

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 80a-56(o) of this title) 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 80a-60(a)(3) of this title.

(Aug. 22, 1940, ch. 686, title I, § 63, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2289.)

§ 80a-63. Accounts and records

(a) Exception for business development company

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-30 of this title 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 80a-29 of this title shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 78m of this title.

(b) Risk factors statement; availability

(1) In addition to the requirements of subsection (a) of this section, 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 capital structure, and shall supply copies of such statement to any registered broker or dealer upon request.

(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 subchapter, 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 Commis-

sion, 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.

(Aug. 22, 1940, ch. 686, title I, § 64, as added Pub. L. 96-477, title I § 105, Oct. 21, 1980, 94 Stat. 2289; amended Pub. L. 104-290, title V, § 507, Oct. 11, 1996, 110 Stat. 3446.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-290 inserted “and capital structure” after “portfolio”.

§ 80a-64. Preventing compliance with subchapter; liability of controlling persons

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-47 of this title 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 80a-47(a) of this title shall not be construed to require any company which is not an investment company within the meaning of section 80a-3(a) of this title to comply with the provisions of this subchapter 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.

(Aug. 22, 1940, ch. 686, title I, § 65, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2289.)

SUBCHAPTER II—INVESTMENT ADVISERS

§ 80b-1. Findings

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 79z-4¹ of this title, and facts otherwise disclosed and ascertained, it is found that investment advisers are of national concern, in that, among other things—

(1) their advice, counsel, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and means and instrumentalities of interstate commerce;

(2) their advice, counsel, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on national securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System; and

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, national securities exchanges, and other securities markets, the national banking system and the national economy.

(Aug. 22, 1940, ch. 686, title II, § 201, 54 Stat. 847.)

¹ See References in Text note below.

REFERENCES IN TEXT

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

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.

§ 80b-2. Definitions**(a) In general**

When used in this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) "Assignment" includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but if the investment adviser is a partnership, no assignment of an investment advisory contract shall be deemed to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(2) "Bank" means (A) a banking institution organized under the laws of the United States or a Federal savings association, as defined in section 1462(5) of title 12, (B) a member bank of the Federal Reserve System, (C) any other banking institution, savings association, as defined in section 1462(4) of title 12, or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks or savings associations, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(3) The term "broker" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

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

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

(6) "Convicted" includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed,

set aside, or withdrawn, whether or not sentence has been imposed.

(7) The term "dealer" has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], but does not include an insurance company or investment company.

(8) "Director" means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

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

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

(11) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities; but does not include (A) a bank, or any bank holding company as defined in the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.] which is not an investment company, except that the term "investment adviser" includes any bank or bank holding company to the extent that such bank or bank holding company serves or acts as an investment adviser to a registered investment company, but if, in the case of a bank, such services or actions are performed through a separately identifiable department or division, the department or division, and not the bank itself, shall be deemed to be the investment adviser; (B) any lawyer, accountant, engineer, or teacher whose performance of such services is solely incidental to the practice of his profession; (C) any broker or dealer whose performance of such services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation therefor; (D) the publisher of any bona fide newspaper, news magazine or business or financial publication of general and regular circulation; (E) any person whose advice, analyses or reports relate to no securities other than securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States, or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest which shall have been designated by the Secretary of the Treasury, pursuant to section 3(a)(12) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(12)], as exempted securities for the purposes of that Act