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.

(Aug. 22, 1940, ch. 686, title I, § 59, as added Pub. L. 96–477, title I, § 105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a–59. Functions and activities of business development companies

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–12 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 Commission shall not prescribe any rule, regulation, or order pursuant to section 80a–12(a)(1) of this title governing the circumstances in which a business development company may borrow from a bank in order to purchase any security.

(Aug. 22, 1940, ch. 686, title I, § 60, as added Pub. L. 96–477, title I, § 105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a–60. Capital structure

(a) Exceptions for business development company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–18 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 as follows:

(1) The asset coverage requirements of section 80a–18(a)(1)(A) and (B) of this title applicable to business development companies shall be 200 per centum.

(2) Notwithstanding section 80a–18(c) of this title, a business development company may issue more than one class of senior security representing indebtedness.

(3) Notwithstanding section 80a–18(d) of this title—

(A) a business development company may issue warrants, options, or rights to subscribe or convert to voting securities of such company, accompanied by securities, 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 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 80a–56(*o*) of this title) 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;

(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 80b–5[1] of this title, except to the extent permitted by clause (A) or (B) of that section; and

(iv) such business development company does not have a profit-sharing plan described in section 80a–56(n) of this title; and

(C) a business development company may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

(ii) the proposal to issue such warrants, options, or rights 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 80a–56(*o*) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of the company and its shareholders or partners.

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 80a–18(a) of this title, 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 [15 U.S.C. 661 et seq.] shall not be deemed to be a senior security of such business development company for purposes of section 80a–18(a) of this title 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 80a–18(a) of this title.

(b) Compliance

A business development company shall comply with the provisions of this section at the time it becomes subject to sections 80a–54 through 80a–64 of this title, as if it were issuing a security of each class which it has outstanding at such time.

(Aug. 22, 1940, ch. 686, title I, § 61, as added Pub. L. 96–477, title I, § 105, Oct. 21, 1980, 94 Stat. 2286; amended Pub. L. 104–290, title V, § 506, Oct. 11, 1996, 110 Stat. 3446.)

REFERENCES IN TEXT

Section 80b–5 of this title, referred to in subsec. (a)(3)(B)(iii), was amended generally by Pub. L. 100–181, title VII, § 703, Dec. 4, 1987, 101 Stat. 1263, and, as so amended, the subject matter of former paragraph (1) and clauses (A) and (B) of section 80b–5 is contained in subsections (a)(1) and (b)(1) and (2) of section 80b–5.

The Small Business Investment Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689), as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–290, § 506(1), substituted a period for "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."

Subsec. (a)(3)(A). Pub. L. 104–290, § 506(2)(A), (B), inserted "accompanied by securities," after "of such company," and struck out "senior securities represent-

[1] See References in Text note below.

ing indebtedness accompanied by'' before ''warrants, options, or rights''.

Subsec. (a)(3)(A)(ii). Pub. L. 104–290, § 506(2)(C), struck out ''senior'' before ''securities''.

Subsec. (a)(3)(C). Pub. L. 104–290, § 506(3), added subpar. (C).

§ 80a–61. Loans

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–21 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 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 80a–56(j) of this title; 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.

(Aug. 22, 1940, ch. 686, title I, § 62, as added Pub. L. 96–477, title I, § 105, Oct. 21, 1980, 94 Stat. 2287.)

§ 80a–62. Distribution and repurchase of securities

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–23 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 as follows:

(1) The prohibitions of section 80a–23(a)(2) of this title 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 80a–3(a) of this title.

(2) Notwithstanding the provisions of section 80a–23(b) of this title, 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 80a–56(*o*) of this title) 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 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. 2288.)

§ 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-