

“(3) does not exclude any person who was not registered or required to be registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b-1 et seq.] on January 1, 2010 from the definition of the term ‘family office’, solely because such person provides investment advice to, and was engaged before January 1, 2010 in providing investment advice to—

“(A) natural persons who, at the time of their applicable investment, are officers, directors, or employees of the family office who—

“(i) have invested with the family office before January 1, 2010; and

“(ii) are accredited investors, as defined in Regulation D of the Commission (or any successor thereto) under the Securities Act of 1933 [15 U.S.C. 77a et seq.], or, as the Commission may prescribe by rule, the successors-in-interest thereto;

“(B) any company owned exclusively and controlled by members of the family of the family office, or as the Commission may prescribe by rule;

“(C) any investment adviser registered under the Investment Adviser[s] Act of 1940 [15 U.S.C. 80b-1 et seq.] that provides investment advice to the family office and who identifies investment opportunities to the family office, and invests in such transactions on substantially the same terms as the family office invests, but does not invest in other funds advised by the family office, and whose assets as to which the family office directly or indirectly provides investment advice represent, in the aggregate, not more than 5 percent of the value of the total assets as to which the family office provides investment advice.

“(c) ANTIFRAUD AUTHORITY.—A family office that would not be a family office, but for subsection (b)(3), shall be deemed to be an investment adviser for the purposes of paragraphs (1), (2) and (4) of section 206 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-6].”

[For definitions of “Commission” and “investment adviser” as used in section 409(b), (c) of Pub. L. 111-203, set out above, see section 5301 of Title 12, Banks and Banking, and section 402(b) of Pub. L. 111-203, set out below, respectively.]

#### 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.

#### DEFINITIONS

Pub. L. 111-203, title IV, § 402(b), July 21, 2010, 124 Stat. 1570, provided that: “As used in this title [enacting sections 80b-18b and 80b-18c of this title, amending this section and sections 80b-3, 80b-3a, 80b-4, 80b-5, 80b-10, and 80b-11 of this title, and enacting provisions set out as notes under this section and sections 77b and 80b-20 of this title], the terms ‘investment adviser’ and ‘private fund’ have the same meanings as in section 202 of the Investment Advisers Act of 1940 [15 U.S.C. 80b-2], as amended by this title.”

### § 80b-3. Registration of investment advisers

#### (a) Necessity of registration

Except as provided in subsection (b) and section 80b-3a of this title, it shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.

#### (b) Investment advisers who need not be registered

The provisions of subsection (a) shall not apply to—

(1) any investment adviser, other than an investment adviser who acts as an investment adviser to any private fund, all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

(2) any investment adviser whose only clients are insurance companies;

(3) any investment adviser that is a foreign private adviser;

(4) any investment adviser that is a charitable organization, as defined in section 80a-3(c)(10)(D) of this title, or is a trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of such person’s employment or duties with such organization, whose advice, analyses, or reports are provided only to one or more of the following:

(A) any such charitable organization;

(B) a fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title; or

(C) a trust or other donative instrument described in section 80a-3(c)(10)(B) of this title, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument;

(5) any plan described in section 414(e) of title 26, any person or entity eligible to establish and maintain such a plan under title 26, or any trustee, director, officer, or employee of or volunteer for any such plan or person, if such person or entity, acting in such capacity, provides investment advice exclusively to, or with respect to, any plan, person, or entity or any company, account, or fund that is excluded from the definition of an investment company under section 80a-3(c)(14) of this title;

(6)(A) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 80b-2(a)(11) of this title, and that does not act as an investment adviser to—

(i) an investment company registered under subchapter I of this chapter; or

(ii) a company which has elected to be a business development company pursuant to section 80a-53 of this title and has not withdrawn its election; or

(B) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor and advises a private fund, provided that, if after July 21, 2010, the business of the advisor should become predominately the provision of securities-related advice, then such adviser shall register with the Commission.<sup>1</sup>

(7) any investment adviser, other than any entity that has elected to be regulated or is regulated as a business development company

<sup>1</sup> So in original. The period probably should be “; or”.

pursuant to section 80a-53 of this title, who solely advises—

(A) small business investment companies that are licensees under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(B) entities that have received from the Small Business Administration notice to proceed to qualify for a license as a small business investment company under the Small Business Investment Act of 1958, which notice or license has not been revoked; or

(C) applicants that are affiliated with 1 or more licensed small business investment companies described in subparagraph (A) and that have applied for another license under the Small Business Investment Act of 1958, which application remains pending.

**(c) Procedure for registration; filing of application; effective date of registration; amendment of registration**

(1) An investment adviser, or any person who presently contemplates becoming an investment adviser, may be registered by filing with the Commission an application for registration in such form and containing such of the following information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors:

(A) the name and form of organization under which the investment adviser engages or intends to engage in business; the name of the State or other sovereign power under which such investment adviser is organized; the location of his or its principal office, principal place of business, and branch offices, if any; the names and addresses of his or its partners, officers, directors, and persons performing similar functions or, if such an investment adviser be an individual, of such individual; and the number of his or its employees;

(B) the education, the business affiliations for the past ten years, and the present business affiliations of such investment adviser and of his or its partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(C) the nature of the business of such investment adviser, including the manner of giving advice and rendering analyses or reports;

(D) a balance sheet certified by an independent public accountant and other financial statements (which shall, as the Commission specifies, be certified);

(E) the nature and scope of the authority of such investment adviser with respect to clients' funds and accounts;

(F) the basis or bases upon which such investment adviser is compensated;

(G) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e) of this section; and

(H) a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser

and a statement as to whether a substantial part of the business of such investment adviser, consists or is to consist of rendering investment supervisory services.

(2) Within forty-five days of the date of the filing of such application (or within such longer period as to which the applicant consents) the Commission shall—

(A) by order grant such registration; or

(B) institute proceedings to determine whether registration should be denied. Such proceedings shall include notice of the grounds for denial under consideration and opportunity for hearing and shall be concluded within one hundred twenty days of the date of the filing of the application for registration. At the conclusion of such proceedings the Commission, by order, shall grant or deny such registration. The Commission may extend the time for conclusion of such proceedings for up to ninety days if it finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the applicant consents.

The Commission shall grant such registration if the Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an investment adviser under section 80b-3a of this title. The Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section.

**(d) Other acts prohibited by subchapter**

Any provision of this subchapter (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.

**(e) Censure, denial, or suspension of registration; notice and hearing**

The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding twelve months, or revoke the registration of any investment adviser if it finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is in the public interest and that such investment adviser, or any person associated with such investment adviser, whether prior to or subsequent to becoming so associated—

(1) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was at the time and in the light of the circumstances under which it was made false or misleading

with respect to any material fact, or has omitted to state in any such application or report any material fact which is required to be stated therein.

(2) has been convicted within ten years preceding the filing of any application for registration or at any time thereafter of any felony or misdemeanor or of a substantially equivalent crime by a foreign court of competent jurisdiction which the Commission finds—

(A) involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, any substantially equivalent activity however denominated by the laws of the relevant foreign government, or conspiracy to commit any such offense;

(B) arises out of the conduct of the business of a broker, dealer, municipal securities dealer, investment adviser, bank, insurance company, government securities broker, government securities dealer, fiduciary, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation;

(C) involves the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities or substantially equivalent activity however denominated by the laws of the relevant foreign government; or

(D) involves the violation of section 152, 1341, 1342, or 1343 or chapter 25 or 47 of title 18, or a violation of<sup>2</sup> substantially equivalent foreign statute.

(3) has been convicted during the 10-year period preceding the date of filing of any application for registration, or at any time thereafter, of—

(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in paragraph (2); or

(B) a substantially equivalent crime by a foreign court of competent jurisdiction.

(4) is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, including any foreign court of competent jurisdiction, from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, credit rating agency, foreign person performing a function substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.] or any substantially equivalent statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commod-

ity Exchange Act or any substantially equivalent statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(5) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], or the rules or regulations under any such statutes or any rule of the Municipal Securities Rulemaking Board, or is unable to comply with any such provision.

(6) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, this subchapter, the Commodity Exchange Act [7 U.S.C. 1 et seq.], the rules or regulations under any of such statutes, or the rules of the Municipal Securities Rulemaking Board, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules and regulations, another person who commits such a violation, if such other person is subject to his supervision. For the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person, if—

(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and

(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.

(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;

(8) has been found by a foreign financial regulatory authority to have—

(A) made or caused to be made in any application for registration or report required to be filed with a foreign securities authority, or in any proceeding before a foreign securities authority with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to state in any application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the

<sup>2</sup>So in original. Probably should be "of a".

rules of a contract market or any board of trade, or has been found, by the foreign financial<sup>3</sup> regulatory authority, to have failed reasonably to supervise, with a view to preventing violations of statutory provisions, and rules and regulations promulgated thereunder, another person who commits such a violation, if such other person is subject to his supervision; or

(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.

**(f) Bar or suspension from association with investment adviser; notice and hearing**

The Commission, by order, shall censure or place limitations on the activities of any person associated, seeking to become associated, or, at the time of the alleged misconduct, associated or seeking to become associated with an investment adviser, or suspend for a period not exceeding 12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (5), (6), (8), or (9) of subsection (e) or has been convicted of any offense specified in paragraph (2) or (3) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (4) of subsection (e). It shall be unlawful for any person as to whom such an order suspending or barring him from being associated with an investment adviser is in effect willfully to become, or to be, associated with an investment adviser without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with him without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care, should have known, of such order.

<sup>3</sup> So in original. Probably should be "financial".

**(g) Registration of successor to business of investment adviser**

Any successor to the business of an investment adviser registered under this section shall be deemed likewise registered hereunder, if within thirty days from its succession to such business it shall file an application for registration under this section, unless and until the Commission, pursuant to subsection (c) or subsection (e) of this section, shall deny registration to or revoke or suspend the registration of such successor.

**(h) Withdrawal of registration**

Any person registered under this section may, upon such terms and conditions as the Commission finds necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. If the Commission finds that any person registered under this section, or who has pending an application for registration filed under this section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 80b-3a of this title, the Commission shall by order cancel the registration of such person.

**(i) Money penalties in administrative proceedings**

**(1) Authority of Commission**

**(A) In general**

In any proceeding instituted pursuant to subsection (e) or (f) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest and that such person—

(i) has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter I of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person;

(iii) has willfully made or caused to be made in any application for registration or report required to be filed with the Commission under this subchapter, or in any proceeding before the Commission with respect to registration, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein; or

(iv) has failed reasonably to supervise, within the meaning of subsection (e)(6), with a view to preventing violations of the provisions of this subchapter and the rules and regulations thereunder, another person who commits such a violation, if such other person is subject to his supervision;<sup>4</sup>

**(B) Cease-and-desist proceedings**

In any proceeding instituted pursuant to subsection (k) against any person, the Com-

<sup>4</sup> So in original. The semicolon probably should be a period.

mission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

**(2) Maximum amount of penalty**

**(A) First tier**

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for a natural person or \$50,000 for any other person.

**(B) Second tier**

Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be \$50,000 for a natural person or \$250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

**(C) Third tier**

Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be \$100,000 for a natural person or \$500,000 for any other person if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

**(3) Determination of public interest**

In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in subsection (e)(2);

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

**(4) Evidence concerning ability to pay**

In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon such person's assets and the amount of such person's assets.

**(j) Authority to enter order requiring accounting and disgorgement**

In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

**(k) Cease-and-desist proceedings**

**(1) Authority of Commission**

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

**(2) Hearing**

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

**(3) Temporary order****(A) In general**

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission, notwithstanding section 80b-11(c) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

**(B) Applicability**

This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

**(4) Review of temporary orders****(A) Commission review**

At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

**(B) Judicial review**

Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing, or

(ii) 10 days after the Commission renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal office or place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under subparagraph (A) of this paragraph.

**(C) No automatic stay of temporary order**

The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

**(D) Exclusive review**

Section 80b-13 of this title shall not apply to a temporary order entered pursuant to this section.

**(5) Authority to enter order requiring accounting and disgorgement**

In any cease-and-desist proceeding under paragraph (1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

**(I) Exemption of venture capital fund advisers****(1) In general**

No investment adviser that acts as an investment adviser solely to 1 or more venture capital funds shall be subject to the registration requirements of this subchapter with respect to the provision of investment advice relating to a venture capital fund. Not later than 1 year after July 21, 2010, the Commission shall issue final rules to define the term "venture capital fund" for purposes of this subsection. The Commission shall require such advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

**(2) Advisers of SBICS**

For purposes of this subsection, a venture capital fund includes an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title).

**(m) Exemption of and reporting by certain private fund advisers****(1) In general**

The Commission shall provide an exemption from the registration requirements under this section to any investment adviser of private funds, if each of<sup>5</sup> such investment adviser acts solely as an adviser to private funds and has assets under management in the United States of less than \$150,000,000.

**(2) Reporting**

The Commission shall require investment advisers exempted by reason of this subsection to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary or appropriate in the public interest or for the protection of investors.

**(3) Advisers of SBICS**

For purposes of this subsection, the assets under management of a private fund that is an entity described in subparagraph (A), (B), or (C) of subsection (b)(7) (other than an entity that has elected to be regulated or is regulated as a business development company pursuant to section 80a-53 of this title) shall be excluded from the limit set forth in paragraph (1).

**(n) Registration and examination of mid-sized private fund advisers**

In prescribing regulations to carry out the requirements of this section with respect to investment advisers acting as investment advisers to mid-sized private funds, the Commission shall take into account the size, governance, and investment strategy of such funds to determine whether they pose systemic risk, and shall provide for registration and examination procedures with respect to the investment advisers of such funds which reflect the level of systemic risk posed by such funds.

(Aug. 22, 1940, ch. 686, title II, § 203, 54 Stat. 850; Pub. L. 86-750, §§ 2-5, Sept. 13, 1960, 74 Stat. 885, 886; Pub. L. 91-547, § 24, Dec. 14, 1970, 84 Stat. 1430; Pub. L. 94-29, § 29(1)-(4), June 4, 1975, 89 Stat. 166-169; Pub. L. 96-477, title II, § 202, Oct. 21, 1980, 94 Stat. 2290; Pub. L. 99-571, title I, § 102(m), Oct. 28, 1986, 100 Stat. 3220; Pub. L. 100-181, title VII, § 702, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 101-429, title IV, § 401, Oct. 15, 1990, 104 Stat. 946; Pub. L. 101-550, title II, § 205(b), (c), Nov. 15, 1990, 104 Stat. 2719, 2720; Pub. L. 104-62, § 5, Dec. 8, 1995, 109 Stat. 685; Pub. L. 104-290, title III, §§ 303(b), (d), 305, title V, § 508(d), Oct. 11, 1996, 110 Stat. 3438, 3439, 3448; Pub. L. 105-353, title III, § 301(d)(1), Nov. 3, 1998, 112 Stat. 3237; Pub. L. 106-554, § 1(a)(5) [title II, § 209(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A-436; Pub. L. 107-204, title VI, § 604(b), (c)(2), July 30, 2002, 116 Stat. 796; Pub. L. 109-291, § 4(b)(3)(C), Sept. 29, 2006, 120 Stat. 1337; Pub. L. 111-203, title IV, §§ 403, 407, 408, title IX, §§ 925(b), 929P(a)(4), 985(e)(1), July 21, 2010, 124 Stat. 1571, 1574, 1575, 1851, 1864, 1935; Pub. L. 114-94, div. G, title LXXIV, §§ 74001, 74002, Dec. 4, 2015, 129 Stat. 1786.)

## REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsec. (b)(7), is Pub. L. 85-699, Aug. 21, 1958, 72

Stat. 689, 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.

The Commodity Exchange Act, referred to in subsec. (e)(2)(B), (4)-(6), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

The Securities Act of 1933, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, 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.

The Securities Exchange Act of 1934, referred to in subsecs. (e)(5), (6) and (i)(1)(A)(i), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

## AMENDMENTS

2015—Subsec. (l). Pub. L. 114-94, § 74001, designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsec. (m)(3). Pub. L. 114-94, § 74002, added par. (3).

2010—Subsec. (b)(1). Pub. L. 111-203, § 403(1), inserted “, other than an investment adviser who acts as an investment adviser to any private fund,” after “any investment adviser”.

Subsec. (b)(3). Pub. L. 111-203, § 403(2), added par. (3) and struck out former par. (3) which read as follows: “any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under subchapter I of this chapter, or a company which has elected to be a business development company pursuant to section 80a-53 of this title and has not withdrawn its election. For purposes of determining the number of clients of an investment adviser under this paragraph, no shareholder, partner, or beneficial owner of a business development company, as defined in this subchapter, shall be deemed to be a client of such investment adviser unless such person is a client of such investment adviser separate and apart from his status as a shareholder, partner, or beneficial owner;”.

Subsec. (b)(5). Pub. L. 111-203, § 403(3), struck out “or” at end.

Subsec. (b)(6). Pub. L. 111-203, § 403(4), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (b)(7). Pub. L. 111-203, § 403(5), added par. (7).

Subsec. (c)(1)(A). Pub. L. 111-203, § 985(e)(1)(A), substituted “principal office, principal place of business, and” for “principal business office and”.

Subsec. (f). Pub. L. 111-203, § 925(b), substituted “12 months or bar any such person from being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization,” for “twelve months or bar any such person from being associated with an investment adviser.”.

Subsec. (i)(1). Pub. L. 111-203, § 929P(a)(4), designated existing provisions as subpar. (A) and inserted heading, inserted “that such penalty is in the public interest and” before “that such person—” in introductory provisions, redesignated former subpars. (A) to (D) as cls. (i) to (iv), respectively, and realigned margins, struck out concluding provisions which read “and that such penalty is in the public interest.”, and added subpar. (B).

Subsec. (k)(4)(B). Pub. L. 111-203, § 985(e)(1)(B), substituted “principal office or place of business” for “principal place of business” in concluding provisions. Subsec. (l). Pub. L. 111-203, § 407, added subsec. (l).

Subsecs. (m), (n). Pub. L. 111-203, § 408, added subsecs. (m) and (n).

<sup>5</sup> So in original. The word “of” probably should not appear.

2006—Subsec. (e)(2)(B), (4). Pub. L. 109-291 inserted “credit rating agency,” after “transfer agent.”

2002—Subsec. (e)(7). Pub. L. 107-204, § 604(b)(1), added par. (7) and struck out former par. (7) which read as follows: “is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser which order is in effect with respect to such person.”

Subsec. (e)(9). Pub. L. 107-204, § 604(b)(2), (3), added par. (9).

Subsec. (f). Pub. L. 107-204, § 604(c)(2), substituted “(8), or (9)” for “or (8)” and inserted “or (3)” after “paragraph (2)”.

2000—Subsec. (b)(6). Pub. L. 106-554 added par. (6).

1998—Subsec. (e)(8)(B). Pub. L. 105-353 inserted “or” after semicolon at end.

1996—Subsec. (a). Pub. L. 104-290, § 303(d), which directed substitution of “subsection (b) and section 80b-3a of this title” for “subsection (b) of this section”, was executed by making the substitution for “subsection (b)” to reflect the probable intent of Congress.

Subsec. (b)(5). Pub. L. 104-290, § 508(d), added par. (5).

Subsec. (c)(2). Pub. L. 104-290, § 303(b)(1), inserted “and that the applicant is not prohibited from registering as an investment adviser under section 80b-3a of this title” after “satisfied” in closing provisions.

Subsec. (e)(3) to (5). Pub. L. 104-290, § 305(a), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively. Former par. (5) redesignated (6).

Subsec. (e)(6). Pub. L. 104-290, § 305(b)(1), substituted “this paragraph” for “this paragraph (5)”.

Pub. L. 104-290, § 305(a)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (e)(7), (8). Pub. L. 104-290, § 305(a)(1), redesignated pars. (6) and (7) as (7) and (8), respectively.

Subsec. (f). Pub. L. 104-290, § 305(b)(2), substituted “paragraph (1), (5), (6), or (8) of subsection (e)” for “paragraph (1), (4), (5), or (7) of subsection (e) of this section” and “paragraph (4)” for “paragraph (3)” and substituted “subsection (e)” for “said subsection (e)” in two places.

Subsec. (h). Pub. L. 104-290, § 303(b)(2), substituted “existence,” for “existence or” and inserted “or is prohibited from registering as an investment adviser under section 80b-3a of this title,” after “investment adviser.”

Subsec. (i)(1)(D). Pub. L. 104-290, § 305(b)(3), substituted “subsection (e)(6)” for “subsection (e)(5)”.

1995—Subsec. (b)(4). Pub. L. 104-62 added par. (4).

1990—Subsec. (e)(2). Pub. L. 101-550, § 205(b)(1), inserted “or of a substantially equivalent crime by a foreign court of competent jurisdiction” after “misdemeanor”.

Subsec. (e)(2)(A). Pub. L. 101-550, § 205(b)(2), inserted “any substantially equivalent activity however denominated by the laws of the relevant foreign government,” after “burglary.”

Subsec. (e)(2)(B). Pub. L. 101-550, § 205(b)(3), inserted “foreign person performing a function substantially equivalent to any of the above,” after “transfer agent,” and “or any substantially equivalent statute or regulation” after “Commodity Exchange Act”.

Subsec. (e)(2)(C). Pub. L. 101-550, § 205(b)(4), inserted “or substantially equivalent activity however denominated by the laws of the relevant foreign government” after “securities”.

Subsec. (e)(2)(D). Pub. L. 101-550, § 205(b)(5), inserted “, or a violation of substantially equivalent foreign statute” after “title 18”.

Subsec. (e)(3). Pub. L. 101-550, § 205(b)(3), (6), inserted “foreign person performing a function substantially equivalent to any of the above,” after “transfer agent,” “or any substantially equivalent statute or regulation” after “Commodity Exchange Act” wherever appearing, “, including any foreign court of competent jurisdiction”, and “foreign entity substantially equivalent to any of the above,” after “insurance company.”

Subsec. (e)(5). Pub. L. 101-550, § 205(b)(7), inserted “the Commodity Exchange Act” after “this subchapter.”

Subsec. (e)(7). Pub. L. 101-550, § 205(b)(8), added par. (7).

Subsec. (f). Pub. L. 101-550, § 205(c), substituted “paragraph (1), (4), (5), or (7)” for “paragraph (1), (4), or (5)”.

Subsecs. (i) to (k). Pub. L. 101-429 added subsecs. (i) to (k).

1987—Subsec. (e)(2)(B). Pub. L. 100-181, § 702(1), inserted “transfer agent,” after “fiduciary.”

Subsec. (e)(3). Pub. L. 100-181, § 702(2), inserted “transfer agent,” after “government securities dealer.”

Subsec. (f). Pub. L. 100-181, § 702(3), inserted “, seeking to become associated, or, at the time of the alleged misconduct, associated” before “or seeking to become associated”.

Subsec. (g). Pub. L. 100-181, § 702(4), substituted “subsection (c) or subsection (e)” for “subsection (d)”.

1986—Subsec. (e)(2)(B). Pub. L. 99-571, § 102(m)(1), substituted “government securities broker, government securities dealer, fiduciary, or entity or person required to be registered under the Commodity Exchange Act” for “or fiduciary”.

Subsec. (e)(3). Pub. L. 99-571, § 102(m)(2), inserted par. (3) and struck out former par. (3) which read as follows: “is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, or municipal securities dealer, or as an affiliated person or employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.”

Subsec. (e)(4). Pub. L. 99-571, § 102(m)(3), inserted reference to Commodity Exchange Act.

1980—Subsec. (b)(3). Pub. L. 96-477 required investment advisers to business development companies to register under this section and provided that for purposes of determining the number of clients of an investment adviser under par. (3), no shareholders, partners, or beneficial owners of business development companies were to be deemed to be clients of an investment adviser unless such person qualified as a client apart from his status in connection with the business development company.

1975—Subsec. (c). Pub. L. 94-29, § 29(1), inserted provision authorizing the Commission to require a balance sheet certified by an independent public accountant and other financial statements which, as the Commission specifies, may be certified, and substituted provisions directing the Commission either to grant the registration within forty-five days or institute proceedings to determine whether registration should be denied, directing the Commission to grant registration if it finds that the requirements of this section are satisfied, and requiring the Commission to deny registration if it does not make such a finding or finds that if the applicant were registered its registration would be subject to suspension or revocation for provisions directing that registration be effective thirty days after receipt of the application by the Commission except as otherwise provided and making allowances for amendment of the application.

Subsec. (e). Pub. L. 94-29, § 29(2), added the placing of limitations on the activities of investment advisers to the enumeration of sanctions available to the Commission as set out in the provisions preceding par. (1), inserted references in par. (2)(A) to the taking of a false oath, the making of a false report, bribery, perjury, burglary, and conspiracy to commit such offenses, expanded par. (2)(B) to include municipal securities dealers, banks, insurance companies, and fiduciaries, inserted references in par. (2)(C) to larceny, theft, robbery, extortion, forgery, counterfeiting, and fraudulent concealment, inserted references in par. (2)(D) to section 152 and chapters 25 and 47 of title 18, and inserted reference to the rules of the Municipal Securities Rule-making Board in pars. (4) and (5).

Subsec. (f). Pub. L. 94-29, § 29(3), added the placing of limitations on the activities of persons associated or seeking to become associated with an investment ad-



viser to the enumeration of sanctions available to the Commission.

Subsecs. (g), (h). Pub. L. 94-29, §29(4), redesignated subsec. (h) and (i) as (g) and (h), respectively. Former subsec. (g), covering the postponement of the effective day of registration by the commencement of a proceeding to deny registration, was struck out.

1970—Subsec. (b). Pub. L. 91-547, §24(a), struck out “investment companies and” before “insurance companies” in par. (2) and struck out “does not hold” after “clients and who” and inserted “neither hold” and “nor acts as an investment adviser to any investment company registered under subchapter I of this chapter” in par. (3).

Subsec. (c)(1)(F). Pub. L. 91-547, §24(b), substituted “any person associated with such investment adviser” for “any partner, officer, director thereof, or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser” and reference to subsec. “(e)” for “(d)”.

Subsecs. (d), (e). Pub. L. 91-547, §24(c), (d), added subsec. (d), redesignated former subsec. (d) as (e), and in amending its provisions, inserted reference to “censure” in two places and substituted “such investment adviser or any person associated with such investment adviser” for “(1) such investment adviser, whether prior or subsequent to becoming such, or (2) any partner, officer, or director thereof, or any person performing similar functions, or (3) any person directly or indirectly controlling or controlled by such investment adviser, whether prior or subsequent to becoming such,” in introductory text preceding par. (1), formerly cl. (A), redesignated as pars. (1) to (5) former cls. (A) to (E), redesignated as items (A) to (D) of par. (2) former items (i) to (iv), striking out “, as heretofore or hereafter amended” after “Title 18”, substituted in par. (3) “an affiliated person” for “as an affiliated person”, in par. (4) included reference to subchapter I of this chapter and struck out “as any of such statutes heretofore have been or hereafter may be amended” after “this subchapter”, in par. (5) included reference to subchapter I of this chapter, struck out “as any of such statutes heretofore have been or hereafter may be amended” after “this subchapter”, inserted provision respecting disciplining an investment adviser for failure reasonably to supervise, with a view to preventing violations of statutes, rules, and regulations, another person who commits such a violation if such other person is subject to his supervision, including subpars. (A) and (B) respecting failure to supervise a person, and inserted par. (6). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 91-547, §24(e), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 91-547, §24(c), redesignated former subsec. (e) as (g). Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 91-547, §24(e), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1960—Subsec. (c)(1)(F). Pub. L. 86-750, §2, substituted “or any person performing similar functions, or any person directly or indirectly controlling or controlled by such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (d)” for “person performing similar function or controlling person thereof (i) within ten years of the filing of such application has been convicted of any felony or misdemeanor of the character described in paragraph (1) of subsection (d) of this section, or (ii) is permanently or temporarily enjoined by an order, judgment or decree of the character described in paragraph (2) of said subsection (d) and in each case the facts relating to such conviction or injunction”.

Subsec. (c)(2). Pub. L. 86-750, §3(a), substituted “a statement as to whether the principal business of such investment adviser consists or is to consist of acting as investment adviser and a statement as to whether a substantial part of the business of such investment adviser consists or is to consist of rendering investment

supervisory services” for “a statement as to whether such investment adviser is engaged or is to engage primarily in the business of rendering investment supervisory services”.

Subsec. (d). Pub. L. 86-750, §3(b), among other changes, limited the period of suspension to twelve months, included people controlled by the adviser, provided that the ten year period within which convictions are counted be measured from the filing of the application or after specified felonies or misdemeanors, increased the number of offenses by including willful, false or misleading statements as to any material fact, or omissions thereof, in any application for registration or report filed with the Commission, embezzlement, fraudulent conversion, and misappropriation of funds or securities, violations of sections 1341, 1342 or 1343 of title 18, willful violations of, or aiding, abetting, counseling, commanding, inducing or procuring the violation of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of this title, and any amendment or rule or regulation thereunder.

Subsec. (e). Pub. L. 86-750, §4, substituted provisions postponing the effective date of registration for ninety days at commencement of a proceeding to deny registration, or until final determination whether such registration should be denied, whichever was first, and authorizing the Commission after notice and opportunity for hearing, to postpone said effective date beyond the ninety-day period or final determination, provided that upon request of any interested party, made more than ninety days after such postponement, the Commission shall consider the postponement’s continuation, for provisions prohibiting postponement of the effective date of registration upon a proceeding to deny registration, unless the Commission found it in the public interest to do so, and which limited said postponement to three months.

Subsec. (g). Pub. L. 86-750, §5, substituted “existence” for “business”.

#### EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 925(b), 929P(a)(4), and 985(e)(1) of 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.

Amendment by sections 403, 407, and 408 of Pub. L. 111-203 effective 1 year after July 21, 2010, except that any investment adviser may, at the discretion of the investment adviser, register with the Commission under the Investment Advisers Act of 1940 during that 1-year period, subject to the rules of the Commission, and except as otherwise provided, see section 419 of Pub. L. 111-203, set out as a note under section 80b-2 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 303(b), (d) and 305 of Pub. L. 104-290 effective 270 days after Oct. 11, 1996, see section 308(a) of Pub. L. 104-290, as amended, set out as a note under section 80b-2 of this title.

#### EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104-62 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 section 80a-3a of this title, except as specifically provided in such statutes, see section 7 of Pub. L. 104-62, set out as a note under section 77c of this title.

#### EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-429 effective Oct. 15, 1990, with provisions relating to civil penalties and account-

ing and disgorgement, see section 1(c)(1), (2) of Pub. L. 101-429, set out in a note under section 77g of this title.

**EFFECTIVE DATE OF 1986 AMENDMENT**

Amendment by Pub. L. 99-571 effective 270 days after Oct. 28, 1986, see section 401 of Pub. L. 99-571, set out as an Effective Date note under section 78o-5 of this title.

**EFFECTIVE DATE OF 1975 AMENDMENT**

Amendment by Pub. L. 94-29 effective June 4, 1975, see section 31(a) of Pub. L. 94-29, set out as a note under section 78b of this title.

**EFFECTIVE DATE OF 1970 AMENDMENT**

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, except that amendment by section 24(a) of Pub. L. 91-547 effective on expiration of one year after Dec. 14, 1970, see section 30 (introductory text and par. (1)) of Pub. L. 91-547, set out as a note under section 80a-52 of this title.

**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.

**§ 80b-3a. State and Federal responsibilities**

**(a) Advisers subject to State authorities**

**(1) In general**

No investment adviser that is regulated or required to be regulated as an investment adviser in the State in which it maintains its principal office and place of business shall register under section 80b-3 of this title, unless the investment adviser—

(A) has assets under management of not less than \$25,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter; or

(B) is an adviser to an investment company registered under subchapter I of this chapter.

**(2) Treatment of mid-sized investment advisers**

**(A) In general**

No investment adviser described in subparagraph (B) shall register under section 80b-3 of this title, unless the investment adviser is an adviser to an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], or a company which has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940 [15 U.S.C. 80a-53], and has not withdrawn the election, except that, if by effect of this paragraph an investment adviser would be required to register with 15 or more States, then the adviser may register under section 80b-3 of this title.

**(B) Covered persons**

An investment adviser described in this subparagraph is an investment adviser that—

(i) is required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the State in

which it maintains its principal office and place of business and, if registered, would be subject to examination as an investment adviser by any such commissioner, agency, or office; and

(ii) has assets under management between—

(I) the amount specified under subparagraph (A) of paragraph (1), as such amount may have been adjusted by the Commission pursuant to that subparagraph; and

(II) \$100,000,000, or such higher amount as the Commission may, by rule, deem appropriate in accordance with the purposes of this subchapter.

**(3) “Assets under management” defined**

For purposes of this subsection, the term “assets under management” means the securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.

**(b) Advisers subject to Commission authority**

**(1) In general**

No law of any State or political subdivision thereof requiring the registration, licensing, or qualification as an investment adviser or supervised person of an investment adviser shall apply to any person—

(A) that is registered under section 80b-3 of this title as an investment adviser, or that is a supervised person of such person, except that a State may license, register, or otherwise qualify any investment adviser representative who has a place of business located within that State;

(B) that is not registered under section 80b-3 of this title because that person is exempt from the definition of an investment adviser under section 80b-2(a)(11) of this title; or

(C) that is not registered under section 80b-3 of this title because that person is exempt from registration as provided in subsection (b)(7) of such section, or is a supervised person of such person.

**(2) Limitation**

Nothing in this subsection shall prohibit the securities commission (or any agency or office performing like functions) of any State from investigating and bringing enforcement actions with respect to fraud or deceit against an investment adviser or person associated with an investment adviser.

**(c) Exemptions**

Notwithstanding subsection (a), the Commission, by rule or regulation upon its own motion, or by order upon application, may permit the registration with the Commission of any person or class of persons to which the application of subsection (a) would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section.

**(d) State assistance**

Upon request of the securities commissioner (or any agency or officer performing like functions) of any State, the Commission may pro-