

Securities and Exchange Commission

§ 260.10b-3

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 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 sec-

tion 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 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.