§ 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–4[1] 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.)

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Section 79z–4 of this title, referred to in text, was repealed by Pub.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 perform-

[1] See References in Text note below.

ing 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 [15 U.S.C. 78a et seq.]; (F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(62)], unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others;;[1] (G) any family office, as defined by rule, regulation, or order of the Commission, in accordance with the purposes of this subchapter; or (H) such other persons not within the intent of this paragraph, as the Commission may designate by rules and regulations or order.

(12) ''Investment company'', affiliated person, and ''insurance company'' have the same meanings as in the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]. ''Control'' means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

(13) ''Investment supervisory services'' means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(14) ''Means or instrumentality of interstate commerce'' includes any facility of a national securities exchange.

(15) ''National securities exchange'' means an exchange registered under section 6 of the Securities Exchange Act of 1934 [15 U.S.C. 78f].

(16) ''Person'' means a natural person or a company.

(17) The term ''person associated with an investment adviser'' means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 80b–3 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion of portions of this subchapter, persons, including employees controlled by an investment adviser.

(18) ''Security'' means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a ''security'', or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase any of the foregoing.

(19) ''State'' means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(20) ''Underwriter'' means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any

[1] So in original.

such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term ''issuer'' shall include in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer.

(21) ''Securities Act of 1933'' [15 U.S.C. 77a et seq.], ''Securities Exchange Act of 1934'' [15 U.S.C. 78a et seq.], and ''Trust Indenture Act of 1939'' [15 U.S.C. 77aaa et seq.], mean those Acts, respectively, as heretofore or hereafter amended.

(22) ''Business development company'' means any company which is a business development company as defined in section 80a–2(a)(48) of this title and which complies with section 80a–54 of this title, except that—

(A) the 70 per centum of the value of the total assets condition referred to in sections 80a–2(a)(48) and 80a–54 of this title shall be 60 per centum for purposes of determining compliance therewith;

(B) such company need not be a closed-end company and need not elect to be subject to the provisions of sections 80a–54 through 80a–64 of this title; and

(C) the securities which may be purchased pursuant to section 80a–54(a) of this title may be purchased from any person.

For purposes of this paragraph, all terms in sections 80a–2(a)(48) and 80a–54 of this title shall have the same meaning set forth in subchapter I of this chapter as if such company were a registered closed-end investment company, except that the value of the assets of a business development company which is not subject to the provisions of sections 80a–54 through 80a–64 of this title shall be determined as of the date of the most recent financial statements which it furnished to all holders of its securities, and shall be determined no less frequently than annually.

(23) ''Foreign securities authority'' means any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(24) ''Foreign financial regulatory authority'' means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(25) ''Supervised person'' means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

(26) The term ''separately identifiable department or division'' of a bank means a unit—

(A) that is under the direct supervision of an officer or officers designated by the board of directors of the bank as responsible for the day-to-day conduct of the bank's investment adviser activities for one or more investment companies, including the supervision of all bank employees engaged in the performance of such activities; and

(B) for which all of the records relating to its investment adviser activities are separately maintained in or extractable from such unit's own facilities or the facilities of the bank, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of this subchapter or the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.] and rules and regulations promulgated under this subchapter or the Investment Company Act of 1940.

(27) The terms ''security future'' and ''narrow-based security index'' have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].

(28) The term ''credit rating agency'' has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(29)[2] The term ''private fund'' means an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.

(30) The term ''foreign private adviser'' means any investment adviser who—

(A) has no place of business in the United States;

(B) has, in total, fewer than 15 clients and investors in the United States in private funds advised by the investment adviser;

(C) has aggregate assets under management attributable to clients in the United States and investors in the United States in private funds advised by the investment adviser of less than $25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; and

(D) neither—

(i) holds itself out generally to the public in the United States as an investment adviser; nor

(ii) acts as—

(I) an investment adviser to any investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.]; or

(II) a company that has elected to be a business development company pursuant

[2] So in original. Another par. (29) is set out after par. (30).

to section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a–53), and has not withdrawn its election.

(29)[3] The terms ''commodity pool'', ''commodity pool operator'', ''commodity trading advisor'', ''major swap participant'', ''swap'', ''swap dealer'', and ''swap execution facility'' have the same meanings as in section 1a of title 7.

(b) Applicability to Federal or State government, agency, or instrumentality, or to officers, agents, or employees thereof

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of promotion of efficiency, competition, and capital formation

Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

(Aug. 22, 1940, ch. 686, title II, § 202, 54 Stat. 847; Pub. L. 86–70, § 12(c), June 25, 1959, 73 Stat. 143; Pub. L. 86–624, § 7(d), July 12, 1960, 74 Stat. 412; Pub. L. 86–750, § 1, Sept. 13, 1960, 74 Stat. 885; Pub. L. 89–485, § 13(j), July 1, 1966, 80 Stat. 243; Pub. L. 91–547, § 23, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 95–598, title III, § 311, Nov. 6, 1978, 92 Stat. 2676; Pub. L. 96–477, title II, § 201, Oct. 21, 1980, 94 Stat. 2289; Pub. L. 97–303, § 6, Oct. 13, 1982, 96 Stat. 1410; Pub. L. 100–181, title VII, § 701, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101–550, title II, § 206(b), Nov. 15, 1990, 104 Stat. 2720; Pub. L. 104–290, title III, § 303(c), Oct. 11, 1996, 110 Stat. 3438; Pub. L. 106–102, title II, §§ 217–219, 224, Nov. 12, 1999, 113 Stat. 1399, 1400, 1402; Pub. L. 106–554, § 1(a)(5) [title II, § 209(a)(2), (4)], Dec. 21, 2000, 114 Stat. 2763, 2763A–435, 2763A–436; Pub. L. 109–291, § 4(b)(3)(A), (B), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 109–351, title IV, § 401(b)(1), Oct. 13, 2006, 120 Stat. 1973; Pub. L. 111–203, title IV, §§ 402(a), 409(a), title VII, § 770, title IX, § 986(d), July 21, 2010, 124 Stat. 1570, 1575, 1801, 1936.)

AMENDMENT OF SECTION

Unless otherwise provided, amendment by subtitle B (§§ 761–774) of title VII of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see 2010 Amendment notes and Effective Date of 2010 Amendment note below.

[3] So in original. Another par. (29) is set out preceding par. (30).

REFERENCES IN TEXT

The Bank Holding Company Act of 1956, referred to in subsec. (a)(11)(A), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§ 1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

The Investment Company Act of 1940, referred to in subsec. (a)(12), (26)(B), (30)(D)(ii)(I), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, which is classified generally to subchapter I (§ 80a–1 et seq.) of this chapter. For complete classification of this Act to the Code, see section 80a–51 of this title and Tables.

The Securities Act of 1933, referred to in subsec. (a)(21), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, 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 subsec. (a)(21), is act June 6, 1934, ch. 404, 48 Stat. 881, 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.

The Trust Indenture Act of 1939, referred to in subsec. (a)(21), is title III of act May 27, 1933, ch. 38, as added Aug. 3, 1939, ch. 411, 53 Stat. 1149, which is classified generally to subchapter III (§ 77aaa et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77aaa of this title and Tables.

This subchapter, referred to in subsec. (a)(26)(B), was in the original ''this Act'' and was translated as reading ''this title'', meaning title II of act Aug. 22, 1940, ch. 686, known as the Investment Advisers Act of 1940, to reflect the probable intent of Congress.

AMENDMENTS

2010—Subsec. (a)(11)(G), (H). Pub. L. 111–203, § 409(a), added subpar. (G) and redesignated former subpar. (G) as (H).

Subsec. (a)(21). Pub. L. 111–203, § 986(d), struck out '' 'Public Utility Holding Company Act of 1935','' after '' 'Securities Exchange Act of 1934',''.

Subsec. (a)(29). Pub. L. 111–203, § 770, added par. (29) relating to certain terms having the same meanings as in section 1a of title 7.

Pub. L. 111–203, § 402(a), added par. (29) defining the term ''private fund''.

Subsec. (a)(30). Pub. L. 111–203, § 402(a), added par. (30).

2006—Subsec. (a)(2)(A). Pub. L. 109–351, § 401(b)(1)(A), inserted ''or a Federal savings association, as defined in section 1462(5) of title 12'' after ''a banking institution organized under the laws of the United States''.

Subsec. (a)(2)(C). Pub. L. 109–351, § 401(b)(1)(B), inserted '', savings association, as defined in section 1462(4) of title 12,'' after ''other banking institution'' and ''or savings associations'' after ''having supervision over banks''.

Subsec. (a)(11)(F), (G). Pub. L. 109–291, § 4(b)(3)(B), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (a)(28). Pub. L. 109–291, § 4(b)(3)(A), added par. (28).

2000—Subsec. (a)(18). Pub. L. 106–554, § 1(a)(5) [title II, § 209(a)(2)], inserted ''security future,'' after ''treasury stock,''.

Subsec. (a)(27). Pub. L. 106–554, § 1(a)(5) [title II, § 209(a)(4)], added par. (27).

1999—Subsec. (a)(3). Pub. L. 106–102, § 218, amended par. (3) generally. Prior to amendment, par. (3) read as follows: '' 'Broker' means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank.''

Subsec. (a)(7). Pub. L. 106–102, § 219, amended par. (7) generally. Prior to amendment, par. (7) read as follows: '' 'Dealer' means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment com-

pany, or any person insofar as he is engaged in investing, reinvesting or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.''

Subsec. (a)(11)(A). Pub. L. 106–102, § 217(a), substituted ''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'' for ''investment company''.

Subsec. (a)(26). Pub. L. 106–102, § 217(b), added par. (26).

Subsec. (c). Pub. L. 106–102, § 224, added subsec. (c).

1996—Subsec. (a). Pub. L. 104–290, § 303(c)(1), substituted ''requires, the following definitions shall apply:'' for ''requires—'' in introductory provisions.

Subsec. (a)(25). Pub. L. 104–290, § 303(c)(2), added par. (25).

1990—Subsec. (a)(23), (24). Pub. L. 101–550 added pars. (23) and (24).

1987—Subsec. (a)(19). Pub. L. 100–181 struck out reference to Canal Zone.

1982—Subsec. (a)(18). Pub. L. 97–303 inserted ''any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,'' after ''mineral rights,''.

1980—Subsec. (a)(22). Pub. L. 96–477 added par. (22).

1978—Subsec. (a)(5). Pub. L. 95–598 substituted ''a case under title 11'' for ''bankruptcy''.

1970—Subsec. (a)(2). Pub. L. 91–547, § 23(1), substituted ''under the authority of the Comptroller of the Currency'' for ''under section 248(k) of Title 12''.

Subsec. (a)(17) to (21). Pub. L. 91–547, § 23(2), added par. (17) and redesignated former pars. (17) to (20) as (18) to (21), respectively.

1966—Subsec. (a)(11)(A). Pub. L. 89–485 substituted ''bank holding company as defined in the Bank Holding Company Act of 1956'' for ''holding company affiliate, as defined in the Banking Act of 1933''.

1960—Subsec. (a)(12). Pub. L. 86–750, § 1(a), substituted definition of ''control'' as ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company'' for its prior definition which was the same as in the Investment Company Act of 1940.

Subsec. (a)(18). Pub. L. 86–750, § 1(b), struck out reference to Philippine Islands, which change was previously executed in the codification of this section pursuant to Proc. No. 2695 that granted independence to the Philippine Islands.

Pub. L. 86–624 struck out reference to Hawaii.

1959—Subsec. (a)(18). Pub. L. 86–70 struck out reference to Alaska.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 986(d) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Pub. L. 111–203, title IV, § 419, July 21, 2010, 124 Stat. 1580, provided that: ''Except as otherwise provided in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b–20 of this title], this title and the amendments made by this title shall become effective 1 year after the date of enactment of this Act [July 21, 2010], except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] during that 1-year period, subject to the rules of the Commission.''

[For definitions of ''investment adviser'' and ''Commission'' as used in section 419 of Pub. L. 111–203, set out above, see section 402(b) of Pub. L. 111–203, set out below, and section 5301 of Title 12, Banks and Banking, respectively.]

Amendment by section 770 of Pub. L. 111–203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§ 761–774) of title VII of Pub. L. 111–203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111–203, set out as a note under section 77b of this title.

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 1996 AMENDMENT

Section 308(a) of title III of Pub. L. 104–290, as amended by Pub. L. 105–8, § 1, Mar. 31, 1997, 111 Stat. 15, provided that: ''This title [enacting section 80b–3a of this title, amending this section, sections 80b–3 and 80b–18a of this title, and section 1002 of Title 29, Labor, and enacting provisions set out as notes under sections 80b–3a, 80b–10, and 80b–20 of this title and section 1002 of Title 29] and the amendments made by this title shall take effect 270 days after the date of enactment of this Act [Oct. 11, 1996].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 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.

REGULATIONS; CONSTRUCTION

Pub. L. 111–203, title IV, § 409(b), (c), July 21, 2010, 124 Stat. 1575, provided that:

''(b) RULEMAKING.—The rules, regulations, or orders issued by the Commission pursuant to section 202(a)(11)(G) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2(a)(11)(G)], as added by this section, regarding the definition of the term 'family office' shall provide for an exemption that—

''(1) is consistent with the previous exemptive policy of the Commission, as reflected in exemptive orders for family offices in effect on the date of enactment of this Act [July 21, 2010], and the grandfathering provisions in paragraph (3);

''(2) recognizes the range of organizational, management, and employment structures and arrangements employed by family offices; and

''(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 et seq.] on January 1, 2010 from the definition of the term 'family office', solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

''(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

''(i) have invested with the family office before January 1, 2010; and

''(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or, as the Commission may

prescribe by rule, the successors-in-interest thereto;

''(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

''(C) any investment adviser registered under the Investment Adviser[s] Act of 1940 [15 U.S.C. 80b–1 et seq.] that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

''(c) ANTIFRAUD AUTHORITY.—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–6].''

[For definitions of ''Commission'' and ''investment adviser'' as used in section 409(b), (c) of Pub. L. 111–203, set out above, see section 5301 of Title 12, Banks and Banking, and section 402(b) of Pub. L. 111–203, set out below, respectively.]

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.

DEFINITIONS

Pub. L. 111–203, title IV, §402(b), July 21, 2010, 124 Stat. 1570, provided that: ''As used in this title [enacting sections 80b–18b and 80b–18c of this title, amending this section and sections 80b–3, 80b–3a, 80b–4, 80b–5, 80b–10, and 80b–11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b–20 of this title], the terms 'investment adviser' and 'private fund' have the same meanings as in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–2], as amended by this title.''

§ 80b–3. Registration of investment advisers

(a) Necessity of registration

Except as provided in subsection (b) of this section and section 80b–3a of this title, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

(b) Investment advisers who need not be registered

The provisions of subsection (a) of this section shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 3(c)(10)(D) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(D)], or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person's employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)]; or

(C) a trust or other donative instrument described in section 3(c)(10)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(10)(B)], or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of title 26, any person or entity eligible to establish and maintain such a plan under title 26, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a–3(c)(14)];

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 80b–2(a)(11) of this title, and that does not act as an investment adviser to—

(i) an investment company registered under subchapter I of this chapter; or

(ii) a company which has elected to be a business development company pursuant to section 80a–53 of this title and has not withdrawn its election; or

(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after July 21, 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission.[1]

(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a–53], who solely advises—

(A) small business investment companies that are licensees under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small

[1] So in original. The period probably should be ''; or''.