

Securities and Exchange Commission

§ 270.12d3-1

§ 270.12d2-1 Definition of insurance company for purposes of sections 12(d)(2) and 12(g) of the Act.

For purposes of sections 12(d)(2) and 12(g) of the Act [15 U.S.C. 80a-12(d)(2) and 80a-12(g)], *insurance company* shall include a foreign insurance company as that term is used in rule 3a-6 under the Act (17 CFR 270.3a-6).

[56 FR 56300, Nov. 4, 1991]

§ 270.12d3-1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

(a) Notwithstanding section 12(d)(3) of the Act, a registered investment company, or any company or companies controlled by such registered investment company (“acquiring company”) may acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities related activities unless the acquiring company would control such person after the acquisition.

(b) Notwithstanding section 12(d)(3) of the Act, an acquiring company may acquire any security issued by a person that, in its most recent fiscal year, derived more than 15 percent of its gross revenues from securities related activities, *provided that*:

(1) Immediately after the acquisition of any equity security, the acquiring company owns not more than five percent of the outstanding securities of that class of the issuer’s equity securities;

(2) Immediately after the acquisition of any debt security, the acquiring company owns not more than ten percent of the outstanding principal amount of the issuer’s debt securities; and

(3) Immediately after any such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in the securities of the issuer.

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of a general partnership interest or a security issued by the acquiring company’s investment adviser, promoter, or principal underwriter, or any affiliated per-

son of such investment adviser, promoter, or principal underwriter.

(d) For purposes of this section:

(1) *Securities related activities* are a person’s activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940, as amended, or as an investment adviser to a registered investment company.

(2) An issuer’s gross revenues from its own securities related activities and from its ratable share of the securities related activities of enterprises of which it owns 20 percent or more of the voting or equity interest should be considered in determining the degree to which an issuer is engaged in securities related activities. Such information may be obtained from the issuer’s annual report to shareholders, the issuer’s annual reports or registration statement filed with the Commission, or the issuer’s chief financial officer.

(3) *Equity security* is as defined in § 240.3a-11 of this chapter.

(4) *Debt security* includes all securities other than equity securities.

(5) Determination of the percentage of an acquiring company’s ownership of any class of outstanding equity securities of an issuer shall be made in accordance with the procedures described in the rules under § 240.16 of this chapter.

(6) Where an acquiring company is considering acquiring or has acquired options, warrants, rights, or convertible securities of a securities related business, the determination required by paragraph (b) of this section shall be made as though such options, warrants, rights, or conversion privileges had been exercised.

(7) The following transactions will not be deemed to be an acquisition of securities of a securities related business:

(i) Receipt of stock dividends on securities acquired in compliance with this section;

(ii) Receipt of securities arising from a stock-for-stock split on securities acquired in compliance with this section;

(iii) Exercise of options, warrants, or rights acquired in compliance with this section;