

(l) Persons subject to brokerage commission restrictions

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

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

(2)(A) Any person who is, within the meaning of section 80a-2(a)(3)(B), (C), or (D) of this title, an affiliated person or 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 82a-2(a)(3)(A), (B), (C), or (D) of this title, 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 80a-2(a)(3)(C) of this title, an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 80a-2(a)(3)(A) of this title.

(m) Receipt of fee or salary from transaction participant

For purposes of subsections (a) and (d) of this section, 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.

(n) Profit-sharing plans

(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 this section) 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 80a-60(a)(3)(B) of this title, or has an investment adviser registered or required to be registered under subchapter II of this chapter.

(o) Required majority for approval of proposed transactions

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.

(Aug. 22, 1940, ch. 686, title I, § 57, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2280; amended Pub. L. 100-181, title VI, § 627, Dec. 4, 1987, 101 Stat. 1263.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (c)(2) and (f)(2), 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. (c)(2) and (f)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, 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.

AMENDMENTS

1987—Subsec. (i). Pub. L. 100-181 substituted "subsections (a) and (d) of section 80a-17 of this title" for "sections 80a-17(a) and (d) of this title" in two places.

§ 80a-57. Changes in investment policy

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.

(Aug. 22, 1940, ch. 686, title I, § 58, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a-58. Incorporation of subchapter provisions

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