

EMPLOYEES' SECURITIES COMPANIES AND ESCHEATMENT

The Division understands that the operation of State¹ escheatment statutes has resulted in States owning Employees' Securities Companies' ("ESC") securities. A question has been raised as to what effect a transfer of an ESC's securities to a State by operation of the State's escheatment law would have on the ESC's compliance with the Investment Company Act of 1940 ("1940 Act") or ability to rely on its exemptive order. This guidance shares the Division's view on this question.

Employees' Securities Companies

ESCs are employer-sponsored investment companies, the beneficial owners of which, by definition, generally include only current and former employees and employer retainers.² In recognition of the unique nature of ESCs, Congress specifically authorized the Commission to exempt them from the provisions of the 1940 Act to the extent consistent with the protection of investors.³ The Commission has exercised this authority and, consistent with the protection of investors, has exempted ESCs from many of the restrictions to which publicly owned registered investment companies are subject under the 1940 Act.⁴

The Commission has also issued exemptive orders permitting ESC securities to be held by certain extended family members of, and trusts established by, eligible holders.⁵ The Commission has not, however, permitted ESC securities to be offered to, or held by, persons not reasonably related to the categories of eligible holders included in the statutory definition.

Escheatment

Escheatment is the process by which abandoned property is remitted to a State after the expiration of a certain period of time dictated by the State's laws.⁶ We understand that generally the missing owners may later reclaim the abandoned property or the proceeds generated by its sale or redemption. As noted, the operation of state



escheatment laws has raised a question as to the ability of an ESC to rely on its exemptive order because such laws may result in ESC securities being held by a State.

The Division's View

The Division believes that the special treatment of ESCs under the 1940 Act based on the nature of ESCs as employer-sponsored investment companies would not be undermined if States hold ESC securities escheated to them. Accordingly, the Division would not object if an ESC continued to rely on its exemptive order under the 1940 Act if securities issued to eligible holders consistent with the ESC's relevant exemptive order are remitted to, and held by, a State, by operation of the State's escheatment law. Our position is limited to the remittance of ESC securities to a State under the State's escheatment law, and does not extend to any other transfers.

Endnotes

- 1 For purposes of this guidance, "State" means any state under the United States Constitution or any comparable governmental entity.
- 2 States are not permitted owners of ESC securities under the definition of ESC set forth in section 2(a)(13) of the 1940 Act. Section 2(a)(13) defines "employees' securities company" as any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons. See generally T. Lemke, G. Lins, A. Smith III, *Regulation of Investment Companies*, Vol. I, 3 79, 80 (2014).
- 3 Section 6(b) of the 1940 Act. See Hearings on S. 3580 Before a *Subcomm. of the Senate Comm. on Banking and Currency*, 76th Cong., 3d Sess. 196-97 (1940) (stating that the Commission is authorized to grant exemptions to ESCs that are "virtually an eleemosynary institution, which the investment company sets up as a sort of savings plan for his employees"). See also G.E. Employees Securities Corporation, Investment Company Act Rel. No. 271 (Dec. 1, 1941).
- 4 See, e.g., G.E. Employees Securities Corporation, *supra* n.3; Kohlberg Kravis Roberts & Co. L.P., et al., Investment Company Act Rel. Nos. 31070 (June 3, 2014) (notice) and 31141 (July 1, 2014) (order); BlackRock, Inc., Investment Company Act Rel.

Nos. 31341 (Nov. 20, 2014) (notice) and 31376 (Dec. 16, 2014) (order) (granting an exemption from all provisions of the 1940 Act, except sections 9, 17, 30, 36 through 53; with respect to sections 17(a), (d), (e), (f), (g) and (j) and 30(a), (b), (e) and (h) of the 1940 Act, and rule 38a-1, granting a limited exemption).

- 5 See, e.g., Elfund Trusts, et al., Investment Company Act Rel. Nos. 24782 (Dec. 1, 2000) (notice) and 24803 (Dec. 27, 2000) (order); Kiewit Investment Fund LLLP, Investment Company Act Rel. Nos. 28047 (Nov. 15, 2007) (notice) and 28076 (Dec. 11, 2007) (order).
- 6 See Lost Securityholders and Unresponsive Payees, Exchange Act Rel. No. 68668 (Jan. 16, 2013) (Generally, after expiration of a certain period of time, which varies from state to state but is usually three to seven years, an issuer or its transfer agent will remit abandoned property (e.g., securities and funds of lost securityholders) to a state's unclaimed property administrator pursuant to the state's escheatment laws).

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The Investment Management Division works to:

- ▲ protect investors
- ▲ promote informed investment decisions and
- ▲ facilitate appropriate innovation in investment products and services through regulating the asset management industry.

If you have any questions about this IM Guidance Update, please contact:

Steven I. Amchan
Chief Counsel's Office
Phone: 202.551.6825
Email: IMOCC@sec.gov