

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.