

SECTION 102 OF THE NATIONAL SECURITIES ACT

UNITED STATES CODE SERVICE
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TITLE 15. COMMERCE AND TRADE CHAPTER 2A. SECURITIES AND TRUST INDENTURES DOMESTIC SECURITIES

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15 USCS § 77r (2004)

§ 77r. Exemption from State regulation of securities offerings

(a) Scope of exemption. Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof--

(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that--

(A) is a covered security; or

(B) will be a covered security upon completion of the transaction;

(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of--

(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or

(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 15A of the Securities Exchange Act of 1934 [*15 USCS § 78o-3*], except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or

(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities. For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities. A security is a covered security if such security is--

(A) listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market System of the Nasdaq Stock Market (or any successor to such entities);

(B) listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule (on its own initiative or on the basis of a petition) are substantially similar to the listing standards applicable to securities described in subparagraph (A); or

(C) is a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A) or (B).

(2) Exclusive Federal registration of investment companies. A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940.

(3) Sales to qualified purchasers. A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term "qualified purchaser" differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings. A security is a covered security with respect to a transaction that is exempt from registration under this title [15 USCS § § 77a et seq.] pursuant to--

(A) paragraph (1) or (3) of section 4 [15 USCS § 77d(1) or (3)], and the issuer of such security files reports with the Commission pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 [15 USCS § § 78m or 78o(d)];

(B) section 4(4) [15 USCS § 77d(4)];

(C) section 3(a) [15 USCS § 77c(a)], other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located; or

(D) Commission rules or regulations issued under section 4(2) [15 USCS § 77d(2)], except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 4(2) [15 USCS § 77d(2)] that are in effect on September 1, 1996.

(c) Preservation of authority.

(1) Fraud authority. Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions.

(2) Preservation of filing requirements.

(A) Notice filings permitted. Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this title [15 USCS § § 77a et seq.], together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees.

(i) In general. Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State, or any political subdivision thereof, adopted after the date of enactment of the National Securities Markets Improvement Act of 1996 [enacted October 11, 1996], filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before such date.

(ii) Schedule. The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) Availability of preemption contingent on payment of fees.

(i) In general. During the period beginning on the date of enactment of the National Securities Markets Improvement Act of 1996 [enacted October 11, 1996] and ending 3 years after that date of enactment, the securities commission (or any agency or office performing like functions) of any State may require the registration of securities issued by any issuer who refuses to pay the fees required by subparagraph (B).

(ii) Delays. For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities. Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any security that is a covered security pursuant to subsection (b)(1), or will be such a covered security upon completion of the transaction, or is a security of the same issuer that is equal in seniority or that is a senior security to a security that is a covered security pursuant to subsection (b)(1).

(3) Enforcement of requirements. Nothing in this section shall prohibit the securities commission (or any agency or office performing like functions) of any State from suspending the offer or sale of securities within such State as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) Definitions. For purposes of this section, the following definitions shall apply:

(1) Offering document. The term "offering document"--

(A) has the meaning given the term "prospectus" in section 2(a)(10) [15 USCS § 77b(a)(10)], but without regard to the provisions of subparagraphs (a) and (b) of that section; and

(B) includes a communication that is not deemed to offer a security pursuant to a rule of the Commission.

(2) Prepared by or on behalf of the issuer. Not later than 6 months after the date of enactment of the National Securities Markets Improvement Act of 1996 [enacted October 11, 1996], the Commission shall, by rule, define the term "prepared by or on behalf of the issuer" for purposes of this section.

(3) State. The term "State" has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 USCS § 78c].

(4) Senior security. The term "senior security" means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

HISTORY: (May 27, 1933, ch 38, Title I, § 18, 48 Stat. 85.)

(As amended Oct. 11, 1996, P.L. 104-290, Title I, § 102(a), 110 Stat. 3417; Nov. 3, 1998, P.L. 105-353, Title III, § § 301(a)(4), 302, 112 Stat. 3235, 3237.)