

folio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 80a-2(a)(46)(C)(ii) of this title;

(3) securities purchased in transactions not involving any public offering from an issuer described in sections 80a-2(a)(46)(A) and (B) of this title or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

(C) issued by an issuer that, immediately prior to the purchase of such issuer's securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for such securities and if immediately prior to such purchase the business development company owns at least 60 per centum of the outstanding equity securities of such issuer (giving effect to all securities presently convertible into or exchangeable for equity securities of such issuer as if such securities were so converted or exchanged);

(5) securities received in exchange for or distributed on or with respect to securities described in paragraphs (1) through (4) of this subsection, or pursuant to the exercise of options, warrants, or rights relating to securities described in such paragraphs;

(6) cash, cash items, Government securities, or high quality debt securities maturing in one year or less from the time of investment in such high quality debt securities; and

(7) office furniture and equipment, interests in real estate and leasehold improvements and facilities maintained to conduct the business operations of the business development com-

pany, deferred organization and operating expenses, and other noninvestment assets necessary and appropriate to its operations as a business development company, including notes of indebtedness of directors, officers, employees, and general partners held by a business development company as payment for securities of such company issued in connection with an executive compensation plan described in section 80a-56(j) of this title.

#### (b) Valuation of assets

For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent financial statements filed by such company with the Commission pursuant to section 78m of this title, and shall be determined no less frequently than annually.

(Aug. 22, 1940, ch. 686, title I, § 55, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100-181, title VI, § 626, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104-290, title V, § 505, Oct. 11, 1996, 110 Stat. 3446.)

#### REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1), 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.

#### AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-290 substituted “from any person” for “or from any person” and inserted before semicolon “, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”.

1987—Subsec. (a)(1)(B). Pub. L. 100-181 substituted “described in section” for “described in sections”.

### § 80a-55. Qualifications of directors

#### (a) Non-interested persons

A majority of a business development company's directors or general partners shall be persons who are not interested persons of such company.

#### (b) Vacancies; suspension of provisions

If, by reason of the death, disqualification, or bona fide resignation of any director or general partner, a business development company does not meet the requirements of subsection (a) of this section, or the requirements of section 80a-15(f)(1) of this title with respect to directors, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the Commission may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(Aug. 22, 1940, ch. 686, title I, § 56, as added Pub. L. 96-477, title I § 105, Oct. 21, 1980, 94 Stat. 2280.)

### § 80a-56. Transactions with certain affiliates

#### (a) Transactions involving controlling or closely affiliated persons

It shall be unlawful for any person who is related to a business development company in a