

**(g) Corporate or other trustees performing functions of investment advisers**

For the purposes of this section, the term “investment adviser” includes a corporate or other trustee performing the functions of an investment adviser.

(Aug. 22, 1940, ch. 686, title I, §9, 54 Stat. 805; Pub. L. 91-547, §4, Dec. 14, 1970, 84 Stat. 1415; Pub. L. 94-29, §28(6), June 4, 1975, 89 Stat. 166; Pub. L. 99-571, title I, §102(l), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100-181, title VI, §609, Dec. 4, 1987, 101 Stat. 1261; Pub. L. 101-429, title III, §301, Oct. 15, 1990, 104 Stat. 941; Pub. L. 101-550, title II, §205(a), Nov. 15, 1990, 104 Stat. 2718; Pub. L. 106-102, title II, §222, Nov. 12, 1999, 113 Stat. 1401; Pub. L. 109-291, §4(b)(2)(B), Sept. 29, 2006, 120 Stat. 1337.)

## REFERENCES IN TEXT

The Commodity Exchange Act, referred to in subsecs. (a)(1), (2) and (b)(2), (3), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (b)(2), (3) and (d)(1)(A), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, 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 Securities Exchange Act of 1934, referred to in subsecs. (b)(2), (3) and (d)(1)(A), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified generally to 2B (§78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

## AMENDMENTS

2006—Subsec. (a). Pub. L. 109-291 inserted “credit rating agency,” after “transfer agent,” in pars. (1) and (2).

1999—Subsec. (a)(1), (2). Pub. L. 106-102 substituted “securities dealer, bank, transfer agent,” for “securities dealer, transfer agent.”

1990—Subsec. (b)(4) to (6). Pub. L. 101-550 added pars. (4) to (6).

Subsecs. (d) to (f). Pub. L. 101-429, §301(1), (2), added subsecs. (d) to (f) and redesignated former subsec. (d) as (g).

Subsec. (g). Pub. L. 101-429, §301(3), which directed the striking out of “subsections (a) through (c) of” after “the purposes of”, was executed by striking out “subsection (a) through (c) of” as the probable intent of Congress.

Pub. L. 101-429, §301(1), redesignated subsec. (d) as (g).

1987—Subsec. (a)(1), (2). Pub. L. 100-181 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

“(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person’s conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Commodity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

“(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, or entity or person required to be registered under the Com-

modity Exchange Act, or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or”.

1986—Subsec. (a)(1), (2). Pub. L. 99-571, §102(l)(1), inserted pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

“(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person’s conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company;

“(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or”.

Subsec. (b)(2), (3). Pub. L. 99-571, §102(l)(2), (3), inserted reference to Commodity Exchange Act.

1975—Subsec. (d). Pub. L. 94-29 added subsec. (d).

1970—Subsec. (a). Pub. L. 91-547, §4(a), inserted “employee,” before “officer” in introductory text.

Subsecs. (b), (c). Pub. L. 91-547, §4(b), added subsec. (b) and redesignated former subsec. (b) as (c).

## 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 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and accounting and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

## EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78a-5 of this title.

## EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

## 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.

## 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-10. Affiliations or interest of directors, officers, and employees****(a) Interested persons of company who may serve on board of directors**

No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company.

**(b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker**

No registered investment company shall—

(1) employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers;

(2) use as a principal underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters; or

(3) have as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company shall be persons who are not investment bankers or affiliated persons of any investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company of the character described in section 80a-12(d)(3)(A) and (B) of this title.

**(c) Officers, directors, or employees of one bank or bank holding company as majority of board of directors of company; exceptions**

No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12) or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12),<sup>1</sup> except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such company may continue to have the same percentage of its board of directors consisting of persons who are directors, officers, or employees of such bank.

**(d) Exception to limitation of number of interested persons who may serve on board of directors**

Notwithstanding subsections (a) and (b)(2) of this section, a registered investment company may have a board of directors all the members of which, except one, are interested persons of the investment adviser of such company, or are officers or employees of such company, if—

(1) such investment company is an open-end company;

(2) such investment adviser is registered under subchapter II of this chapter and is en-

gaged principally in the business of rendering investment supervisory services as defined in subchapter II;

(3) no sales load is charged on securities issued by such investment company;

(4) any premium over net asset value charged by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;

(5) no sales or promotion expenses are incurred by such registered company; but expenses incurred in complying with laws regulating the issue or sale of securities shall not be deemed sales or promotion expenses;

(6) such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management fee exceeding 1 per centum per annum of the value of such company's net assets averaged over the year or taken as of a definite date or dates within the year;

(7) all executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser; and

(8) such investment company has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.

**(e) Death, disqualification, or resignation of directors as suspension of limitation provisions**

If by reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section or of section 80a-15(f)(1) of this title in respect of directors shall not be met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

**(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company**

No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 80a-12(d)(3)(A) and (B) of this title) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is itself acting as a principal underwriter for the issuer. The Commission, by rules

<sup>1</sup> So in original.

and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

**(g) Advisory boards; restrictions on membership**

In the case of a registered investment company which has an advisory board, such board, as a distinct entity, shall be subject to the same restrictions as to its membership as are imposed upon a board of directors by this section.

**(h) Application of section to unincorporated registered management companies**

In the case of a registered management company which is an unincorporated company not having a board of directors, the provisions of this section shall apply as follows:

(1) the provisions of subsection (a) of this section, as modified by subsection (e) of this section, shall apply to the board of directors of the depositor of such company;

(2) the provisions of subsections (b) and (c) of this section, as modified by subsection (e) of this section, shall apply to the board of directors of the depositor and of every investment adviser of such company; and

(3) the provisions of subsection (f) of this section shall apply to purchases and other acquisitions for the account of such company of securities a principal underwriter of which is the depositor or an investment adviser of such company, or an affiliated person of such depositor or investment adviser.

(Aug. 22, 1940, ch. 686, title I, §10, 54 Stat. 806; Pub. L. 91-547, §5, Dec. 14, 1970, 84 Stat. 1416; Pub. L. 94-29, §28(5), June 4, 1975, 89 Stat. 165; Pub. L. 106-102, title II, §213(c), Nov. 12, 1999, 113 Stat. 1398; Pub. L. 109-351, title IV, §401(c), Oct. 13, 2006, 120 Stat. 1973.)

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-351 inserted “or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12),” after “1841 of title 12”).

1999—Subsec. (c). Pub. L. 106-102 substituted “bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12), except” for “bank, except”.

1975—Subsec. (e). Pub. L. 94-29 inserted reference to provisions of section 80a-15(f)(1) of this title.

1970—Subsec. (a). Pub. L. 91-547, §5(a), struck out introductory text “After one year from the effective date of this subchapter” and substituted “interested persons of such registered company” for “investment advisers of, affiliated persons of an investment adviser of, or officers or employees of, such registered company”.

Subsec. (b). Pub. L. 91-547, §5(b)(1), struck out introductory text “After one year from the effective date of this subchapter,” and substituted “No” for “no”.

Subsec. (b)(2). Pub. L. 91-547, §5(b)(2), substituted “interested” for “affiliated” in two places.

Subsec. (c). Pub. L. 91-547, §5(c), struck out introductory text “After the effective date of this subchapter”, substituted “No”, “, except that”, “had a majority”, and “such company” for “no”, “; Provided, That”, “shall have had a majority”, and “such company”, respectively, and inserted reference to employees where first appearing.

Subsec. (d). Pub. L. 91-547, §5(d), reenacted provisions except for substitution of “interested persons” for “affiliated persons” in introductory text, deletion of “such investment adviser” before “is engaged” in item (2), and substitution of “class of securities” for “class of stock” and “unit” for “share” in two places in item (8).

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 1975 AMENDMENT

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91-547, see section 30 (introductory text and pars. (1) and (2)) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

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-11. Offers to exchange securities**

**(a) Approval by Commission for exchanges of securities on basis other than relative net asset value**

It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.

**(b) Application of section to offers pursuant to plan of reorganization**

The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs.