

(F) The granting of options or the payment of other remuneration to directors or officers; and

(G) Transactions with directors, officers or principal security holders.

(ii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b) of this section if in a foreign language:

(A) Its annual report, including or accompanied by annual financial statements;

(B) Interim reports that include financial statements;

(C) Press releases; and

(D) All other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.

(c) The exemption under paragraph (b) of this section shall remain in effect until:

(1) The issuer no longer satisfies the electronic publication condition of paragraph (b)(2) of this section;

(2) The issuer no longer maintains a listing of the subject class of securities on one or more exchanges in a primary trading market, as defined under paragraph (b)(1) of this section; or

(3) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(d) Depositary shares registered on Form F-6 (§239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

[48 FR 46739, Oct. 14, 1983, as amended at 49 FR 12689, Mar. 30, 1984; 56 FR 30068, July 1, 1991; 65 FR 37676, June 15, 2000; 72 FR 16955, Apr. 5, 2007; 73 FR 52768, Sept. 10, 2008]

§ 240.12g5-1 Definition of securities “held of record”.

(a) For the purpose of determining whether an issuer is subject to the provisions of sections 12(g) and 15(d) of the Act, securities shall be deemed to be “held of record” by each person who is identified as the owner of such securities on records of security holders maintained by or on behalf of the issuer, subject to the following:

(1) In any case where the records of security holders have not been main-

tained in accordance with accepted practice, any additional person who would be identified as such an owner on such records if they had been maintained in accordance with accepted practice shall be included as a holder of record.

(2) Except as specified in paragraph (a)(9) of this section, securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.

(3) Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.

(4) Securities held by two or more persons as coowners shall be included as held by one person.

(5) Each outstanding unregistered or bearer certificate shall be included as held of record by a separate person, except to the extent that the issuer can establish that, if such securities were registered, they would be held of record, under the provisions of this rule, by a lesser number of persons.

(6) Securities registered in substantially similar names where the issuer has reason to believe because of the address or other indications that such names represent the same person, may be included as held of record by one person.

(7) Other than when determining compliance with Rule 257(d)(2) of Regulation A (§230.257(d)(2) of this chapter), the definition of “held of record” shall not include securities issued in a Tier 2 offering pursuant to Regulation A by an issuer that:

(i) Is required to file reports pursuant to Rule 257(b) of Regulation A (§230.257(b) of this chapter);

(ii) Is current in filing annual, semi-annual and special financial reports pursuant to such rule as of its most recently completed fiscal year end;

(iii) Has engaged a transfer agent registered pursuant to Section 17A(c) of the Act to perform the function of a transfer agent with respect to such securities; and

(iv) Had a public float of less than \$75 million as of the last business day of its most recently completed semi-annual period, computed by multiplying the aggregate worldwide number of shares of its common equity securities held by non-affiliates by the price at which such securities were last sold (or the average bid and asked prices of such securities) in the principal market for such securities or, in the event the result of such public float calculation was zero, had annual revenues of less than \$50 million as of its most recently completed fiscal year. An issuer that would be required to register a class of securities under Section 12(g) of the Act as a result of exceeding the applicable threshold in this paragraph (a)(7)(iv), may continue to exclude the relevant securities from the definition of “held of record” for a transition period ending on the penultimate day of the fiscal year two years after the date it became ineligible. The transition period terminates immediately upon the failure of an issuer to timely file any periodic report due pursuant to Rule 257 (§ 230.257 of this chapter) at which time the issuer must file a registration statement that registers that class of securities under the Act within 120 days.

(8)(i) For purposes of determining whether an issuer is required to register a class of equity securities with the Commission pursuant to section 12(g)(1) of the Act (15 U.S.C. 78l(g)(1)), an issuer may exclude securities:

(A) Held by persons who received the securities pursuant to an employee compensation plan in transactions exempt from, or not subject to, the registration requirements of section 5 of the Securities Act of 1933 (15 U.S.C. 77e); and

(B) Held by persons who received the securities in a transaction exempt from, or not subject to, the registration requirements of section 5 of the Securities Act (15 U.S.C. 77e) from the issuer, a predecessor of the issuer or an acquired company in substitution or exchange for excludable securities under paragraph (a)(8)(i)(A) of this section, as long as the persons were eligible to receive securities pursuant to § 230.701(c) of this chapter at the time

the excludable securities were originally issued to them.

(ii) As a non-exclusive safe harbor under this paragraph (a)(8):

(A) An issuer may deem a person to have received the securities pursuant to an employee compensation plan if such plan and the person who received the securities pursuant to the plan met the plan and participant conditions of § 230.701(c) of this chapter; and

(B) An issuer may, solely for the purposes of Section 12(g) of the Act (15 U.S.C. 78l(g)(1)), deem the securities to have been issued in a transaction exempt from, or not subject to, the registration requirements of Section 5 of the Securities Act (15 U.S.C. 77e) if the issuer had a reasonable belief at the time of the issuance that the securities were issued in such a transaction.

(9) For purposes of determining whether a crowdfunding issuer, as defined in § 270.3a-9(b)(1) of this chapter, or a crowdfunding vehicle, as defined in § 270.3a-9(b)(2) of this chapter, is required to register a class of equity securities with the Commission pursuant to section 12(g)(1) of the Act, both the crowdfunding issuer and the crowdfunding vehicle:

(i) May exclude securities issued by a crowdfunding vehicle, as defined in § 270.3a-9(b)(2) of this chapter, in an offering under §§ 227.100 through 227.504 (Regulation Crowdfunding) in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act (15 U.S.C. 77a *et seq.*) and that are held by natural persons; and

(ii) Shall include securities issued by a crowdfunding vehicle, as defined in § 270.3a-9(b)(2) of this chapter, in an offering under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act and that are held by investors that are not natural persons.

(b) Notwithstanding paragraph (a) of this section:

(1) Securities held, to the knowledge of the issuer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of

interest in such securities: *Provided, however,* That the issuer may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or evidences of interest.

(2) Whole or fractional securities issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution for the sole purpose of qualifying a borrower for membership in the issuer, and which are to be redeemed or repurchased by the issuer when the borrower's loan is terminated, shall not be included as held of record by any person.

(3) If the issuer knows or has reason to know that the form of holding securities of record is used primarily to circumvent the provisions of section 12(g) or 15(d) of the Act, the beneficial owners of such securities shall be deemed to be the record owners thereof.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78l)

[30 FR 484, Jan. 14, 1965, as amended at 80 FR 21922, Apr. 20, 2015; 81 FR 28706, May 10, 2016; 86 FR 3601, Jan. 14, 2021]

§ 240.12g5-2 Definition of “total assets”.

For the purpose of section 12(g)(1) of the Act, the term *total assets* shall mean the total assets as shown on the issuer's balance sheet or the balance sheet of the issuer and its subsidiaries consolidated, whichever is larger, as required to be filed on the form prescribed for registration under this section and prepared in accordance with the pertinent provisions of Regulation S-X (17 CFR part 210). Where the security is a certificate of deposit, voting trust certificate, or certificate or other evidence of interest in a similar trust or agreement, the “total assets” of the issuer of the security held under the trust or agreement shall be deemed to be the “total assets” of the issuer of such certificate or evidence of interest.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566; 15 U.S.C. 78c, 78l)

[30 FR 484, Jan. 14, 1965]

§ 240.12h-1 Exemptions from registration under section 12(g) of the Act.

Issuers shall be exempt from the provisions of section 12(g) of the Act with respect to the following securities:

(a) Any interest or participation in an employee stock bonus, stock purchase, profit sharing, pension, retirement, incentive, thrift, savings or similar plan which is not transferable by the holder except in the event of death or mental incompetency, or any security issued solely to fund such plans;

(b) Any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of monies contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian. For purposes of this paragraph (b), the term “common trust fund” shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(1) The common trust fund is operated in compliance with the same state and Federal regulatory requirements as would apply if the bank maintaining such fund as any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributioning bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group;

(c) Any class of equity security which would not be outstanding 60 days after a registration statement would be required to be filed with respect thereto;

(d) Any standardized option, as that term is defined in section 240.9b-1(a)(4), that is issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C.