Pub. L. 100–181, § 616(2), (3), redesignated par. (3) as (2) and substituted ''section 78s(c)'' for ''section 78*o*–3(k)(2)'', redesignated par. (4) as (3), and struck out former par. (2) which read as follows: ''At any time after the expiration of eighteen months from December 14, 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 78*o*(b)(10) of this title as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 78*o*(b)(8) of this title: *Provided*, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales.''

Subsec. (e). Pub. L. 100–181, § 616(4), (5), in introductory provisions, substituted ''redemption, or postpone'' for ''redemption or postpone'' and ''redemption, except'' for ''redemption except'', and, in closing provisions, struck out ''Any company which, as of March 15, 1940, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a bylaw or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this subchapter, or upon the repeal or amendment of such provision, or upon the sale by such company after March 15, 1940, of any security (other than short-term paper) of which it is the issuer, whichever first occurs.''

1970—Subsec. (b). Pub. L. 91–547, § 12(a), designated existing provisions as par. (1), inserted ''notwithstanding the provisions of subsection (b)(8) thereof but'', and ''other'' in phrase ''all other provisions'', substituted exclusion of ''excessive sales load'' for ''unconscionable or grossly excessive sales load'', provided for allowance for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors, and for grant by Commission of appropriate qualified exemptions from provisions of this section where on application or otherwise it appears that smaller companies are subject to relatively higher operating costs, and added pars. (2) to (4).

Subsec. (c). Pub. L. 91–547, § 12(b), provided for application of rules and regulations to registered investment companies, struck out introductory phrase ''After one year from the effective date of this chapter'', ''registered'' before ''securities association'' where first appearing, and substituted ''prescribed in subsection (a) of this section'' for ''prescribed in subsections (a) and (b) of this section'' and ''. Any rules and regulations'' for ''; and any rules and regulations''.

Subsec. (d). Pub. L. 91–547, § 12(c), substituted ''public offering price described in the prospectus. Nothing in this subsection'' for ''public offering price described in the prospectus: *Provided, however*, That nothing in this subsection'' and struck out ''clause (1) or (2) of'' before ''section 80a–11(b) 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–23. Closed-end companies

(a) Issuance of securities

No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(b) Sale of common stock at price below current net asset value

No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on August 22, 1940, or issued in accordance with the provisions of section 80a–18(d) of this title; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) Purchase of securities of which it is issuer; exceptions

No registered closed-end company shall purchase any securities of any class of which it is the issuer except—

(1) on a securities exchange or such other open market as the Commission may designate by rules and regulations or orders: *Provided*, That if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

(2) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or

(3) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

(Aug. 22, 1940, ch. 686, title I, § 23, 54 Stat. 825.)

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–24. Registration of securities under Securities Act of 1933

(a) Registration statement; contents

In registering under the Securities Act of 1933 [15 U.S.C. 77a et seq.], any security of which it

is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in schedule A of said Act [15 U.S.C. 77aa], may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this subchapter, and of such reports filed by such company pursuant to section 80a–29 of this title or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

(2) such additional information and documents (including a prospectus) as the Commission shall prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors.

(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing

It shall be unlawful for any of the following companies, or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to make use of the mails or any means or instrumentalities of interstate commerce, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

(1) any registered open-end company;

(2) any registered unit investment trust; or

(3) any registered face-amount certificate company.

(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate

In addition to the powers relative to prospectuses granted the Commission by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], the Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate or face-amount certificate registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], on or after the effective date of this subchapter be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust

The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)] shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) [15 U.S.C. 77c(a)(11)] shall not apply to any security of which a registered investment company is the issuer. The exemption provided by section 4(3) of the Securities Act of 1933 [15 U.S.C. 77d(3)] shall not apply to any transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act [15 U.S.C. 77e], except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts

For the purposes of section 11 of the Securities Act of 1933, as amended [15 U.S.C. 77k] the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the Securities Act of 1933, as amended [15 U.S.C. 77m], no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust which varies for the purposes of subsection (a)(3) of section 10 of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] from the latest prospectus filed as a part of the registration statement shall be deemed to meet the requirements of said section 10 [15 U.S.C. 77j] unless filed as part of an amendment to the registration statement under said Act [15 U.S.C. 77a et seq.] and such amendment has become effective.

(f) Registration of indefinite amount of securities

(1) Registration of securities

Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933 [15 U.S.C. 77h], a face-amount certificate company, open-end management company, or unit investment trust, shall be deemed to have registered an indefinite amount of securities.

(2) Payment of registration fees

Not later than 90 days after the end of the fiscal year of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount of securities under this subsection during the previous fiscal year of the company or trust, reduced by—

(A) the aggregate redemption or repurchase price of the securities of the company or trust during that year; and

(B) the aggregate redemption or repurchase price of the securities of the company or trust during any prior fiscal year ending not more than 1 year before October 11, 1996, that were not used previously by the company or trust to reduce fees payable under this section.

(3) Interest due on late payment

A company or trust paying the fee required by this subsection or any portion thereof more than 90 days after the end of the fiscal year of the company or trust shall pay to the Commission interest on unpaid amounts, at the average investment rate for Treasury tax and loan accounts published by the Secretary of the Treasury pursuant to section 3717(a) of title 31. The payment of interest pursuant to this paragraph shall not preclude the Commission from bringing an action to enforce the requirements of paragraph (2).

(4) Rulemaking authority

The Commission may adopt rules and regulations to implement this subsection.

(g) Additional prospectuses

In addition to any prospectus permitted or required by section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)], the Commission shall permit, by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors, the use of a prospectus for purposes of section 5(b)(1) of that Act [15 U.S.C. 77e(b)(1)] with respect to securities issued by a registered investment company. Such a prospectus, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by section 10(b) of that Act [15 U.S.C. 77j(b)].

(Aug. 22, 1940, ch. 686, title I, § 24, 54 Stat. 825; Aug. 10, 1954, ch. 667, title IV, §§ 402, 403, 68 Stat. 689; Pub. L. 91–547, § 13, Dec. 14, 1970, 84 Stat. 1423; Pub. L. 100–181, title VI, § 617, Dec. 4, 1987, 101 Stat. 1262; Pub. L. 104–290, title II, §§ 203(a), (b), 204, Oct. 11, 1996, 110 Stat. 3427, 3428.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (a), (c), and (e), 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.

For the effective date of this subchapter, referred to in subsec. (c), see section 80a–52 of this title.

AMENDMENTS

1996—Subsec. (e). Pub. L. 104–290, § 203(a), substituted ''For'' for ''(3) For'', struck out ''pursuant to this subsection or otherwise'' before ''shall be deemed the effective date of the registration statement'', and struck out pars. (1) and (2) which read as follows:

''(1) A registration statement under the Securities Act of 1933 relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust may be amended after its effective date so as to increase the securities specified therein as proposed to be offered. At the time of filing such amendment there shall be paid to the Commission a fee, calculated in the manner specified in section 6(b) of said Act, with respect to the additional securities therein proposed to be offered.

''(2) The filing of such an amendment to a registration statement under the Securities Act of 1933 shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under paragraph (1) of this subsection.''

Subsec. (f). Pub. L. 104–290, § 203(b), inserted heading and amended text generally. Prior to amendment, text read as follows: ''In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust.''

Subsec. (g). Pub. L. 104–290, § 204, added subsec. (g).

1987—Subsec. (d). Pub. L. 100–181 struck out '', except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this subchapter and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this subchapter'' at end of second sentence.

1970—Subsec. (d). Pub. L. 91–547, § 13(a), substituted ''section 4(3) of the Securities Act of 1933'' for ''the third clause of section 4(1) of the Securities Act of 1933'' and struck out the comma before ''if any''.

Subsec. (f). Pub. L. 91–547, § 13(b), added subsec. (f).

1954—Subsec. (d). Act Aug. 10, 1954, § 402, inserted provision making dealer's exemption contained in third clause of section 77d(1) of this title inapplicable to transactions in the securities of investment companies that are offered to the public on a continuous basis, subject to certain exceptions.

Subsec. (e). Act Aug. 10, 1954, § 403, added subsec. (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 203(c) of Pub. L. 104–290 provided that: ''The amendments made by this section [amending this section] shall become effective on the earlier of—

''(1) 1 year after the date of enactment of this Act [Oct. 11, 1996]; or

''(2) the effective date of final rules or regulations issued in accordance with section 24(f) of the Investment Company Act of 1940 [subsec. (f) of this section], as amended by this section.''

EFFECTIVE DATE OF 1970 AMENDMENT

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

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective sixty days after Aug. 10, 1954, see note under section 77b 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–25. Reorganization plans; reports by Commission

(a) Filing of reorganization plan and other information with Commission

Any person who, by use of the mails or any means or instrumentality of interstate commerce or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of reorganization of any registered investment company shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney, ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) Advisory report by Commission at request of shareholders

The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of reorganization, by any registered investment company which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders. In such event any registered investment company, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: *Provided*, That such advisory report shall have been received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) Enjoinder of plan of reorganization

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) Application of section to reorganizations under title 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.

(Aug. 22, 1940, ch. 686, title I, §25, 54 Stat. 826; Pub. L. 91–547, §14, Dec. 14, 1970, 84 Stat. 1424; Pub. L. 95–598, title III, §310(c), Nov. 6, 1978, 92 Stat. 2676.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95–598 substituted ''title 11'' for ''the Bankruptcy Act of 1898, as amended''.

1970—Subsec. (c). Pub. L. 91–547 substituted ''that any such plan is not fair and equitable to all security holders'' for ''any such plan to be grossly unfair or to constitute gross misconduct or gross abuse of trust on the part of the officers, directors, or investment advisers of such registered company or other sponsors of such plan''.

EFFECTIVE DATE OF 1978 AMENDMENT

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

EFFECTIVE DATE OF 1970 AMENDMENT

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

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–26. Unit investment trusts

(a) Custody and sale of securities

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which shall not be less than $500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that