

velopment company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 80a-56(j) of this title; or

(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.

(Aug. 22, 1940, ch. 686, title I, § 62, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2287.)

#### § 80a-62. Distribution and repurchase of securities

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-23 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 as follows:

(1) The prohibitions of section 80a-23(a)(2) of this title shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 80a-3(a) of this title.

(2) Notwithstanding the provisions of section 80a-23(b) of this title, a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

(A) the holders of a majority of such business development company's outstanding voting securities, and the holders of a majority of such company's outstanding voting securities that are not affiliated persons of such company, approved such company's policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities;

(B) a required majority (as defined in section 80a-56(o) of this title) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

(C) a required majority (as defined in section 80a-56(o) of this title) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that

the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

(3) A business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 80a-60(a)(3) of this title.

(Aug. 22, 1940, ch. 686, title I, § 63, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2288.)

#### § 80a-63. Accounts and records

##### (a) Exception for business development company

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-30 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 reference to the financial statements required to be filed pursuant to section 80a-29 of this title shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 78m of this title.

##### (b) Risk factors statement; availability

(1) In addition to the requirements of subsection (a) of this section, a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors involved in an investment in the securities of a business development company due to the nature of such company's investment portfolio and capital structure, and shall supply copies of such statement to any registered broker or dealer upon request.

(2) If the Commission finds it is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

(Aug. 22, 1940, ch. 686, title I, § 64, as added Pub. L. 96-477, title I § 105, Oct. 21, 1980, 94 Stat. 2289; amended Pub. L. 104-290, title V, § 507, Oct. 11, 1996, 110 Stat. 3446.)

#### AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-290 inserted “and capital structure” after “portfolio”.