

Securities and Exchange Commission

§ 260.10b-1

§ 260.10a-4 Consent of trustee to service of process.

At the time of filing an application pursuant to Rule 10a-1 (§ 260.10a-1 of this chapter) and at such time as it files a statement of eligibility to act as trustee under an indenture qualified under the Act, an indenture trustee organized and doing business under the laws of a foreign government shall furnish to the Commission on Form F-X (§ 249.250 of this chapter) a written consent of the trustee and power of attorney designating a U. S. person with an address in the United States as agent upon whom may be served any process, pleadings, subpoenas or other papers in any Commission investigation or administrative proceeding and any civil suit or action brought against the trustee or to which the trustee has been joined as defendant or respondent, in any appropriate court in any place subject to the jurisdiction of any state or of the United States, or of the District of Columbia or Puerto Rico, where the investigation, proceeding or cause of action arises out of or relates to or concerns the securities in relation to which the indenture trustee proposes to act as trustee pursuant to any rule or order under section 310(a) of the Act and stipulates and agrees that any such suit, action or proceeding may be commenced by the service of process upon said agent for service of process, and that such service shall be taken and held in all courts to be as valid and binding as if due personal service thereof had been made.

[56 FR 30077, July 1, 1991]

§ 260.10a-5 Eligibility of Canadian Trustees.

(a) Subject to paragraph (b) of this section (17 CFR 260.10a-5), any trust company, acting as trustee under an indenture qualified or to be qualified under the Act and filed in connection with offerings on a registration statement on Form SB-2 (§ 239.10 of this chapter) F-7, F-8, F-9, F-10 or F-80 (§§ 239.37 through 239.41 of this chapter) that is incorporated and regulated as a trust company under the laws of Canada or any of its political subdivisions and that is subject to supervision or examination pursuant to the Trust

Companies Act (Canada), R.S.C. 1985, or the Canada Deposit Insurance Corporation Act, R.S.C. 1985 shall not be subject to the requirement of domicile in the United States under section 310(a) of the Act (15 U.S.C. 77jjj(a)).

(b) Each trustee eligible for appointment under this section (17 CFR 260.10a-5) shall file as part of the registration statement for the securities to which the trusteeship relates a consent to service of process and power of attorney on Form F-X (§ 269.5 of this chapter).

[56 FR 30077, July 1, 1991, as amended at 57 FR 36501, Aug. 13, 1992; 58 FR 33191, June 16, 1993]

§ 260.10b-1 Calculation of percentages.

The percentages of voting securities and other securities specified in section 310(b) of the Act shall be calculated in accordance with the following provisions:

(a) A specified percentage of the voting securities of a person means such amount of the outstanding voting securities of such person as entitles the holder or holders thereof to cast such specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such person are entitled to cast in the direction or management of the affairs of such person.

(b) A specified percentage of a class of securities of a person means such percentage of the aggregate amount of securities of the class outstanding.

(c) The term *amount*, when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to capital shares, and the number of units if relating to any other kind of security.

(d) The term *outstanding* means issued and not held by or for the account of the issuer. The following securities shall not be deemed outstanding within the meaning of this definition:

(1) Securities of an issuer held in a sinking fund relating to securities of the issuer of the same class;

(2) Securities of an issuer held in a sinking fund relating to another class of securities of the issuer, if the obligation evidenced by such other class of

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securities is not in default as to principal or interest or otherwise;

(3) Securities pledged by the issuer thereof as security for an obligation of the issuer not in default as to principal or interest or otherwise;

(4) Securities held in escrow is placed in escrow by the issuer otherwise;

Provided, however, That any voting securities of an issuer shall be deemed outstanding if any person other than the issuer is entitled to exercise the voting rights thereof.

(e) A security shall be deemed to be of the same class as another security if both securities confer upon the holder or holders thereof substantially the same rights and privileges: *Provided, however,* That, in the case of secured evidences of indebtedness, all of which are issued under a single indenture, differences in the interest rates or maturity dates of various series thereof shall not be deemed sufficient to constitute such series different classes: *And, provided further,* That, in the case of unsecured evidences of indebtedness, differences in the interest rates or maturity dates thereof shall not be deemed sufficient to constitute them securities of different classes, whether or not they are issued under a single indenture.

§ 260.10b-2 Applications under section 310(b)(1)(ii).

If an application filed with the Commission pursuant to clause (ii) of section 310(b)(1) (53 Stat. 1157; 15 U.S.C. 77jjj) of the Act is based upon the claim that no material conflict of interest will be involved because prior to or concurrently with the delivery of the securities to be issued under the indenture to be qualified all securities outstanding under the other indenture or indentures, under which the person designated to act as indenture trustee is also a trustee, will be discharged or:

(a) Funds sufficient to discharge the securities will be deposited in trust for that purpose.

(b) The securities, if not presently maturing, will be called for redemption or irrevocable power to make the call will be given to some third person.

(c) All liens securing the securities will be released or all steps necessary

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to effect the release at the maturity or redemption date will be taken.

The application shall be deemed to have been granted unless, within 7 days after it is filed, the Commission orders a hearing thereon.

[6 FR 808, Feb. 7, 1941]

§ 260.10b-3 Applications relative to affiliations between trustees and underwriters.

(a) Any person proposing to act as trustee under indentures to be qualified under the act may make application for a finding by the Commission as to whether such person is or is not an affiliate of any specified person who may be named as an underwriter for an obligor in any registration statement or application for qualification subsequently filed with the Commission.

(b) Every application pursuant to this section shall be filed in triplicate and shall contain a statement of the material facts necessary to enable the Commission to make the finding request. The applicant may incorporate by reference in the application any information or documents contained in a statement of eligibility and qualification of the applicant filed with the Commission. The Commission may with the consent of the applicant or at the applicant's request, make a part of the record the record in any prior proceeding in which the same issues were involved.

(c) A hearing will be held, after confirmed telegraphic notice to the applicant, upon every application filed pursuant to this section.

(d) Every finding by the Commission pursuant to this section shall be limited to the facts disclosed in the application and in the hearing thereon, and shall be made solely for the purposes of sections 305(b) and 307(c) of the Act.

[6 FR 2376, May 13, 1941]

§ 260.10b-4 Application for stay of trustee's duty to resign pursuant to section 310(b) of the Act.

(a) Three copies of every application for a stay of a trustee's duty to resign under section 310(b) of the Act and of every amendment thereto shall be filed with the Commission at its principal office.