

with the protection of investors, permits a larger commission.

(l) Persons subject to brokerage commission restrictions

The provisions of subsection (k) of this section shall apply to the following persons:

(1) Any affiliated person of a business development company.

(2)(A) Any person who is, within the meaning of section 80a-2(a)(3)(B), (C), or (D) of this title, an affiliated person of any director, officer, employee, or member of an advisory board of the business development company.

(B) Any person who is, within the meaning of section 80a-2(a)(3)(A), (B), (C), or (D) of this title, an affiliated person of any investment adviser of, general partner in, or person directly or indirectly either controlling, controlled by, or under common control with, the business development company.

(C) Any person who is, within the meaning of section 80a-2(a)(3)(C) of this title, an affiliated person of any person who is an affiliated person of the business development company within the meaning of section 80a-2(a)(3)(A) of this title.

(m) Receipt of fee or salary from transaction participant

For purposes of subsections (a) and (d), a person who is a director, officer, or employee of a party to a transaction and who receives his usual and ordinary fee or salary for usual and customary services as a director, officer, or employee from such party shall not be deemed to have a financial interest or to participate in the transaction solely by reason of his receipt of such fee or salary.

(n) Profit-sharing plans

(1) Notwithstanding subsection (a)(4) of this section, a business development company may establish and maintain a profit-sharing plan for its directors, officers, employees, and general partners and such directors, officers, employees, and general partners may participate in such profit-sharing plan, if—

(A)(i) in the case of a profit-sharing plan for officers and employees of the business development company (including any officer or employee who is also a director of such company), such profit-sharing plan is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in such company on the basis that such plan is reasonable and fair to the shareholders or partners of such company, does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; or

(ii) in the case of a profit-sharing plan which includes one or more directors of the business development company who are not also officers or employees of such company, or one or more general partners in such company, such profit-sharing plan is approved by order of the Commission, upon application, on the basis that such plan is reasonable and fair to the shareholders or partners of such company,

does not involve overreaching of such company or its shareholders or partners on the part of any person concerned, and is consistent with the interests of the shareholders or partners of such company; and

(B) the aggregate amount of benefits which would be paid or accrued under such plan shall not exceed 20 per centum of the business development company's net income after taxes in any fiscal year.

(2) This subsection may not be used where the business development company has outstanding any stock option, warrant, or right issued as part of an executive compensation plan, including a plan pursuant to section 80a-60(a)(4)(B) of this title, or has an investment adviser registered or required to be registered under subchapter II of this chapter.

(o) Required majority for approval of proposed transactions

The term "required majority", when used with respect to the approval of a proposed transaction, plan, or arrangement, means both a majority of a business development company's directors or general partners who have no financial interest in such transaction, plan, or arrangement and a majority of such directors or general partners who are not interested persons of such company.

(Aug. 22, 1940, ch. 686, title I, § 57, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2280; amended Pub. L. 100-181, title VI, § 627, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 115-141, div. S, title VIII, § 802(b)(2)(A), Mar. 23, 2018, 132 Stat. 1140.)

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsecs. (c)(2) and (f)(2), 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.

The Securities Exchange Act of 1934, referred to in subsecs. (c)(2) and (f)(2), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, 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

2018—Subsecs. (j)(1), (n)(2). Pub. L. 115-141 substituted "section 80a-60(a)(4)(B) of this title" for "section 80a-60(a)(3)(B) of this title".

1987—Subsec. (i). Pub. L. 100-181 substituted "subsections (a) and (d) of section 80a-17 of this title" for "sections 80a-17(a) and (d) of this title" in two places.

§ 80a-57. Changes in investment policy

No business development company shall, unless authorized by the vote of a majority of its outstanding voting securities or partnership interests, change the nature of its business so as to cease to be, or to withdraw its election as, a business development company.

(Aug. 22, 1940, ch. 686, title I, § 58, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a-58. Incorporation of subchapter provisions

Notwithstanding the exemption set forth in section 80-6(f) of this title, sections 80a-1, 80a-2,

80a-3, 80a-4, 80a-5, 80a-6, 80a-9, 80a-10(f), 80a-15(a), (c), and (f), 80a-16(b), 80a-17(f) through (j), 80a-19(a), 80a-20(b), 80a-31(a) and (c), 80a-32 through 80a-46, and 80a-48 through 80a-52 of this title shall apply to a business development company to the same extent as if it were a registered closed-end investment company.

(Aug. 22, 1940, ch. 686, title I, §59, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a-59. Functions and activities of business development companies

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-12 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 Commission shall not prescribe any rule, regulation, or order pursuant to section 80a-12(a)(1) of this title governing the circumstances in which a business development company may borrow from a bank in order to purchase any security.

(Aug. 22, 1940, ch. 686, title I, §60, as added Pub. L. 96-477, title I, §105, Oct. 21, 1980, 94 Stat. 2285.)

§ 80a-60. Capital structure

(a) Exceptions for business development company

Notwithstanding the exemption set forth in section 80a-6(f) of this title, section 80a-18 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) Except as provided in paragraph (2), the asset coverage requirements of subparagraphs (A) and (B) of section 80a-18(a)(1) of this title (and any related rule promulgated under this subchapter) applicable to business development companies shall be 200 percent.

(2) The asset coverage requirements of subparagraphs (A) and (B) of section 80a-18(a)(1) of this title and of subparagraphs (A) and (B) of section 80a-18(a)(2) of this title (and any related rule promulgated under this subchapter) applicable to a business development company shall be 150 percent if—

(A) not later than 5 business days after the date on which those asset coverage requirements are approved under subparagraph (D) of this paragraph, the business development company discloses that the requirements were approved, and the effective date of the approval, in—

(i) any filing submitted to the Commission under section 78m(a) or 78o(d) of this title; and

(ii) a notice on the website of the business development company;

(B) the business development company discloses, in each periodic filing required under section 78m(a) of this title—

(i) the aggregate outstanding principal amount or liquidation preference, as applicable, of the senior securities issued by the business development company and the asset coverage percentage as of the date of the business development company's most

recent financial statements included in that filing;

(ii) that the business development company, under subparagraph (D), has approved the asset coverage requirements under this paragraph; and

(iii) the effective date of the approval described in clause (ii);

(C) with respect to a business development company that is an issuer of common equity securities, each periodic filing of the company required under section 78m(a) of this title includes disclosures that are reasonably designed to ensure that shareholders are informed of—

(i) the amount of senior securities (and the associated asset coverage ratios) of the company, determined as of the date of the most recent financial statements of the company included in that filing; and

(ii) the principal risk factors associated with the senior securities described in clause (i), to the extent that risk is incurred by the company; and

(D) the company—

(i)(I) through a vote of the required majority (as defined in section 80a-56(o) of this title), approves the application of this paragraph to the company, to become effective on the date that is 1 year after the date of the approval; or

(II) obtains, at a special or annual meeting of shareholders or partners at which a quorum is present, the approval of more than 50 percent of the votes cast for the application of this paragraph to the company, to become effective on the first day after the date of the approval; and

(ii) if the company is not an issuer of common equity securities that are listed on a national securities exchange, extends, to each person that is a shareholder as of the date of an approval described in subclause (I) or (II) of clause (i), as applicable, the opportunity (which may include a tender offer) to sell the securities held by that shareholder as of that applicable approval date, with 25 percent of those securities to be repurchased in each of the 4 calendar quarters following the calendar quarter in which that applicable approval date takes place.

(3) Notwithstanding section 80a-18(c) of this title, a business development company may issue more than one class of senior security representing indebtedness.

(4) Notwithstanding section 80a-18(d) of this title—

(A) a business development company may issue warrants, options, or rights to subscribe or convert to voting securities of such company, accompanied by securities, if—

(i) such warrants, options, or rights expire by their terms within ten years;

(ii) such warrants, options, or rights are not separately transferable unless no class of such warrants, options, or rights and the securities accompanying them has been publicly distributed;

(iii) the exercise or conversion price is not less than the current market value at