

§ 250.49

17 CFR Ch. II (4-1-03 Edition)

6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) and of §250.44 with respect to the guarantee, by endorsement or otherwise, and sale of any such customers' evidence of indebtedness. This paragraph shall be inapplicable to any company which is a registered holding company.⁴

(3) *Issuance of note.* Any public utility company, or subsidiary thereof, or associated service company thereof, shall be exempt from the provisions of section 6(a) of the Act with respect to the issue or sale of any note or draft which is, and at all times will be, secured by a pledge of such customers' evidence of indebtedness having a principal amount still unpaid at least equal to the unpaid principal amount of such note or draft. This paragraph shall be inapplicable to any company which is a registered holding company.⁴

(4) *Acquisition of guaranteed paper or retirement of notes.* Any public utility company, or subsidiary thereof, or associate service company thereof, shall be exempt from section 9(a) of the Act and §250.42 with respect to the acquisition, retirement or redemption of any note or draft or customers' evidence of indebtedness issued or guaranteed by such company under the circumstances described in paragraph (b) or (c) of this section.

(b) *Exemption in connection with loans to employees.* Each registered holding company and any subsidiary company thereof is exempted from section 9(a)(1) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition of any evidence of indebtedness from its employee in consideration of a loan made to such employee and each subsidiary of a registered holding company is exempted from section 6(a) of the Act (49 Stat. 814; 15 U.S.C. 79f) with respect to the guarantee of indebtedness of its employee:

(1) If such transaction is made pursuant to a personnel policy of general application adopted in writing by the board of directors of such company, or by a committee or executive officer au-

thorized by the board of directors so to act and communicated to the class of employees to which it applies; and does not cause the total amount of guarantees and loans of all companies in the holding-company system to or for the account of such employee, outstanding at the time of the transaction, to exceed the limits specified in the applicable personnel policy.

(2) The exemption also extends to securities or guarantees incident to bona fide advances to the employee for travel or other reimbursable expenses and current indebtedness of the employee for goods or services sold by the system companies in the ordinary course of business.

(3) Each company intending to avail itself of this exemption subsequent to the effective date of this rule shall file, as an exhibit or as an amendment to the system's annual report on Form U5S, a copy of such personnel policy.

As used in this rule, the term "employee" includes an officer and does not include a director who is not an officer or employee; and the term "guarantee" includes the assumption of an indebtedness or of an obligation to purchase such indebtedness or otherwise to provide a means of payment if the primary obligor fails to pay.

(Secs. 5(b), 9(c) and 14 of the Act, 15 U.S.C. 79e(b), 79i(c) and 79m)

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 49 FR 4717, Feb. 8, 1984]

§ 250.49 Certain exemptions granted to non-utility subsidiaries.

(a) *Companies exempted.* The exemptions provided by this section shall apply to any subsidiary of a registered holding company which subsidiary is not:

(1) A holding company,

(2) A public utility company,

(3) A company engaged in the business of performing services or construction for or selling goods to associate holding or public utility companies, or

(4) A company controlling, directly or indirectly, any company specified in paragraphs (a) (1) to (3) of this section.

(b) *Exemptions from sections 6(a) and 12(c).* Any such subsidiary company shall be exempt from the provisions of section 6(a) of the Act (49 Stat. 814; 15

⁴Any registered holding company which is also a public utility company and whose regular course of business involves activities within the scope of this section may file a declaration, regarding such activities. See §250.22(a).

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U.S.C. 79f) with respect to the issuance or sale of any securities to the vendor of supplies or equipment for use in the business of such subsidiary company, and from the provisions of any rule under section 12(c) of the Act with respect to the acquisition, redemption or retirement of any such securities.

(c) *Transactions approved by a reorganization court.* Any such subsidiary company which is the subject of a proceeding for reorganization in any court of the United States in which proceeding the Commission has filed a notice of appearance pursuant to section 1109(a) of chapter 11 of the Bankruptcy Code (11 U.S.C. 1109(a)) or which is a subsidiary within the meaning of section 2(a)(8) of the Public Utility Holding Company Act (49 Stat. 804; 15 U.S.C. 79b), of any such subsidiary company which is the subject of such a proceeding, shall be exempt from any provision of the act applicable to the appointment of any trustee for such company or to any transaction entered into with the approval (direct or indirect) of such court: *Provided*, That such transaction does not involve the acquisition of any utility assets or securities of any public utility or holding company; *Provided further*, That this paragraph shall be inapplicable to any subsidiary company which is the subject of reorganization proceedings (or any subsidiary of such subsidiary company within the meaning of section 2(a)(8) of the Public Utility Holding Company Act), where such subsidiary company, or any subsidiary thereof, is the issuer of any securities, or is the obligor on any obligations, which have been guaranteed or assumed by any registered holding company.

(d) *Exemption from section 9(a).* (1) Any such subsidiary company primarily engaged in the production of natural gas or crude oil or sulphur, or in two or more of such businesses, shall be exempt from section 9(a) of the Act (49 Stat. 817; 15 U.S.C. 79i) with respect to the acquisition, from a person other than an associate or an affiliate of the acquiring company or an affiliate of an associate company, of gas leases, oil leases, or other production leases, in connection with the business in which such subsidiary is so engaged: *Provided*,

however, That the exemption provided by this paragraph shall not be applicable if such acquisition is part of a transaction which involves the filing of an application or declaration with the Commission by such subsidiary company.

(2) Any such subsidiary company which is subject to regulation as a water, telephone, common carrier or other public service company, under the laws of the State in which it operates, shall be exempt from section 9(a) of the Act with respect to any acquisition expressly authorized by the State commission of such State provided that such acquisition does not include utility assets, securities of a public utility or holding company, or any other interest in any class of business other than that in which such public service company is engaged.

[Rule U, 6 FR 2015, Apr. 19, 1941, as amended at 12 FR 1649, Mar. 11, 1947; 59 FR 21928, Apr. 28, 1994]

§ 250.50 [Reserved]

§ 250.51 Acquisitions pursuant to preliminary agreements and invitation for tenders.

For the purpose of section 9(a) of the Act, the term "acquire" is defined to include the making of a contract or agreement (herein called Preliminary Agreement) pursuant to which a person subject to section 9(a) (of the Act) (herein called the Proposed Acquirer) contingently or otherwise acquires any right or becomes subject to any obligation to acquire directly or indirectly any securities or utility assets or any other interest in any business, or to direct any other person to make any sale or acquisition of any securities or utility assets or any other interest in any business. Except where an exemption from section 9(a) (of the Act) may be applicable, the making of such Preliminary Agreement or the taking of any action in connection therewith, without prior approval of the Commission, by any person so subject to section 9(a) (of the Act) shall be deemed unlawful, unless all of the following conditions are satisfied: