

“(2) The amendment made by subsection (b) of this section [amending section 78m of this title] shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act [Feb. 5, 1976].

“(3) The amendment made by subsection (c) of this section [amending this section] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976]”.

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 1942 AMENDMENT

Act Oct. 21, 1942, ch. 619, title I, §162(d), 56 Stat. 866 (Revenue Act of 1942), as amended by act Dec. 17, 1943, ch. 346, §3, 57 Stat. 602, provided: “TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section [to this section and sections 22, 23, and 165 of Title 26, I.R.C. 1939] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

“(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

“(A) such a plan shall not become subject to the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] until the beginning of the first taxable year beginning after December 31, 1942.

“(B) such a plan shall be considered as satisfying the requirements of section 165(a), (3), (4), and (5) and (6) [of Title 26, I.R.C. 1939] for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944.

“(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p)(1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

“(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section 23(a) or 23(p) prior to amendment by this section, and

“(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p)(1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

“(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later.”

REGULATIONS

Pub. L. 104-290, title II, §209(d)(1), Oct. 11, 1996, 110 Stat. 3435, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules to implement the requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)(B)), as amended by this section.”

Pub. L. 104-290, title II, §209(d)(3), Oct. 11, 1996, 110 Stat. 3436, provided that: “Not later than 1 year after

the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 [15 U.S.C. 80a-6] to permit the ownership of securities by knowledgeable employees of the issuer of the securities or an affiliated person without loss of the exception of the issuer under paragraph (1) or (7) of section 3(c) of that Act [15 U.S.C. 80a-3(c)] from treatment as an investment company under that Act [15 U.S.C. 80a-1 et seq.]”

Pub. L. 104-290, title II, §209(d)(4), Oct. 11, 1996, 110 Stat. 3436, provided that: “Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term ‘beneficial owner’ for purposes of section 3(c)(7)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(7)(B)], as amended by this Act.”

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.

PROTECTION OF CHURCH EMPLOYEE BENEFIT PLANS UNDER STATE LAW

Pub. L. 104-290, title V, §508(f), Oct. 11, 1996, 110 Stat. 3448, provided that:

“(1) REGISTRATION REQUIREMENTS.—Any security issued by or any interest or participation in any church plan, company, or account 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)], as added by subsection (a) of this section, and any offer, sale, or purchase thereof, shall be exempt from any law of a State that requires registration or qualification of securities.

“(2) TREATMENT OF CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986 [26 U.S.C. 414(e)], no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], no company or account 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)], as added by subsection (a) of this section, and no trustee, director, officer, or employee of or volunteer for any such plan, person, entity, company, or account shall be required to qualify, register, or be subject to regulation as an investment company or as a broker, dealer, investment adviser, or agent under the laws of any State solely because such plan, person, entity, company, or account buys, holds, sells, or trades in securities for its own account or in its capacity as a trustee or administrator of or otherwise on behalf of, or for the account of, or provides investment advice to, for, or on behalf of, any such plan, person, or entity or any company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section.”

§ 80a-3a. Protection of philanthropy under State law

(a) Registration requirements

A security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title, and the offer or sale thereof, shall be exempt from any statute or regulation of a State that requires registration or qualification of securities.

(b) Treatment of charitable organizations

No charitable organization, or any trustee, director, officer, employee, or volunteer of a char-

itable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

- (1) a charitable organization;
- (2) a fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title; or
- (3) a trust or other donative instrument described in section 80a-3(c)(10)(B) of this title, or the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) State action

Notwithstanding subsections (a) and (b) of this section, during the 3-year period beginning on December 8, 1995, a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

(d) Definitions

For purposes of this section—

- (1) the term “charitable organization” means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;
- (2) the term “security” has the same meaning as in section 78c of this title; and
- (3) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 104-62, § 6, Dec. 8, 1995, 109 Stat. 685.)

CODIFICATION

Section was enacted as part of the Philanthropy Protection Act of 1995, and not as part of the Investment Company Act of 1940 which comprises this subchapter.

EFFECTIVE DATE

Section applicable as defense to any claim in administrative and judicial actions pending on or commenced after Dec. 8, 1995, that any person, security, interest, or participation of type described in Pub. L. 104-62 is subject to the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, the Investment Advisers Act of 1940, or any State statute or regulation preempted as provided in this section, except as specifically provided in such statutes, see section 7 of Pub. L. 104-62, set out as an Effective Date of 1995 Amendment note under section 77c of this title.

§ 80a-4. Classification of investment companies

For the purposes of this subchapter, investment companies are divided into three principal classes, defined as follows:

- (1) “Face-amount certificate company” means an investment company which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such

business and has any such certificate outstanding.

(2) “Unit investment trust” means an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.

(3) “Management company” means any investment company other than a face-amount certificate company or a unit investment trust.

(Aug. 22, 1940, ch. 686, title I, § 4, 54 Stat. 799.)

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-5. Subclassification of management companies

(a) Open-end and closed-end companies

For the purposes of this subchapter, management companies are divided into open-end and closed-end companies, defined as follows:

- (1) “Open-end company” means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.
- (2) “Closed-end company” means any management company other than an open-end company.

(b) Diversified and non-diversified companies

Management companies are further divided into diversified companies and non-diversified companies, defined as follows:

- (1) “Diversified company” means a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

(2) “Non-diversified company” means any management company other than a diversified company.

(c) Loss of status as diversified company

A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) of this section shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy existing immediately after its acquisition of any security or other property is neither wholly nor partly the result of such acquisition.