issuer, as a condition of purchase; or (ii) an assignment of future rentals in the event of default by