

§ 240.12g5-2

names represent the same person, may be included as held of record by one person.

(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]

§ 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

17 CFR Ch. II (4-1-01 Edition)

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 contributing 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; and

(c) Any class of equity security which would not be outstanding 60 days after

Securities and Exchange Commission

§ 240.12h-3

a registration statement would be required to be filed with respect thereto.

(Sec. 3, 48 Stat. 882, as amended, sec. 3, 78 Stat. 566, 15 U.S.C. 78c 781)

[30 FR 6114, Apr. 30, 1965, as amended at 43 FR 2392, Jan. 17, 1978. Redesignated at 47 FR 17052, Apr. 21, 1982]

§ 240.12h-2 [Reserved]

§ 240.12h-3 Suspension of duty to file reports under section 15(d).

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securities held of record by:

(i) Less than 300 persons; or

(ii) By less than 500 persons, where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years;

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b-4 (§240.3b-4), held of record by:

(i) Less than 300 persons resident in the United States or

(ii) Less than 500 persons resident in the United States where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years.

For purposes of this paragraph, the number of persons resident in the United States shall be determined in

accordance with the provisions of Rule 12g3-2(a) (§240.12g3-2(a)); and

(3) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraphs (b)(1)(ii) and (2)(ii), the two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i) and (ii) in either paragraph (b)(1) or (2) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this rule is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) by filing an