

curities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4) such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5) the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Policy

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4¹ of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

(1) when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2) when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders;

(3) when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4) when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;

(5) when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when investment companies are reorganized, become inactive, or change the char-

acter of their business, or when the control or management thereof is transferred, without the consent of their security holders;

(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or

(8) when investment companies operate without adequate assets or reserves.

It is declared that the policy and purposes of this subchapter, in accordance with which the provisions of this subchapter shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

(Aug. 22, 1940, ch. 686, title I, §1, 54 Stat. 789.)

Editorial Notes

REFERENCES IN TEXT

Section 79z-4 of this title, referred to in text, was repealed by Pub. L. 109-58, title XII, §1263, Aug. 8, 2005, 119 Stat. 974.

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.

§ 80a-2. Definitions; applicability; rulemaking considerations

(a) Definitions

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

(1) "Advisory board" means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members "directors" within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) "Affiliated company" means a company which is an affiliated person.

(3) "Affiliated person" of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member

of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) "Assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) "Bank" means (A) a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) "Commission" means the Securities and Exchange Commission.

(8) "Company" means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this subchapter. Any such presumption may be rebut-

ted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11) The term "dealer" has the same meaning as given in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], but does not include an insurance company or investment company.

(12) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) "Employees' securities company" means 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.

(14) "Exchange" means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) "Face-amount certificate" means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount cer-

tificate of the "installment type"); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a "fully paid" face-amount certificate).

(16) "Government security" means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) "Insurance company" means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) "Interstate commerce" means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19) "Interested person" of another person means—

(A) when used with respect to an investment company—

(i) any affiliated person of such company,

(ii) any member of the immediate family of any natural person who is an affiliated person of such company,

(iii) any interested person of any investment adviser of or principal underwriter for such company,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person

or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser of principal underwriter or by a controlling person or such investment adviser or principal underwriter,

(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of in-

vestment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), “member of the immediate family” means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this subchapter or for any other purpose for any period prior to the effective date of such order.

(20) “Investment adviser” of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) of this paragraph regularly performs substantially all of the duties undertaken by such person described in said clause (A); but does not

include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) “Investment banker” means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22) “Issuer” means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) “Lend” includes a purchase coupled with an agreement by the vendor to repurchase; “borrow” includes a sale coupled with a similar agreement.

(24) “Majority-owned subsidiary” of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) “Means or instrumentality of interstate commerce” includes any facility of a national securities exchange.

(26) “National securities exchange” means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(27) “Periodic payment plan certificate” means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.

(28) “Person” means a natural person or a company.

(29) “Principal underwriter” of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to pur-

chase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) "Promoter" of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) "Prospectus", as used in section 80a-22 of this title, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)] and currently in use. As used elsewhere, "prospectus" means a prospectus as defined in the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(32) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(33) "Reorganization" means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or in-

terest in a security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) "Sales load" means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, "sales load" includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) "Security" means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) "Separate account" means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) "Short-term paper" means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) "Underwriter" means any person who has purchased from an issuer with a view to, 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 distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 80a-28 of this title, means—

(A) as used in sections 80a-3, 80a-5, and 80a-12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this subchapter, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this subchapter, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 80a-5(b)(1) of this title, the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this subchapter. For purposes of sections 80a-5 and 80a-12 of this title in lieu of values determined as provided in clause (A) above, the

Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 80a-8, 80a-29, and 80a-30 of this title.

(42) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) "Wholly-owned subsidiary" of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44) "Securities Act of 1933" [15 U.S.C. 77a et seq.], "Securities Exchange Act of 1934" [15 U.S.C. 78a et seq.], and "Trust Indenture Act of 1939" [15 U.S.C. 77aaa et seq.] mean those acts, respectively, as heretofore or hereafter amended.

(45) "Savings and loan association" means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) "Eligible portfolio company" means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 80a-3 of this title (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small

Business Investment Act of 1958 [15 U.S.C. 661 et seq.] and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 80a-3(c) of this title; and

(C) satisfies one of the following:

(i) it does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 7 of the Securities Exchange Act of 1934 [15 U.S.C. 78g];

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than \$4,000,000, and capital and surplus (shareholders' equity less retained earnings) of not less than \$2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this subchapter.

(47) "Making available significant managerial assistance" by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company

where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48) "Business development company" means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 80a-54(a) of this title, and makes available significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 80a-54 of this title; and provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and

(C) has elected pursuant to section 80a-53(a) of this title to be subject to the provisions of sections 80a-54 through 80a-64 of this title.

(49) "Foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51)(A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a-3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than \$5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than \$5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons;

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than \$25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term “qualified purchaser” does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a-3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an “excepted investment company”), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a-3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment beneficial owners”), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(53) The term “credit rating agency” has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(54) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of title 7.

(b) Applicability to government

No provision in this subchapter shall apply to, or be deemed to include, the United States, a

State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title I, §2, 54 Stat. 790; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; Aug. 10, 1954, ch. 667, title IV, §401, 68 Stat. 688; Pub. L. 86-70, §12(d), June 25, 1959, 73 Stat. 143; Pub. L. 86-624, §7(c), July 12, 1960, 74 Stat. 412; Pub. L. 91-547, §2(a), Dec. 14, 1970, 84 Stat. 1413; Pub. L. 95-598, title III, §310(a), Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96-477, title I, §101, Oct. 21, 1980, 94 Stat. 2275; Pub. L. 97-303, §5, Oct. 13, 1982, 96 Stat. 1409; Pub. L. 100-181, title VI, §§601-603, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 101-550, title II, §206(a), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104-290, title I, §106(c), title II, §209(b), title V, §§503, 504, Oct. 11, 1996, 110 Stat. 3425, 3434, 3445; Pub. L. 105-353, title III, §301(c)(1), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-102, title II, §§213(a), (b), 215, 216, 223, Nov. 12, 1999, 113 Stat. 1397, 1399, 1401; Pub. L. 106-554, §1(a)(5) [title II, §209(a)(1), (3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-435, 2763A-436; Pub. L. 109-291, §4(b)(2)(A), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111-203, title VII, §769, title IX, §§985(d)(1), 986(c)(1), July 21, 2010, 124 Stat. 1801, 1934, 1936.)

Editorial Notes

REFERENCES IN TEXT

The Securities Exchange Act of 1934, referred to in subsec. (a)(11), (44), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(31), (44), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

The Trust Indenture Act of 1939, referred to in subsec. (a)(44), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (a)(46)(B), (47)(C), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

CODIFICATION

Words “Philippine Islands” deleted from definition of term “State” under authority of Proc. No. 2695, which

granted independence to the Philippine Islands. Proc. No. 2695 was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under that section.

AMENDMENTS

2010—Subsec. (a)(19). Pub. L. 111-203, §985(d)(1)(A), substituted “clause (vii)” for “clause (vi)” in two places in concluding provisions.

Subsec. (a)(19)(A)(vi)(III), (B)(vi)(III). Pub. L. 111-203, §985(d)(1)(B), inserted “and” at end.

Subsec. (a)(44). Pub. L. 111-203, §986(c)(1), struck out “Public Utility Holding Company Act of 1935,” after “Securities Exchange Act of 1934.”

Subsec. (a)(54). Pub. L. 111-203, §769, added par. (54).

2006—Subsec. (a)(53). Pub. L. 109-291 added par. (53).

2000—Subsec. (a)(36). Pub. L. 106-554, §1(a)(5) [title II, §209(a)(1)], inserted “security future,” after “treasury stock.”

Subsec. (a)(52). Pub. L. 106-554, §1(a)(5) [title II, §209(a)(3)], added par. (52).

1999—Subsec. (a)(5)(A). Pub. L. 106-102, §223, substituted “a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12)” for “a banking institution organized under the laws of the United States”.

Subsec. (a)(6). Pub. L. 106-102, §215, amended par. (6) generally. Prior to amendment, par. (6) read as follows: “‘Broker’ means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.”

Subsec. (a)(11). Pub. L. 106-102, §216, amended par. (11) generally. Prior to amendment, par. (11) read as follows: “‘Dealer’ means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.”

Subsec. (a)(19)(A)(v). Pub. L. 106-102, §213(a)(1), added cl. (v) and struck out former cl. (v) which read as follows: “any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and”.

Subsec. (a)(19)(A)(vi), (vii). Pub. L. 106-102, §213(a)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (a)(19)(B)(v). Pub. L. 106-102, §213(b)(1), added cl. (v) and struck out former cl. (v) which read as follows: “any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and”.

Subsec. (a)(19)(B)(vi), (vii). Pub. L. 106-102, §213(b)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

1998—Subsec. (a)(8). Pub. L. 105-353 made a technical amendment to reference in original act which appears in text as reference to title 11.

1996—Subsec. (a)(46)(C)(iii), (iv). Pub. L. 104-290, §503, added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(48)(B). Pub. L. 104-290, §504, inserted at end “provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and”.

Subsec. (a)(51). Pub. L. 104-290, §209(b), added par. (51).

Subsec. (c). Pub. L. 104-290, §106(c), added subsec. (c).

1990—Subsec. (a)(49), (50). Pub. L. 101-550 added pars. (49) and (50).

1987—Subsec. (a)(19). Pub. L. 100-181, §601, inserted “completed” before “fiscal years” wherever appearing in subpars. (A)(iv), (vi) and (B)(iv), (vi).

Subsec. (a)(39). Pub. L. 100-181, §602, struck out reference to Canal Zone.

Subsec. (a)(48)(B). Pub. L. 100-181, §603, substituted “paragraphs (1) through (3) of section 80a-54(a) of this title” for “sections 80a-54(a)(1) through (3) of this title”.

1982—Subsec. (a)(36). Pub. L. 97-303 inserted “any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,” after “mineral rights.”

1980—Subsec. (a)(46) to (48). Pub. L. 96-477 added pars. (46) to (48).

1978—Subsec. (a)(8). Pub. L. 95-598 substituted “a case under title 11” for “bankruptcy”.

1970—Subsec. (a)(5). Pub. L. 91-547, §2(a)(1), substituted “under the authority of the Comptroller of the Currency” for “under section 248(k) of title 12.”

Subsec. (a)(19). Pub. L. 91-547, §2(a)(3), added par. (19). Former par. (19) redesignated (20).

Subsecs. (a)(20) to (36). Pub. L. 91-547, §2(a)(2), redesignated former pars. (19) to (35) as (20) to (36), respectively.

Subsec. (a)(37). Pub. L. 91-547, §2(a)(4), added par. (37). Former par. (37) redesignated (39).

Subsecs. (a)(38) to (44). Pub. L. 91-547, §2(a)(2), redesignated former pars. (36) to (42) as (38) to (44).

Subsec. (a)(45). Pub. L. 91-547, §2(a)(5), added par. (45).

1960—Subsec. (a)(37). Pub. L. 86-624 struck out reference to Hawaii.

1959—Subsec. (a)(37). Pub. L. 86-70 struck out reference to Alaska.

1954—Subsec. (a)(30). Act Aug. 10, 1954, substituted “section 10(a) of the Securities Act of 1933” for “section 5(b) of the Securities Act of 1933”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 985(d)(1) and 986(c)(1) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 769 of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-290, title II, §209(e), Oct. 11, 1996, 110 Stat. 3436, provided that: “The amendments made by this section [amending this section and section 80a-3 of this title] shall take effect on the earlier of—

“(1) 180 days after the date of enactment of this Act [Oct. 11, 1996]; or

“(2) the date on which the rulemaking required under subsection (d)(2) [set out below] is completed.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note set out under section 77b of this title.

REGULATIONS

Pub. L. 104-290, title II, §209(d)(2), Oct. 11, 1996, 110 Stat. 3435, provided that: "Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term, or otherwise identifying, 'investments' for purposes of section 2(a)(51) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(51)], as added by this Act."

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.

§ 80a-3. Definition of investment company**(a) Definitions**

(1) When used in this subchapter, "investment company" means any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(2) As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).

(b) Exemption from provisions

Notwithstanding paragraph (1)(C) of subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

(2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of busi-

nesses. The filing of an application under this paragraph in good faith by an issuer other than a registered investment company shall exempt the applicant for a period of sixty days from all provisions of this subchapter applicable to investment companies as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by paragraph (1) or (2) of this subsection.

(c) Further exemptions

Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons (or, in the case of a qualifying venture capital fund, 250 persons) and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

(C)(i) The term "qualifying venture capital fund" means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed