

**§ 77hh. Assessments by Corporation on holders of foreign securities**

The Corporation may in its discretion levy charges, assessed on a pro rata basis, on the holders of foreign securities deposited with it: *Provided*, That any charge levied at the time of depositing securities with the Corporation shall not exceed one fifth of 1 per centum of the face value of such securities: *Provided further*, That any additional charges shall bear a close relationship to the cost of operations and negotiations including those enumerated in sections 77dd and 77ee of this title and shall not exceed 1 per centum of the face value of such securities.

(May 27, 1933, ch. 38, title II, § 207, 48 Stat. 95.)

**§ 77ii. Subscriptions accepted by Corporation as loans; repayment**

The Corporation may receive subscriptions from any person, foundation with a public purpose, or agency of the United States Government, and such subscriptions may, in the discretion of the board of directors, be treated as loans repayable when and as the board of directors shall determine.

(May 27, 1933, ch. 38, title II, § 208, 48 Stat. 95.)

**§ 77jj. Loans to Corporation from Reconstruction Finance Corporation authorized**

The Reconstruction Finance Corporation is authorized to loan out of its funds not to exceed \$75,000 for the use of the Corporation.

(May 27, 1933, ch. 38, title II, § 209, 48 Stat. 95.)

ABOLITION OF RECONSTRUCTION FINANCE CORPORATION

Section 6(a) of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 F.R. 4633, 71 Stat. 647, set out as a note under section 601 of this title, abolished the Reconstruction Finance Corporation.

**§ 77kk. Representations by Corporation as acting for Department of State or United States forbidden; interference with foreign negotiations forbidden**

Notwithstanding the foregoing provisions of this subchapter, it shall be unlawful for, and nothing in this subchapter shall be taken or construed as permitting or authorizing, the Corporation in this subchapter created, or any committee of said Corporation, or any person or persons acting for or representing or purporting to represent it—

(a) to claim or assert or pretend to be acting for or to represent the Department of State or the United States Government;

(b) to make any statements or representations of any kind to any foreign government or its officials or the officials of any political subdivision of any foreign government that said Corporation or any committee thereof or any individual or individuals connected therewith were speaking or acting for the said Department of State or the United States Government; or

(c) to do any act directly or indirectly which would interfere with or obstruct or hinder or which might be calculated to obstruct, hinder, or interfere with the policy or policies of the said Department of State or the Government

of the United States or any pending or contemplated diplomatic negotiations, arrangements, business or exchanges between the Government of the United States or said Department of State and any foreign government or any political subdivision thereof.

(May 27, 1933, ch. 38, title II, § 210, 48 Stat. 95.)

**§ 77ll. Effective date of subchapter**

This subchapter shall not take effect until the President finds that its taking effect is in the public interest and by proclamation so declares.

(May 27, 1933, ch. 38, title II, § 211, 48 Stat. 95.)

**§ 77mm. Short title**

This subchapter may be cited as the “Corporation of Foreign Bondholders Act, 1933.”

(May 27, 1933, ch. 38, title II, § 212, 48 Stat. 95.)

SUBCHAPTER III—TRUST INDENTURES

**§ 77aaa. Short title**

This subchapter may be cited as the “Trust Indenture Act of 1939.”

(May 27, 1933, ch. 38, title III, § 301, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149.)

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-550, title IV, § 401, Nov. 15, 1990, 104 Stat. 2721, provided that: “This title [amending sections 77ccc to 77eee, 77iii to 77rrr, and 77vvv of this title] may be cited as the ‘Trust Indenture Reform Act of 1990.’”

**§ 77bbb. Necessity for regulation**

**(a) Practices adversely affecting public**

Upon the basis of facts disclosed by the reports of the Securities and Exchange Commission made to the Congress pursuant to section 78jj of this title and otherwise disclosed and ascertained, it is hereby declared that the national public interest and the interest of investors in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public, are adversely affected—

(1) when the obligor fails to provide a trustee to protect and enforce the rights and to represent the interests of such investors, notwithstanding the fact that (A) individual action by such investors for the purpose of protecting and enforcing their rights is rendered impracticable by reason of the disproportionate expense of taking such action, and (B) concerted action by such investors in their common interest through representatives of their own selection is impeded by reason of the wide dispersion of such investors through many States, and by reason of the fact that information as to the names and addresses of such investors generally is not available to such investors;

(2) when the trustee does not have adequate rights and powers, or adequate duties and responsibilities, in connection with matters relating to the protection and enforcement of the rights of such investors; when, notwithstanding the obstacles to concerted action by such investors, and the general and reasonable

assumption by such investors that the trustee is under an affirmative duty to take action for the protection and enforcement of their rights, trust indentures (A) generally provide that the trustee shall be under no duty to take any such action, even in the event of default, unless it receives notice of default, demand for action, and indemnity, from the holders of substantial percentages of the securities outstanding thereunder, and (B) generally relieve the trustee from liability even for its own negligent action or failure to act;

(3) when the trustee does not have resources commensurate with its responsibilities, or has any relationship to or connection with the obligor or any underwriter of any securities of the obligor, or holds, beneficially or otherwise, any interest in the obligor or any such underwriter, which relationship, connection, or interest involves a material conflict with the interests of such investors;

(4) when the obligor is not obligated to furnish to the trustee under the indenture and to such investors adequate current information as to its financial condition, and as to the performance of its obligations with respect to the securities outstanding under such indenture; or when the communication of such information to such investors is impeded by the fact that information as to the names and addresses of such investors generally is not available to the trustee and to such investors;

(5) when the indenture contains provisions which are misleading or deceptive, or when full and fair disclosure is not made to prospective investors of the effect of important indenture provisions; or

(6) when, by reason of the fact that trust indentures are commonly prepared by the obligor or underwriter in advance of the public offering of the securities to be issued thereunder, such investors are unable to participate in the preparation thereof, and, by reason of their lack of understanding of the situation, such investors would in any event be unable to procure the correction of the defects enumerated in this subsection.

#### (b) Declaration of policy

Practices of the character above enumerated have existed to such an extent that, unless regulated, the public offering of notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, by the use of means and instruments of transportation and communication in interstate commerce and of the mails, is injurious to the capital markets, to investors, and to the general public; and it is hereby declared to be the policy of this subchapter, in accordance with which policy all the provisions of this subchapter shall be interpreted, to meet the problems and eliminate the practices, enumerated in this section, connected with such public offerings.

(May 27, 1933, ch. 38, title III, § 302, as added Aug. 3, 1939, ch. 411, 53 Stat. 1150.)

#### REFERENCES IN TEXT

Section 78jj of this title, referred to in subsec. (a), was omitted from the Code.

#### TRANSFER OF FUNCTIONS

For transfer of functions of Securities and Exchange Commission, with certain exceptions, to Chairman of such Commission, see Reorg. Plan No. 10 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1265, set out under section 78d of this title.

#### § 77ccc. Definitions

When used in this subchapter, unless the context otherwise requires—

(1) Any term defined in section 2 of the Securities Act of 1933 [15 U.S.C. 77b], and not otherwise defined in this section shall have the meaning assigned to such term in such section 2 [15 U.S.C. 77b].

(2) The terms “sale”, “sell”, “offer to sell”, “offer for sale”, and “offer” shall include all transactions included in such terms as provided in paragraph (3) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that an offer or sale of a certificate of interest or participation shall be deemed an offer or sale of the security or securities in which such certificate evidences an interest or participation if and only if such certificate gives the holder thereof the right to convert the same into such security or securities.

(3) The term “prospectus” shall have the meaning assigned to such term in paragraph (10) of section 2(a) of the Securities Act of 1933 [15 U.S.C. 77b(a)], except that in the case of securities which are not registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], such term shall not include any communication (A) if it is proved that prior to or at the same time with such communication a written statement if any required by section 77fff of this title was sent or given to the persons to whom the communication was made, or (B) if such communication states from whom such statement may be obtained (if such statement is required by rules or regulations under paragraphs (1) or (2) of subsection (b) of section 77fff of this title) and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed and contain such other information as the Commission, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, and subject to such terms and conditions as may be prescribed therein, may permit.

(4) The term “underwriter” means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors’ or sellers’ commission.

(5) The term “director” means any director of a corporation, or any individual performing similar functions with respect to any organization whether incorporated or unincorporated.

(6) The term “executive officer” means the president, every vice president, every trust of-