Public Law 96-477
96th Congress

An Act

To amend the Federal securities laws to provide incentives for small business investment, and for other purposes.

Oct. 21, 1980
[H.R. 7554]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Investment Incentive Act of 1980".

Small Business Investment Incentive Act of 1980.
15 USC 80a-51 note.

TITLE I—AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940

DEFINITIONS

SEC. 101. Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended by adding at the end thereof the following new paragraphs:

"(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 3 (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 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 3(c); and

15 USC 80a-3.

15 USC 661 note.

Post, pp. 2276, 2295.

"(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 USC 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; or

"(iii) 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 title.

"(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 part-

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ners, 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, the making of loans to a portfolio company.

15 USC 661 note.

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 sections 55(a) (1) through (3), 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 55; and

Post, p. 2278.

"(C) has elected pursuant to section 54(a) to be subject to the provisions of sections 55 through 65.".

Post, p. 2278.
Post, pp. 2278-2289.

ATTRIBUTION OF BENEFICIAL OWNERSHIP

SEC. 102. Section 3(c)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)) is amended to read as follows:

"(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons and which is not making and does not presently propose to make a public offering of its securities. 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, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper) unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the

company's total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 12(d)(1). 15 USC 80a-12.

"(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 title, where the transfer was caused by legal separation, divorce, death, or other involuntary event.".

EXEMPTION FROM INVESTMENT COMPANY ACT OF 1940

SEC. 103. Section 6 of the Investment Company Act of 1940 (15 U.S.C. 80a-6) is amended by adding at the end thereof the following new subsection:

"(f) Any closed-end company which—

"(1) elects to be treated as a business development company pursuant to section 54; or *Post*, p. 2278.

"(2) would be excluded from the definition of an investment company by section 3(c)(1), except that it presently proposes to make a public offering of its securities as a business development company, and has notified the Commission, in a form and manner which the Commission may, by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 55 through 65, *Ante*, p. 2276. *Post*, pp. 2278-2289.

shall be exempt from sections 1 through 53, except to the extent provided in sections 59 through 65.". 15 USC 80a-1—80a-52.

VALIDITY OF CONTRACTS *Post*, pp. 2285-2289.

SEC. 104. Section 47(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-46(b)) is amended to read as follows:

"(b)(1) A contract that is made, or whose performance involves, a violation of this title, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this title or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this title.

"(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this title.

"(3) This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any person for unjust enrichment.".

REGULATION OF BUSINESS DEVELOPMENT COMPANIES

SEC. 105. The Investment Company Act of 1940 is amended by adding at the end thereof the following new sections:

"ELECTION TO BE REGULATED AS A BUSINESS DEVELOPMENT COMPANY

15 USC 80a-53. *Ante*, p. 2275.

"SEC. 54. (a) Any company defined in sections 2(a)(48) (A) and (B) may elect to be subject to the provisions of sections 55 through 65 by filing with the Commission a notification of election, if such company—

15 USC 78*l*.

"(1) has a class of its equity securities registered under section 12 of the Securities Exchange Act of 1934; or

"(2) has filed a registration statement pursuant to section 12 of the Securities Exchange Act of 1934 for a class of its equity securities.

"(b) The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A business development company shall be deemed to be subject to sections 55 through 65 upon receipt by the Commission of such notification of election.

"(c) Whenever the Commission finds, on its own motion or upon application, that a business development company which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any business development company may voluntarily withdraw its election under subsection (a) by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

"FUNCTIONS AND ACTIVITIES OF BUSINESS DEVELOPMENT COMPANIES

15 USC 80a-54.

"SEC. 55. (a) It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

15 USC 77a.

"(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this title and of the Securities Act of 1933 with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, involved in such transactions—

"(A) from the issuer of such securities, which issuer is an eligible portfolio company, or from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company; or

Ante, p. 2275.

"(B) from the issuer of such securities, which issuer is described in sections 2(a)(46) (A) and (B) but is not an eligible portfolio company because it has issued a 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, or from any person who is an officer or employee of such issuer, if— 15 USC 78g.

"(i) at the time of the purchase, the business development company owns at least 50 per centum of—

"(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

"(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

"(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

"(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 2(a)(46)(C)(ii); *Ante*, p. 2275.

"(3) securities purchased in transactions not involving any public offering from an issuer described in sections 2(a)(46) (A) and (B) or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

"(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

"(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

"(C) issued by an issuer that, immediately prior to the purchase of such issuer's securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

"(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the business development company owns at least 60 per centum of the outstanding equity securities of such issuer (giving effect to all securities presently convertible into or exchangeable for equity securities of such issuer as if such securities were so converted or exchanged);

"(5) securities received in exchange for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

"(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

"(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the business development company, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a business development company, including notes of indebtedness of directors, officers, employees, and general partners held by a business development company as payment for securities of such company issued in connection with an executive compensation plan described in section 57(j).

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"(b) For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to section 13 of the Securities Exchange Act of 1934, and shall be determined no less frequently than annually.

15 USC 78m.

"QUALIFICATIONS OF DIRECTORS

15 USC 80a-55.

"SEC. 56. (a) A majority of a business development company's directors or general partners shall be persons who are not interested persons of such company.

"(b) If, by reason of the death, disqualification, or bona fide resignation of any director or general partner, a business development company does not meet the requirements of subsection (a) of this section, or the requirements of section 15(f)(1) of this title with respect to directors, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

15 USC 80a-15.

"TRANSACTIONS WITH CERTAIN AFFILIATES

15 USC 80a-56.

"SEC. 57. (a) It shall be unlawful for any person who is related to a business development company in a manner described in subsection (b) of this section, acting as principal—

"(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

"(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

"(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 21(b) or section 62; or

15 USC 80a-21.

"(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or

preventing participation by such business development company or controlled company on a basis less advantageous than that of such person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

"(b) The provisions of subsection (a) of this section shall apply to the following persons:

"(1) Any director, officer, employee, or member of an advisory board of a business development company or any person (other than the business development company itself) who is, within the meaning of section 2(a)(3)(C) of this title, an affiliated person of any such person specified in this paragraph. 15 USC 80a-2.

"(2) Any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with, a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company), or any person who is, within the meaning of section 2(a)(3) (C) or (D), an affiliated person of any such person specified in this paragraph.

"(c) Notwithstanding paragraphs (1), (2), and (3) of subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that— Exemption order, application.

"(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned;

"(2) the proposed transaction is consistent with the policy of the business development company as recited in the filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and 15 USC 77a. 15 USC 78a.

"(3) the proposed transaction is consistent with the general purposes of this title.

"(d) It shall be unlawful for any person who is related to a business development company in the manner described in subsection (e) of this section and who is not subject to the prohibitions of subsection (a) of this section, acting as principal—

"(1) knowingly to sell any security or other property to such business development company or to any company controlled by such business development company, unless such sale involves solely (A) securities of which the buyer is the issuer, or (B) securities of which the seller is the issuer and which are part of a general offering to the holders of a class of its securities;

"(2) knowingly to purchase from such business development company or from any company controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

"(3) knowingly to borrow money or other property from such business development company or from any company controlled by such business development company (unless the borrower is controlled by the lender), except as permitted in section 21(b); or

15 USC 80a-21.

"(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such affiliated person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such affiliated person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

"(e) The provisions of subsection (d) of this section shall apply to the following persons:

15 USC 80a-2.

"(1) Any person (A) who is, within the meaning of section 2(a)(3)(A), an affiliated person of a business development company, (B) who is an executive officer or a director of, or general partner in, any such affiliated person, or (C) who directly or indirectly either controls, is controlled by, or is under common control with, such affiliated person.

"(2) Any person who is an affiliated person of a director, officer, employee, investment adviser, member of an advisory board or promoter of, principal underwriter for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company).

"Executive officer."

For purposes of this subsection, the term 'executive officer' means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other person who performs similar policymaking functions.

"(f) Notwithstanding subsection (d) of this section, a person described in subsection (e) may engage in a proposed transaction described in subsection (d) if such proposed transaction is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in the business development company on the basis that—

"(1) the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the business development company and do not involve overreaching of such company or its shareholders or partners on the part of any person concerned;

"(2) the proposed transaction is consistent with the interests of the shareholders or partners of the business development company and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933, its registration statement and reports filed under the Securities Exchange Act of 1934, and its reports to shareholders or partners; and

15 USC 77a.
15 USC 78a.

"(3) the directors or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to section 31(a), a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

"(g) Notwithstanding subsection (a) or (d), a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

Inquiry procedures, adoption and review.

"(h) The directors of or general partners in any business development company shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such business development company or a company controlled by such business development company proposes to participate, with respect to the possible involvement in the transaction of persons described in subsections (b) and (e) of this section.

15 USC 80a-17.

"(i) Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under sections 17 (a) and (d) applicable to registered closed-end investment companies shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under sections 17 (a) and (d) that are applicable to all registered closed-end investment companies.

"(j) Notwithstanding subsections (a) and (d) of this section, any director, officer, or employee of, or general partner in, a business development company may—

"(1) acquire warrants, options, and rights to purchase voting securities of such business development company, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of section 61(a)(3)(B); and

"(2) borrow money from such business development company for the purpose of purchasing securities issued by such company pursuant to an executive compensation plan, if each such loan—

"(A) has a term of not more than ten years;

"(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such person's employment or service;

"(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

"(D) at all times is fully collateralized (such collateral may include any securities issued by such business development company); and

"(E)(i) in the case of a loan to any officer or employee of such business development company (including any officer or employee who is also a director of such company), is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that the loan is in the best interests of such company and its shareholders or partners; or

"(ii) in the case of a loan to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company,

is approved by order of the Commission, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such company or its shareholders or partners.

"(k) It shall be unlawful for any person described in subsection (l)—

"(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from the business development company) for the purchase or sale of any property to or for such business development company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

"(2) acting as broker, in connection with the sale of securities to or by the business development company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds—

"(A) the usual and customary broker's commission if the sale is effected on a securities exchange;

"(B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities; or

"(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent with the protection of investors, permits a larger commission.

"(l) The provisions of subsection (k) of this section shall apply to the following persons:

"(1) Any affiliated person of a business development company.

15 USC 80a-2.

"(2)(A) Any person who is, within the meaning of section 2(a)(3)(B), (C), or (D), an affiliated person of any director, officer, employee, or member of an advisory board of the business development company.

"(B) Any person who is, within the meaning of section 2(a)(3)(A), (B), (C), or (D), an affiliated person of any investment adviser of, general partner in, or person directly or indirectly either controlling, controlled by, or under common control with, the business development company.

"(C) Any person who is, within the meaning of section 2(a)(3)(C), an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 2(a)(3)(A).

"(m) For purposes of subsections (a) and (d), a person who is a director, officer, or employee of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a director, officer, or employee from such party shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such fee or salary.

Profit-sharing plan.

"(n)(1) Notwithstanding subsection (a)(4) of this section, a business development company may establish and maintain a profit-sharing plan for its directors, officers, employees, and general partners and such directors, officers, employees, and general partners may participate in such profit-sharing plan, if—

"(A)(i) in the case of a profit-sharing plan for officers and employees of the business development company (including any officer or employee who is also a director of such company), such profit-sharing plan is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in

such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; or

"(ii) in the case of a profit-sharing plan which includes one or more directors of the business development company who are not also officers or employees of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; and

"(B) the aggregate amount of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the business development company's net income after taxes in any fiscal year.

"(2) This subsection may not be used where the business development company has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 61(a)(3)(B), or has an investment adviser registered or required to be registered under title II of this Act. 15 USC 80b-1.

"(o) The term 'required majority', when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

"CHANGES IN INVESTMENT POLICY

"SEC. 58. No business development company shall, unless authorized by the vote of a majority of its outstanding voting securities or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a business development company. 15 USC 80a-57.

"INCORPORATION OF PROVISIONS

"SEC. 59. Notwithstanding the exemption set forth in section 6(f), sections 1, 2, 3, 4, 5, 6, 9, 10(f), 15 (a), (c), and (f), 16(b), 17 (f) through (j), 19(a), 20(b), 32 (a) and (c), 33 through 47, and 49 through 53 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company. 15 USC 80a-58. *Ante*, p. 2277. 15 USC 80a-1—80a-5, 80a-9, 80a-10, 80a-15—80a-17, 80a-19, 80a-20, 80a-31, 80a-32—80a-46, 80a-48—80a-52.

"FUNCTIONS AND ACTIVITIES OF BUSINESS DEVELOPMENT COMPANIES

"SEC. 60. Notwithstanding the exemption set forth in section 6(f), section 12 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the Commission shall not prescribe any rule, regulation, or order pursuant to section 12(a)(1) governing the circumstances in which a business development company may borrow from a bank in order to purchase any security. 15 USC 80a-59. 15 USC 80a-12.

"CAPITAL STRUCTURE

15 USC 80a-60.
Ante, p. 2277, 15 USC 80a-18.

"SEC. 61. (a) Notwithstanding the exemption set forth in section 6(f), section 18 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

"(1) The asset coverage requirements of section 18(a)(1) (A) and (B) applicable to business development companies shall be 200 per centum.

"(2) Notwithstanding section 18(c), a business development company may issue more than one class of senior security representing indebtedness if such business development company does not have outstanding any publicly held indebtedness, and all such securities of each class are—

"(A) privately held or guaranteed by the Small Business Administration, or banks, insurance companies, or other institutional investors; and

"(B) not intended to be publicly distributed.

"(3) Notwithstanding section 18(d)—

"(A) a business development company may issue senior securities representing indebtedness accompanied by warrants, options, or rights to subscribe or convert to voting securities of such company, if—

"(i) such warrants, options, or rights expire by their terms within ten years;

"(ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the senior securities accompanying them has been publicly distributed;

"(iii) the exercise or conversion price is not less than the current market value at the date of issuance, or if no such market value exists, the current net asset value of such voting securities; and

"(iv) the proposal to issue such securities is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 57(o)) of the directors of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners; and

"(B) a business development company may issue, to its directors, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such company pursuant to an executive compensation plan, if—

"(i)(I) in the case of warrants, options, or rights issued to any officer or employee of such business development company (including any officer or employee who is also a director of such company), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any director of such business development company who is not also an officer or employee of such company, or to any general partner in such company, the proposal to issue such securities satisfies the conditions in clauses (i) and (iii) of subparagraph (A), is authorized by the shareholders or partners of such company, and is approved by order of the Commission,

upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such company or its shareholders or partners;

"(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

"(iii) no investment adviser of such business development company receives any compensation described in paragraph (1) of section 205 of title II of this Act, except to the extent permitted by clause (A) or (B) of that section; and

15 USC 80b-5.

"(iv) such business development company does not have a profit-sharing plan described in section 57(n).

Notwithstanding this paragraph, the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding voting securities of the business development company, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, employees, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding voting securities of such company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

"(4) For purposes of measuring the asset coverage requirements of section 18(a), a senior security created by the guarantee by a business development company of indebtedness issued by another company shall be the amount of the maximum potential liability less the fair market value of the net unencumbered assets (plus the indebtedness which has been guaranteed) available in the borrowing company whose debts have been guaranteed, except that a guarantee issued by a business development company of indebtedness issued by a company which is a wholly-owned subsidiary of the business development company and is licensed as a small business investment company under the Small Business Investment Act of 1958 shall not be deemed to be a senior security of such business development company for purposes of section 18(a) if the amount of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 18(a).

15 USC 80a-18.

15 USC 661 note.

"(b) A business development company shall comply with the provisions of this section at the time it becomes subject to sections 55 through 65, as if it were issuing a security of each class which it has outstanding at such time.

"LOANS

"SEC. 62. Notwithstanding the exemption set forth in section 6(f), section 21 shall apply to a business development company to the same

15 USC 80a-61.
Ante, p. 2277, 15 USC 80a-21.

extent as if it were a registered closed-end investment company, except that nothing in that section shall be deemed to prohibit—

"(1) any loan to a director, officer, or employee of, or general partner in, a business development company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 57(j); or

"(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.

"DISTRIBUTION AND REPURCHASE OF SECURITIES

15 USC 80a-62.
Ante, p. 2277, 15 USC 80a-23.

"SEC. 63. Notwithstanding the exemption set forth in section 6(f), section 23 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except as follows:

"(1) The prohibitions of section 23(a)(2) shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 3(a).

15 USC 80a-3.

"(2) Notwithstanding the provisions of section 23(b), a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

"(A) the holders of a majority of such business development company's outstanding voting securities, and the holders of a majority of such company's outstanding voting securities that are not affiliated persons of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities;

"(B) a required majority (as defined in section 57(o)) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

"(C) a required majority (as defined in section 57(o)) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

"(3) A business development company may sell any common stock of which it is the issuer at a price below the current net

asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 61(a)(3).

"ACCOUNTS AND RECORDS

"SEC. 64. (a) Notwithstanding the exemption set forth in section 6(f), section 31 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the reference to the financial statements required to be filed pursuant to section 30 shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 13 of the Securities Exchange Act of 1934.

15 USC 80a-63.
Ante, p. 2277, 15 USC 80a-30.
15 USC 80a-29.
15 USC 78m.

"(b)(1) In addition to the requirements of subsection (a), a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors involved in an investment in the securities of a business development company due to the nature of such company's investment portfolio, and shall supply copies of such statement to any registered broker or dealer upon request.

Risk factors statement.

"(2) If the Commission finds it is 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 title, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

"LIABILITY OF CONTROLLING PERSONS; PREVENTING COMPLIANCE WITH TITLE

"SEC. 65. Notwithstanding the exemption set forth in section 6(f), section 48 shall apply to a business development company to the same extent as if it were a registered closed-end investment company, except that the provisions of section 48(a) shall not be construed to require any company which is not an investment company within the meaning of section 3(a) to comply with the provisions of this title which are applicable to a business development company solely because such company is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company.".

15 USC 80a-64.
Ante, p. 2277, 15 USC 80a-47.
15 USC 80a-3.

TITLE II—AMENDMENTS TO THE INVESTMENT ADVISERS ACT OF 1940

DEFINITION OF BUSINESS DEVELOPMENT COMPANY

SEC. 201. Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended by adding at the end thereof the following new paragraph:

"(22) 'Business development company' means any company which is a business development company as defined in section 2(a)(48) of

Ante, p. 2275.
Ante, p. 2278.

title I of this Act and which complies with section 55 of title I of this Act, except that—

"(A) the 70 per centum of the value of the total assets condition referred to in sections 2(a)(48) and 55 of title I of this Act shall be 60 per centum for purposes of determining compliance therewith;

"(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 55 through 65 of title I of this Act; and

Ante, pp. 2278–2289.

"(C) the securities which may be purchased pursuant to section 55(a) of title I of this Act may be purchased from any person.

For purposes of this paragraph, all terms in sections 2(a)(48) and 55 of title I of this Act shall have the same meaning set forth in such title as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 55 through 65 of title I of this Act shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.".

REGISTRATION REQUIREMENTS

SEC. 202. Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended by striking out the period at the end of the paragraph (3) and inserting in lieu thereof the following: ", or a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this title, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner.".

Ante, p. 2278.

INVESTMENT ADVISORY CONTRACTS

SEC. 203. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended—

(1) by striking out "or" immediately before "(B)" in the sentence following paragraph (3) thereof; and

(2) by striking out the period at the end of such sentence and inserting in lieu thereof the following: ", or (C) apply with respect to any investment advisory contract between an investment adviser and a business development company, as defined in this title, if (i) the compensation provided for in such contract does not exceed 20 per centum of the realized capital gains upon the funds of the business development company over a specified period or as of definite dates, computed net of all realized capital losses and unrealized capital depreciation, and the condition of section 61(a)(3)(B)(iii) of title I of this Act is satisfied, and (ii) the business development company does not have outstanding any option, warrant, or right issued pursuant to section 61(a)(3)(B) of title I of this Act and does not have a profit-sharing plan described in section 57(n) of title I of this Act.".

Ante, p. 2286.
Ante, p. 2280.

TITLE III—AMENDMENTS TO OTHER FEDERAL SECURITIES LAWS

SMALL OFFERING INCREASE

SEC. 301. Section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) is amended by striking out "$2,000,000" and inserting in lieu thereof "$5,000,000".

AMENDMENTS TO THE TRUST INDENTURE ACT OF 1939

SEC. 302. (a) Section 304(a)(8) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(88)) is amended by striking out "more than $250,000 aggregate principal amount of any securities of the same issuer" and inserting in lieu thereof the following: "an aggregate principal amount of securities of the same issuer greater than the figure stated in section 3(b) of the Securities Act of 1933 limiting exemptions thereunder, or such lesser amount as the Commission may establish by its rules and regulations".

Supra.

(b) Section 304(a)(9) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(a)(9)) is amended—

(1) by striking out "$1,000,000 or less" and inserting in lieu thereof "$10,000,000, or such lesser amount as the Commission may establish by its rules and regulations";

(2) by striking out "more than $1,000,000" and inserting in lieu thereof "more than $10,000,000"; and

(3) by inserting immediately before the semicolon at the end thereof the following: ", or such lesser amount as the Commission may establish by its rules and regulations".

TITLE IV—AUTHORIZATION

SEC. 401. Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended—

(1) in the first sentence thereof, by striking out "and" immediately after "1979,";

(2) by inserting immediately before the period at the end of the first sentence thereof the following: ", $85,500,000 for the fiscal year ending September 30, 1981, $96,640,000 for the fiscal year ending September 30, 1982, and $106,610,000 for the fiscal year ending September 30, 1983"; and

(3) in the last sentence thereof, by striking out "fiscal year 1980" and inserting in lieu thereof "fiscal year 1983".

TITLE V—CAPITAL FORMATION

Omnibus Small Business Capital Formation Act of 1980.

SHORT TITLE AND TABLE OF CONTENTS

SEC. 501. This title may be cited as the "Omnibus Small Business Capital Formation Act of 1980".

15 USC 80c note.

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Sec. 501. Short title and table of contents.
Sec. 502. Liaison between Securities and Exchange Commission and Small Business Administration.
Sec. 503. Annual government-business forum on capital formation.
Sec. 504. Additional funds authorized for the Securities and Exchange Commission.
Sec. 505. Federal-State cooperation in securities matters for the benefit of small business.
Sec. 506. Reduction of costs of small securities issues.
Sec. 507. Effective date.

LIAISON BETWEEN SECURITIES AND EXCHANGE COMMISSION AND SMALL BUSINESS ADMINISTRATION

15 USC 80c.

SEC. 502. (a) The Securities and Exchange Commission shall gather, analyze, and make available to the public, information with respect to the capital formation needs, and the problems and costs involved with new, small, medium-sized, and independent businesses.

(b) The Commission shall make the results of such studies available to the Small Business Administration and otherwise have regular communication and liaison with such Administration in these matters.

ANNUAL GOVERNMENT-BUSINESS FORUM ON CAPITAL FORMATION

15 USC 80c-1.

SEC. 503. (a) Pursuant to the consultation called for in section 502, the Securities and Exchange Commission shall conduct an annual Government-business forum to review the current status of problems and programs relating to small business capital formation.

(b) The Commission shall invite other Federal agencies, such as the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Small Business Administration, organizations representing State securities commissioners, and leading small business and professional organizations concerned with capital formation, to participate in the planning for such forums.

(c) The Commission may request any of the Federal departments, agencies, or organizations such as those specified in subsection (b), or other groups or individuals, to prepare statements and reports to be delivered at such forums. Such departments and agencies shall cooperate in this effort.

Proceedings, transmittal to congressional committees.

(d) A summary of the proceedings of such forums and any findings or recommendations thereof shall be prepared and transmitted to the participants, appropriate committees of the Congress, and others who may be interested in the subject matter.

ADDITIONAL FUNDS AUTHORIZED FOR THE SECURITIES AND EXCHANGE COMMISSION

15 USC 80c-2.

SEC. 504. For fiscal year 1982, and for each of the three succeeding fiscal years, there are hereby authorized to be appropriated such amounts as may be necessary and appropriate to carry out the provisions and purposes of this title. Any sums so appropriated shall remain available until expended.

FEDERAL-STATE COOPERATION IN SECURITIES MATTERS FOR THE BENEFIT OF SMALL BUSINESS

SEC. 505. Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended by adding at the end thereof the following:

"(c)(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an associ-

ation for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

"(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

"(A) maximum effectiveness of regulation,

"(B) maximum uniformity in Federal and State regulatory standards,

"(C) minimum interference with the business of capital formation, and

"(D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

"(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

"(A) the sharing of information regarding the registration or exemption of securities issues applied for in the various States;

"(B) the development and maintenance of uniform securities forms and procedures; and

"(C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this Act shall be construed as authorizing preemption of State law.

Registration exemption.

"(4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate.

Annual conference.

"(5) For fiscal year 1982, and for each of the three succeeding fiscal years, there are authorized to be appropriated such amounts as may be necessary and appropriate to carry out the policies, provisions, and purposes of this subsection. Any sums so appropriated shall remain available until expended.".

REDUCTION OF COSTS OF SMALL SECURITIES ISSUES

SEC. 506. (a) The Securities and Exchange Commission shall use its best efforts to identify and reduce the costs of raising capital in connection with the issuance of securities by firms whose aggregate outstanding securities and other indebtedness have a market value of $25,000,000 or less, through such means as studies, giving appropriate publicity to improved technology developments in fields such as printing, communications, and filing, and giving special attention to the effect of existing and proposed regulatory changes upon the small companies wishing to raise capital and independent broker-dealers which are in a key position with respect to the costs of underwriting and making markets in the securities of smaller companies.

15 USC 80c-3.

(b) The Commission shall report on these efforts at the annual Government-business forum required by section 503.

Report.

EFFECTIVE DATE

15 USC 80c note.

SEC. 507. Except as otherwise specified, the amendments made by this title shall become effective January 1 of the year following the date of enactment of this Act.

TITLE VI—SMALL BUSINESS ISSUERS' SIMPLIFICATION

Small Business Issuers' Simplification Act of 1980.

SHORT TITLE

15 USC 77a note.

SEC. 601. This title may be cited as the "Small Business Issuers' Simplification Act of 1980".

TRANSACTIONS INVOLVING ACCREDITED INVESTORS

SEC. 602. Section 4 of the Securities Act of 1933 (15 U.S.C. 77d) is amended by adding at the end thereof the following new paragraph:

"(6) transactions involving offers or sales by an issuer solely to one or more accredited investors, if the aggregate offering price of an issue of securities offered in reliance on this paragraph does not exceed the amount allowed under section 3(b) of this title, if there is no advertising or public solicitation in connection with the transaction by the issuer or anyone acting on the issuer's behalf, and if the issuer files such notice with the Commission as the Commission shall prescribe.".

15 USC 77c.

DEFINITIONS

SEC. 603. Section 2 of the Securities Act (15 U.S.C. 77b) is amended by adding at the end thereof the following new paragraphs:

"(15) The term 'accredited investor' shall mean—

"(i) a bank as defined in section 3(a)(2) of the Act whether acting in its individual or fiduciary capacity; an insurance company as defined in section 2(13) of the Act; an investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; a Small Business Investment Company licensed by the Small Business Administration; or an employee benefit plan, including an individual retirement account, which is subject to the provisions of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is either a bank, insurance company, or registered investment adviser; or

15 USC 80a-51.
Ante, p. 2275.

29 USC 1001 note.
29 USC 1002.

"(ii) any person who, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial matters, or amount of assets under management qualifies as an accredited investor under rules and regulations which the Commission shall prescribe.".

TITLE VII—EMPLOYEE BENEFIT PLAN EXEMPTIONS

SEC. 701. Section 3(a)(2) of the Securities Act of 1933 (15 U.S.C. 77c(a)(2)) is amended by striking out "or any interest or participation in a single" and all that follows through "section 401(c)(1) of such Code." and inserting in lieu thereof the following: "or any interest or participation in a single trust fund, or in a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is

issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contributions under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such Code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) the contributions under which are held in a single trust fund or in a separate account maintained by an insurance company for a single employer and under which an amount in excesss of the employer's contribution is allocated to the purchase of securities (other than interests or participations in the trust or separate account itself) issued by the employer or any company directly or indirectly controlling, controlled by, or under common control with the employer, (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code, or (iii) which is a plan funded by an annuity contract described in section 403(b) of such Code.".

26 USC 401.
26 USC 404.
26 USC 414.

SEC. 702. Section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)) is amended by striking out "any interest or participation in any collective trust fund" and all that follows through "section 401(c)(1) of such Code," and inserting in lieu thereof the following: "any interest or participation in a single trust fund, or a collective trust fund maintained by a bank, or any security arising out of a contract issued by an insurance company, which interest, participation, or security is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, or (C) a governmental plan as defined in section 414(d) of such code which has been established by an employer for the exclusive benefit of its employees or their beneficiaries for the purpose of distributing to such employees or their beneficiaries the corpus and income of the funds accumulated under such plan, if under such plan it is impossible, prior to the satisfaction of all liabilities with respect to such employees and their beneficiaries, for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of such employees or their beneficiaries, other than any plan described in clause (A), (B), or (C) of this paragraph (i) which covers employees some or all of whom are employees within the meaning of section 401(c) of such Code, or (ii) which is a plan funded by an annuity contract described in section 403(b) of such Code;".

SEC. 703. Section 3(c)(11) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(11)) is amended to read as follows:

"(11) Any employee's stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954 or which holds only assets of governmental plans described in section 3(a)(2)(C) of the Securities Act of 1933; or any collective trust fund maintained by a bank

26 USC 401.

Ante, p. 2294.

consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of the Internal Revenue Code of 1954 or the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 5 of the Securities Act of 1933 by section 3(a)(2)(C) of such Act, and (C) advances made by an insurance company in connection with the operation of such separate account.".

26 USC 401.

26 USC 404.

Ante, p. 2294.

Approved October 21, 1980.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-1341 (Comm. on Interstate and Foreign Commerce).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Sept. 22, 23, considered and passed House.
Sept. 25, considered and passed Senate, amended.
Oct. 1, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 43:
Oct. 21, Presidential statement.