

taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 80a-18(a) of this title.

#### (b) Compliance

A business development company shall comply with the provisions of this section at the time it becomes subject to sections 80a-54 through 80a-64 of this title, as if it were issuing a security of each class which it has outstanding at such time.

(Aug. 22, 1940, ch. 686, title I, §61, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2286; amended Pub. L. 104-290, title V, §506, Oct. 11, 1996, 110 Stat. 3446; Pub. L. 111-203, title IX, §985(d)(5), July 21, 2010, 124 Stat. 1934.)

#### REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (a)(4), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

#### AMENDMENTS

2010—Subsec. (a)(3)(B)(iii). Pub. L. 111-203 substituted “section 80b-5(a)(1) of this title” for “paragraph (1) of section 80b-5 of this title” and “paragraph (1) or (2) of section 80b-5(b) of this title” for “clause (A) or (B) of that section”.

1996—Subsec. (a)(2). Pub. L. 104-290, §506(1), substituted a period for “if such business development company does not have outstanding any publicly held indebtedness, and all such securities of each class are—

“(A) privately held or guaranteed by the Small Business Administration, or banks, insurance companies, or other institutional investors; and

“(B) not intended to be publicly distributed.”

Subsec. (a)(3)(A). Pub. L. 104-290, §506(2)(A), (B), inserted “accompanied by securities,” after “of such company,” and struck out “senior securities representing indebtedness accompanied by” before “warrants, options, or rights”.

Subsec. (a)(3)(A)(ii). Pub. L. 104-290, §506(2)(C), struck out “senior” before “securities”.

Subsec. (a)(3)(C). Pub. L. 104-290, §506(3), added subpar. (C).

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

#### § 80a-61. Loans

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-21 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 nothing in that section shall be deemed to prohibit—

(1) any loan to a director, officer, or employee of, or general partner in, a business development 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.