

which this subsection requires that such certificate or opinion be made by an independent person. In such cases, such certificate or opinion shall be made by an independent engineer, appraiser, or other expert selected or approved by the indenture trustee in the exercise of reasonable care.

(e) Recitals as to basis of certificate or opinion

Each certificate or opinion with respect to compliance with a condition or covenant provided for in the indenture (other than certificates provided pursuant to subsection (a)(4) of this section) shall include (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

(f) Parties may provide for additional evidence

Nothing in this section shall be construed either as requiring the inclusion in the indenture to be qualified of provisions that the obligor upon the indenture securities shall furnish to the indenture trustee any other evidence of compliance with the conditions and covenants provided for in the indenture than the evidence specified in this section, or as preventing the inclusion of such provisions in such indenture, if the parties so agree.

(May 27, 1933, ch. 38, title III, §314, as added Aug. 3, 1939, ch. 411, 53 Stat. 1167; amended Pub. L. 101-550, title IV, §413, Nov. 15, 1990, 104 Stat. 2729.)

Editorial Notes

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §413(1)–(6), in introductory provision substituted “Each” for “The indenture to be qualified shall contain provisions requiring each” and inserted “shall” after “thereby” and in pars. (1) to (3) struck out “to” after the paragraph designation, and directed the addition of par. (4) at the end which was executed by inserting par. (4) after par. (3) to reflect the probable intent of Congress.

Subsec. (b). Pub. L. 101-550, §413(7), (8), struck out “such indenture shall contain provisions requiring” before “the obligor” and substituted “securities shall furnish” for “securities to furnish”.

Subsec. (c). Pub. L. 101-550, §413(9), (10), substituted “The obligor” for “The indenture to be qualified shall contain provisions requiring the obligor” and “securities shall furnish” for “securities to furnish”.

Subsec. (d). Pub. L. 101-550, §413(11), (13), (14), substituted “the obligor upon the indenture securities shall furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value” for “such indenture shall contain provisions” in introductory provisions and “The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that” for “If the indenture to be qualified so provides,” and “duly authorized to make

such certificate or opinion by the obligor from time to time” for “specified in the indenture” in penultimate sentence.

Subsec. (d)(1) to (3). Pub. L. 101-550, §413(12), which directed that “requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser or other expert as to the fair value” be struck out after the paragraph designations in pars. (1) to (3), was executed by striking out “requiring the obligor upon the indenture securities to furnish to the indenture trustee a certificate or opinion of an engineer, appraiser, or other expert as to the fair value”, as the probable intent of Congress.

Subsec. (e). Pub. L. 101-550, §413(15), inserted “(other than certificates provided pursuant to subsection (a)(4) of this section)” after “indenture”.

Executive Documents

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.

§ 7700o. Duties and responsibility of the trustee

(a) Duties prior to default

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to provide that, prior to default (as such term is defined in such indenture)—

(1) the indenture trustee shall not be liable except for the performance of such duties as are specifically set out in such indenture; and

(2) the indenture trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of such trustee, upon certificates or opinions conforming to the requirements of the indenture;

but the indenture trustee shall examine the evidence furnished to it pursuant to section 77mmn of this title to determine whether or not such evidence conforms to the requirements of the indenture.

(b) Notice of defaults

The indenture trustee shall give to the indenture security holders, in the manner and to the extent provided in subsection (c) of section 77mmm of this title, notice of all defaults known to the trustee, within ninety days after the occurrence thereof: *Provided*, That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to provide that, except in the case of default in the payment of the principal of or interest on any indenture security, or in the payment of any sinking or purchase fund installment, the trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or responsible officers, of the trustee in good faith determine that the withholding of such notice is in the interests of the indenture security holders.

(c) Duties of the trustee in case of default

The indenture trustee shall exercise in case of default (as such term is defined in such inden-

ture) such of the rights and powers vested in it by such indenture, and to use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(d) Responsibility of the trustee

The indenture to be qualified shall not contain any provisions relieving the indenture trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that—

(1) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain the provisions authorized by paragraphs (1) and (2) of subsection (a) of this section;

(2) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee from liability for any error of judgment made in good faith by a responsible officer or officers of such trustee, unless it shall be proved that such trustee was negligent in ascertaining the pertinent facts; and

(3) such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions protecting the indenture trustee with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of not less than a majority in principal amount of the indenture securities at the time outstanding (determined as provided in subsection (a) of section 77ppp of this title) relating to the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture.

(e) Undertaking for costs

The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions to the effect that all parties thereto, including the indenture security holders, agree that the court may in its discretion require, in any suit for the enforcement of any right or remedy under such indenture, or in any suit against the trustee for any action taken or omitted by it as trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorney's fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant: *Provided*, That the provisions of this subsection shall not apply to any suit instituted by such trustee, to any suit instituted by any indenture security holder, or group of indenture security holders, holding in the aggregate more than 10 per centum in principal amount of the indenture securities outstanding, or to any suit instituted by any indenture security holder for the enforcement of the payment of the principal of or interest on any indenture security, on or after the respective due dates expressed in such indenture security. (May 27, 1933, ch. 38, title III, §315, as added Aug. 3, 1939, ch. 411, 53 Stat. 1171; amended Pub. L.

101-550, title IV, §414, Nov. 15, 1990, 104 Stat. 2730.)

Editorial Notes

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-550, §414(1), (2), substituted “The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to” for “The indenture to be qualified may” and “the indenture trustee shall examine” for “such indenture shall contain provisions requiring the indenture trustee to examine”.

Subsec. (b). Pub. L. 101-550, §414(3), (4), substituted “The indenture trustee shall” for “The indenture to be qualified shall contain provisions requiring the indenture trustee to” and “That such indenture shall automatically be deemed (unless it is expressly provided therein that such provision is excluded) to” for “That such indenture may”.

Subsec. (c). Pub. L. 101-550, §414(3), substituted “The indenture trustee shall” for “The indenture to be qualified shall contain provisions requiring the indenture trustee to”.

Subsec. (d)(1) to (3). Pub. L. 101-550, §414(5), substituted “such indenture shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to” for “such indenture may”.

Subsec. (e). Pub. L. 101-550, §414(1), substituted “The indenture to be qualified shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to” for “The indenture to be qualified may”.

§ 77ppp. Directions and waivers by bondholders; prohibition of impairment of holder's right to payment; record date

(a) Directions and waivers by bondholders

The indenture to be qualified—

(1) shall automatically be deemed (unless it is expressly provided therein that any such provision is excluded) to contain provisions authorizing the holders of not less than a majority in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding (A) to direct the time, method, and place of conducting any proceeding for any remedy available to such trustee, or exercising any trust or power conferred upon such trustee, under such indenture, or (B) on behalf of the holders of all such indenture securities, to consent to the waiver of any past default and its consequences; or

(2) may contain provisions authorizing the holders of not less than 75 per centum in principal amount of the indenture securities or if expressly specified in such indenture, of any series of securities at the time outstanding to consent on behalf of the holders of all such indenture securities to the postponement of any interest payment for a period not exceeding three years from its due date.

For the purposes of this subsection and paragraph (3) of subsection (d) of section 77000 of this title, in determining whether the holders of the required principal amount of indenture securities have concurred in any such direction or consent, indenture securities owned by any obligor upon the indenture securities, or by any person directly or indirectly controlling or controlled by or under direct or indirect common