

sells products or services to a public utility company referred to in subparagraph (A), wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric or gas service in connection with the activities of such exempt telecommunications company.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

**(m) Independent audit authority for State commissions**

**(1) State may order audit**

Any State commission with jurisdiction over a public utility company that—

(A) is an associate company of a registered holding company; and

(B) transacts business, directly or indirectly, with a subsidiary company, an affiliate or an associate company that is an exempt telecommunications company,

may order an independent audit to be performed, no more frequently than on an annual basis, of all matters deemed relevant by the selected auditor that reasonably relate to retail rates: *Provided*, That such matters relate, directly or indirectly, to transactions or transfers between the public utility company subject to its jurisdiction and such exempt telecommunications company.

**(2) Selection of firm to conduct audit**

(A) If a State commission orders an audit in accordance with paragraph (1), the public utility company and the State commission shall jointly select, within 60 days, a firm to perform the audit. The firm selected to perform the audit shall possess demonstrated qualifications relating to—

(i) competency, including adequate technical training and professional proficiency in each discipline necessary to carry out the audit; and

(ii) independence and objectivity, including that the firm be free from personal or external impairments to independence, and should assume an independent position with the State commission and auditee, making certain that the audit is based upon an impartial consideration of all pertinent facts and responsible opinions.

(B) The public utility company and the exempt telecommunications company shall cooperate fully with all reasonable requests necessary to perform the audit and the public

utility company shall bear all costs of having the audit performed.

**(3) Availability of auditor's report**

The auditor's report shall be provided to the State commission not later than 6 months after the selection of the auditor, and provided to the public utility company not later than 60 days thereafter.

**(n) Applicability of telecommunications regulation**

Nothing in this section shall affect the authority of the Federal Communications Commission under the Communications Act of 1934 [47 U.S.C. 151 et seq.], or the authority of State commissions under State laws concerning the provision of telecommunications services, to regulate the activities of an exempt telecommunications company.

(Aug. 26, 1935, ch. 687, title I, §34, as added Pub. L. 104-104, title I, §103, Feb. 8, 1996, 110 Stat. 81.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsections. (a)(2) and (n), is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

This chapter, referred to in subsections. (b) to (e) and (j), was in the original "this Act", and was translated as reading "this title", meaning title I of act Aug. 26, 1935, ch. 687, known as the Public Utility Holding Company Act of 1935, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 34 of act Aug. 26, 1935, ch. 687, was renumbered section 35 and is classified to section 79z-6 of this title.

**§ 79z-6. Separability clause**

If any provision of this chapter or the application of such provision to any person or circumstances shall be held invalid, the remainder of the chapter and the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(Aug. 26, 1935, ch. 687, title I, §35, formerly §32, 49 Stat. 837; renumbered §34, Pub. L. 102-486, title VII, §711, Oct. 24, 1992, 106 Stat. 2905; renumbered §35, Pub. L. 104-104, title I, §103, Feb. 8, 1996, 110 Stat. 81.)

PRIOR PROVISIONS

A prior section 35 of act Aug. 26, 1935, ch. 687, was renumbered section 36 and is classified to section 79 of this title.

**CHAPTER 2D—INVESTMENT COMPANIES AND ADVISERS**

**SUBCHAPTER I—INVESTMENT COMPANIES**

Sec.	
80a-1.	Findings and declaration of policy. (a) Findings. (b) Policy.
80a-2.	Definitions; applicability; rulemaking considerations. (a) Definitions. (b) Applicability to government. (c) Consideration of promotion of efficiency, competition, and capital formation.

- |   |  |
|---|--|
| <p>Sec.<br/>80a-3. Definitions of investment company.<br/>    (a) Definitions.<br/>    (b) Exemption from provisions.<br/>    (c) Further exemptions.</p> <p>80a-3a. Protection of philanthropy under State law.<br/>    (a) Registration requirements.<br/>    (b) Treatment of charitable organizations.<br/>    (c) State action.<br/>    (d) Definitions.</p> <p>80a-4. Classification of investment companies.</p> <p>80a-5. Subclassification of management companies.<br/>    (a) Open-end and closed-end companies.<br/>    (b) Diversified and non-diversified companies.<br/>    (c) Loss of status as diversified company.</p> <p>80a-6. Exemptions.<br/>    (a) Exemption of specified investment companies.<br/>    (b) Exemption of employees' security company upon application; matters considered.<br/>    (c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest.<br/>    (d) Exemption of closed-end investment companies.<br/>    (e) Application of certain specified provisions of subchapter to otherwise exempt companies.<br/>    (f) Exemption of closed-end company treated as business development company.</p> <p>80a-7. Transactions by unregistered investment companies.<br/>    (a) Prohibition of transactions in interstate commerce by companies.<br/>    (b) Prohibition of transactions in interstate commerce by depositors or trustees of companies.<br/>    (c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies.<br/>    (d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions.<br/>    (e) Disclosure by exempt charitable organizations.</p> <p>80a-8. Registration of investment companies.<br/>    (a) Notification of registration; effective date of registration.<br/>    (b) Registration statement; contents.<br/>    (c) Alternative information.<br/>    (d) Registration of unit investment trusts.<br/>    (e) Failure to file registration statement or omissions of material fact.<br/>    (f) Cessation of existence as investment company.</p> <p>80a-9. Ineligibility of certain affiliated persons and underwriters.<br/>    (a) Persons deemed ineligible for service with investment companies, etc.; investment adviser.<br/>    (b) Certain persons serving investment companies; administrative action of Commission.<br/>    (c) Application of ineligible person for exemption.<br/>    (d) Money penalties in administrative proceedings.<br/>    (e) Authority to enter order requiring accounting and disgorgement.<br/>    (f) Cease-and-desist proceedings.<br/>    (g) Corporate or other trustees performing functions of investment advisors.</p> | <p>Sec.<br/>80a-10. Affiliations or interest of directors, officers, and employees.<br/>    (a) Interested persons of company who may serve on board of directors.<br/>    (b) Employment and use of directors, officers, etc., as regular broker, principal underwriter, or investment banker.<br/>    (c) Officers, directors, or employees of one bank as majority of board of directors of company; exceptions.<br/>    (d) Exception to limitation of number of interested persons who may serve on board of directors.<br/>    (e) Death, disqualification, or resignation of directors as suspension of limitation provisions.<br/>    (f) Officer, director, etc., of company acting as principal underwriter of security acquired by company.<br/>    (g) Advisory boards; restrictions on membership.<br/>    (h) Application of section to unincorporated registered management companies.</p> <p>80a-11. Offers to exchange securities.<br/>    (a) Approval by Commission for exchanges of securities on basis other than relative net asset value.<br/>    (b) Application of section to offers pursuant to plan of reorganization.<br/>    (c) Application of section to specific exchange offers.</p> <p>80a-12. Functions and activities of investment companies.<br/>    (a) Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions.<br/>    (b) Distribution by investment company of securities of which it is issuer.<br/>    (c) Limitations on commitments as underwriter.<br/>    (d) Limitations on acquisition by investment companies of securities of other specific businesses.<br/>    (e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc.<br/>    (f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations.<br/>    (g) Exceptions to limitation on ownership by investment company of securities of insurance company.</p> <p>80a-13. Changes in investment policy.</p> <p>80a-14. Size of investment companies.<br/>    (a) Public offerings.<br/>    (b) Study on effects of size.</p> <p>80a-15. Contracts of advisers and underwriters.<br/>    (a) Written contract to serve or act as investment adviser; contents.<br/>    (b) Written contract with company for sale by principal underwriter of security of which company is issuer; contents.<br/>    (c) Approval of contract to undertake service as investment adviser or principal underwriter by majority of noninterested directors.<br/>    (d) Equivalent of vote of majority of outstanding voting securities in case of common-law trust.<br/>    (e) Exemption of advisory boards or members from provisions of this section.</p> |
|---|--|

- | Sec.    |   | Sec.    |   |
|---------|---|---------|---|
|         | (f) Receipt of benefits by investment adviser from sale of securities or other interest in such investment adviser resulting in assignment of investment advisory contract. |         | (b) Rules relating to purchase of securities by members from issuer investment company.   |
| 80a-16. | Board of directors.   |         | (c) Conflicting rules of Commission and associations.   |
|         | (a) Election of directors.  |         | (d) Sale of securities except to or through principal underwriter; price of securities.   |
|         | (b) Term vacancies.   |         | (e) Suspension of right of redemption or postponement of date of payment.   |
|         | (c) Trustees of common-law trusts.  |         | (f) Restrictions on transferability or negotiability of securities.   |
| 80a-17. | Transactions of certain affiliated persons and underwriters.  |         | (g) Issuance of securities for services or property other than cash.  |
|         | (a) Prohibited transactions.  | 80a-23. | Closed-end companies.   |
|         | (b) Application for exemption of proposed transaction from certain restrictions.  |         | (a) Issuance of securities.   |
|         | (c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship.  |         | (b) Sale of common stock at price below current net asset value.  |
|         | (d) Joint or joint and several participation with company in transactions.  |         | (c) Purchase of securities of which it is issuer; exceptions.   |
|         | (e) Acceptance of compensation, commissions, fees, etc.   | 80a-24. | Registration of securities under Securities Act of 1933.  |
|         | (f) Custody and maintenance of securities and investments.  |         | (a) Registration statement; contents.   |
|         | (g) Bonding of officers and employees having access to securities or funds.   |         | (b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing.   |
|         | (h) Provisions in charter, by-laws, etc., protecting against liability for willful misfeasance, etc.  |         | (c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate.  |
|         | (i) Provisions in contracts protecting against willful misfeasance, etc.  |         | (d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust.        |
|         | (j) Rules and regulations prohibiting fraudulent, deceptive or manipulative courses of conduct.   |         | (e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts. |
| 80a-18. | Capital structure of investment companies.  |         | (f) Registration of indefinite amount of securities.  |
|         | (a) Qualifications on issuance of senior securities.  |         | (g) Additional prospectuses.  |
|         | (b) Asset coverage in respect of senior securities.   | 80a-25. | Reorganization plans; reports by Commission.  |
|         | (c) Prohibitions relating to issuance of senior securities.   |         | (a) Filing of reorganization plan and other information with Commission.  |
|         | (d) Warrants and rights to subscription.  |         | (b) Advisory report by Commission at request of shareholders.   |
|         | (e) Application of section to specific senior securities.   |         | (c) Enjoinder of plan of reorganization.  |
|         | (f) Senior securities securing loans from bank; securities not included in "senior security".   |         | (d) Application of section to reorganizations under title 11.   |
|         | (g) "Senior security" defined.  | 80a-26. | Unit investment trusts.   |
|         | (h) "Asset coverage" defined.   |         | (a) Custody and sale of securities.   |
|         | (i) Future issuance of stock as voting stock; exceptions.   |         | (b) Substitution of securities.   |
|         | (j) Securities issued by registered face-amount certificate company.  |         | (c) Binding contract or agreement embodying applicable provisions deemed to qualify non-complying instrument by which securities were issued.                         |
|         | (k) Application of section to companies operating under Small Business Investment Act provisions.   |         | (d) Liquidation of unit investment trust.   |
| 80a-19. | Payments or distributions.  |         | (e) Exemption.  |
|         | (a) Dividends; restriction; exception.  | 80a-27. | Periodic payment plans.   |
|         | (b) Long-term capital gains; limitation.  |         | (a) Sale of certificates; restrictions.   |
| 80a-20. | Proxies; voting trusts; circular ownership.   |         | (b) Exemptions.   |
|         | (a) Prohibition on use of means of interstate commerce for solicitation of proxies.   |         | (c) Sale of certificates; requirements.   |
|         | (b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates.   |         | (d) Surrender of certificates; regulations.   |
|         | (c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership.   |         | (e) Refund privileges; notice; rules.   |
|         | (d) Duty to eliminate existing cross-ownership or circular ownership.   |         | (f) Charges, statement; rules; surrender of certificates; regulations.  |
| 80a-21. | Loans by management companies.  |         | (g) Governing provisions; election.   |
| 80a-22. | Distribution, redemption, and repurchase of securities; regulations by securities associations.   |         | (h) Sale of certificates; restrictions.   |
|         | (a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption.                               | 80a-28. | Face-amount certificate companies.  |
|         |   |         | (a) Issuance or sale of certificates.   |
|         |   |         | (b) Asset requirements prior to sale of certificates.   |

Sec.		Sec.	
	(c) Certificate reserve requirements.		(b) Filing of information and documents.
	(d) Provisions required in certificate.		(c) Good faith conformance with rules, regulations, and orders.
	(e) Liability of holder to legal action for unpaid amount of certificate.	80a-38.	Procedure for issuance of rules and regulations.
	(f) Optional right to paid up certificate in lieu of cash surrender value.	80a-39.	Procedure for issuance of orders.
	(g) Application of section to company issuing certificates only to holders of previously issued certificates.		(a) Notice and hearing.
	(h) Declaration or payment of dividends.		(b) Application verified under oath admissible as evidence.
	(i) Application of section to certificates issued prior to effective date of section.		(c) Parties.
80a-29.	Reports and financial statements of investment companies and affiliated persons.	80a-40.	Hearings by Commission.
	(a) Annual report by company.	80a-41.	Enforcement of subchapter.
	(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders.		(a) Investigation.
	(c) Minimizing reporting burdens.		(b) Administration of oaths and affirmations, subpoena of witnesses, etc.
	(d) Reports under this section in lieu of reports under other provisions of law.		(c) Jurisdiction of courts of United States.
	(e) Semiannual reports to stockholders.		(d) Action for injunction.
	(f) Additional information.		(e) Money penalties in civil actions.
	(g) Certificate of independent public accountants.	80a-42.	Court review of orders.
	(h) Duties and liabilities of affiliated persons.	80a-43.	Jurisdiction of offenses and suits.
	(i) Disclosure to church plan participants.	80a-44.	Disclosure of information filed with Commission; copies.
	(j) Notice to Commission.	80a-45.	Reports by Commission; hiring and leasing authority.
80a-30.	Accounts and records.		(a) Annual report.
	(a) Maintenance of records.		(b) Hiring and leasing authority.
	(b) Examinations of records.	80a-46.	Validity of contracts.
	(c) Limitations on disclosure by Commission.		(a) Waiver of compliance as void.
	(d) Definitions.		(b) Equitable results; rescission; severance.
	(e) Regulatory authority.	80a-47.	Violation of subchapter.
	(f) Exemption authority.		(a) Procurement.
80a-31.	Accountants and auditors.		(b) Obstructing compliance.
	(a) Selection of accountant.	80a-48.	Penalties.
	(b) Selection of controller or other principal accounting officer.	80a-49.	Construction with other laws.
	(c) Reports of accountants and auditors.	80a-50.	Separability.
80a-32.	Filing of documents with Commission in civil actions.	80a-51.	Short title.
80a-33.	Destruction and falsification of reports and records.	80a-52.	Effective date.
	(a) Willful destruction.	80a-53.	Election to be regulated as business development company.
	(b) Untrue statements or omissions.		(a) Eligibility.
80a-34.	Unlawful representations and names.		(b) Form and manner of notification; effect.
	(a) Unlawful representation of guarantee by United States or agency thereof.		(c) Revocation or withdrawal of election.
	(b) Unlawful representation of sponsorship by United States or agency thereof.	80a-54.	Acquisition of assets by business development companies.
	(c) Statement of registration under securities provisions.		(a) Permissible assets; percentage.
	(d) Deceptive or misleading names.		(b) Valuation of assets.
80a-35.	Breach of fiduciary duty.	80a-55.	Qualifications of directors.
	(a) Civil actions by Commission; jurisdiction; allegations; injunctive or other relief.		(a) Non-interested persons.
	(b) Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction.		(b) Vacancies; suspension of provisions.
	(c) Corporate or other trustees performing functions of investment advisers.	80a-56.	Transactions with certain affiliates.
80a-36.	Larceny and embezzlement.		(a) Transactions involving controlling or closely affiliated persons.
80a-37.	Rules, regulations, and orders.		(b) Controlling or closely affiliated persons.
	(a) Powers of Commission.		(c) Exemption orders.
			(d) Transactions involving noncontrolling shareholders or affiliated persons.
			(e) Noncontrolling shareholders or affiliated persons; executive officer.
			(f) Approval of proposed transactions.
			(g) Transactions in the ordinary course of business.
			(h) Inquiry procedures.
			(i) Rules and regulations of Commission.
			(j) Warrants, options, and rights to purchase voting securities; loans to facilitate executive compensation plans.
			(k) Restriction on brokerage commissions.
			(l) Persons subject to brokerage commission restrictions.
			(m) Receipt of fee or salary from transaction participant.
			(n) Profit-sharing plans.

- Sec. (o) Required majority for approval of proposed transactions.
- 80a-57. Changes in investment policy.
- 80a-58. Incorporation of subchapter provisions.
- 80a-59. Functions and activities of business development companies.
- 80a-60. Capital structure.  
(a) Exceptions for business development company.  
(b) Compliance.
- 80a-61. Loans.
- 80a-62. Distribution and repurchase of securities.
- 80a-63. Accounts and records.  
(a) Exception for business development company.  
(b) Risk factors statement; availability.
- 80a-64. Preventing compliance with subchapter; liability of controlling persons.

## SUBCHAPTER II—INVESTMENT ADVISERS

- 80b-1. Findings.
- 80b-2. Definitions.
- 80b-3. Registration of investment advisers.  
(a) Necessity of registration.  
(b) Investment advisers who need not be registered.  
(c) Procedure for registration; filing of application; effective date of registration; amendment of registration.  
(d) Other acts prohibited by subchapter.  
(e) Censure, denial, or suspension of registration; notice and hearing.  
(f) Bar or suspension from association with investment adviser; notice and hearing.  
(g) Registration of successor to business of investment adviser.  
(h) Withdrawal of registration.  
(i) Money penalties in administrative proceedings.  
(j) Authority to enter order requiring accounting and disgorgement.  
(k) Cease-and-desist proceedings.
- 80b-3a. State and Federal responsibilities.  
(a) Advisers subject to State authorities.  
(b) Advisers subject to Commission authority.  
(c) Exemptions.  
(d) Filing depositories.  
(e) State assistance.
- 80b-4. Reports by investment advisers.
- 80b-4a. Prevention of misuse of nonpublic information.
- 80b-5. Investment advisory contracts.  
(a) Compensation, assignment, and partnership-membership provisions.  
(b) Compensation prohibition inapplicable to certain compensation computations.  
(c) Measurement of changes in compensation.  
(d) "Investment advisory contract" defined.  
(e) Exempt persons and transactions.
- 80b-6. Prohibited transactions by investment advisers.
- 80b-6a. Exemptions.
- 80b-7. Material misstatements.
- 80b-8. General prohibitions.  
(a) Representations of sponsorship by United States or agency thereof.  
(b) Statement of registration under Securities Exchange Act of 1934 provisions.  
(c) Use of name "investment counsel" as descriptive of business.  
(d) Use of indirect means to do prohibited act.

- Sec. 80b-9. Enforcement of subchapter.  
(a) Investigation.  
(b) Administration of oaths and affirmations, subpoena of witnesses, etc.  
(c) Jurisdiction of courts of United States.  
(d) Action for injunction.  
(e) Money penalties in civil actions.
- 80b-10. Disclosure of information by Commission.  
(a) Information available to public.  
(b) Disclosure of fact of examination or investigation; exceptions.  
(c) Disclosure by investment adviser of identity of clients.
- 80b-10a. Consultation.  
(a) Examination results and other information.  
(b) Effect on other authority.  
(c) Definition.
- 80b-11. Rules, regulations, and orders of Commission.  
(a) Power of Commission.  
(b) Effective date of regulations.  
(c) Orders of Commission after notice and hearing; type of notice.  
(d) Good faith compliance with rules and regulations.
- 80b-12. Hearings.
- 80b-13. Court review of orders.  
(a) Petition; jurisdiction; findings of Commission; additional evidence; finality.  
(b) Stay of Commission's order.
- 80b-14. Jurisdiction of offenses and suits.
- 80b-15. Validity of contracts.  
(a) Waiver of compliance as void.  
(b) Rights affected by invalidity.
- 80b-16. Annual reports of Commission.
- 80b-17. Penalties.
- 80b-18. Hiring and leasing authority of Commission.
- 80b-18a. State regulation of investment advisers.  
(a) Jurisdiction of State regulators.  
(b) Dual compliance purposes.  
(c) Limitation on capital and bond requirements.  
(d) National de minimis standard.
- 80b-19. Separability.
- 80b-20. Short title.
- 80b-21. Effective date.

## SUBCHAPTER I—INVESTMENT COMPANIES

## SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 77b, 77r, 78c, 78m, 78n, 78o, 78s, 78u-2, 80b-2, 80b-3, 80b-3a, 80b-5, 687, 687b, 3904, 6805 of this title; title 7 sections 6, 12a; title 12 sections 1464, 1465, 1820a, 1831a, 1843, 1844, 2279aa-12, 3503; title 26 sections 368, 851, 852, 856, 1246, 4975, 6049; title 29 sections 432, 1001, 1002, 1101; title 42 section 9675; title 43 section 1625.

## § 80a-1. Findings and declaration of policy

## (a) Findings

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z-4 of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

- (1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous