

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.

### § 80a-31. Accountants and auditors

#### (a) Selection of accountant

It shall be unlawful for any registered management company or registered face-amount certificate company to file with the Commission any financial statement signed or certified by an independent public accountant, unless—

(1) such accountant shall have been selected at a meeting held within thirty days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of those members of the board of directors who are not interested persons of such registered company;

(2) such selection shall have been submitted for ratification or rejection at the next succeeding annual meeting of stockholders if such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of those members of the board of directors who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action;

(3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities at any meeting called for the purpose to terminate such employment forthwith without any penalty; and

(4) such certificate or report of such accountant shall be addressed both to the board of directors of such registered company and to the security holders thereof.

If the selection of an accountant has been rejected pursuant to paragraph (2) or his employment terminated pursuant to paragraph (3), the vacancy so occurring may be filled by a vote of a majority of the outstanding voting securities, either at the meeting at which the rejection or termination occurred or, if not so filled, at a subsequent meeting which shall be called for the purpose. In the case of a common-law trust of the character described in section 80a-16(c) of this title, no ratification of the employment of such accountant shall be required but such employment may be terminated and such accountant removed by action of the holders of record of a majority of the outstanding shares of beneficial interest in such trust in the same manner as is provided in section 80a-16(c) of this title in respect of the removal of a trustee, and all the provisions therein contained as to the calling of a meeting shall be applicable. In the event of such termination and removal, the vacancy so occurring may be filled by action of the holders of record of a majority of the shares of beneficial interest either at the meeting, if any, at which such termination and removal occurs, or by instruments in writing filed with the custodian, or if not so filed within a reasonable time then at a subsequent meeting which shall be called by the trustees for the purpose. The provisions of paragraph (42) of section 80a-2(a) of

this title as to a majority shall be applicable to the vote cast at any meeting of the shareholders of such a trust held pursuant to this subsection.

#### (b) Selection of controller or other principal accounting officer

No registered management company or registered face-amount certificate company shall file with the Commission any financial statement in the preparation of which the controller or other principal accounting officer or employee of such company participated, unless such controller, officer or employee was selected, either by vote of the holders of such company's voting securities at the last annual meeting of such security holders, or by the board of directors of such company.

#### (c) Reports of accountants and auditors

The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such period or periods as the Commission may prescribe, and to make the same available for inspection by the Commission or any member or representative thereof.

(Aug. 22, 1940, ch. 686, title I, §32, 54 Stat. 838; Pub. L. 91-547, §18, Dec. 14, 1970, 84 Stat. 1427; Pub. L. 94-29, §28(4), June 4, 1975, 89 Stat. 165.)

#### AMENDMENTS

1975—Subsec. (a). Pub. L. 94-29 substituted "section 80a-16(c) of this title" for "section 80a-16(b) of this title".

1970—Subsec. (a). Pub. L. 91-547 struck out introductory text "After one year from the effective date of this subchapter," and substituted "It" for "it"; inserted "the vote, cast in person, of" before "a majority" and substituted "interested persons of" for "investment advisers of, or affiliated persons of an investment adviser of, or officers or employees of," in par. (1); inserted "the vote of a majority of those members of" before "the board of directors" and "who are not interested persons of such registered company, cast in person at a meeting called for the purpose of voting on such action" after "the board of directors" in par. (2); substituted period for colon in par. (4); and in text after par. (4), substituted "if not so filled," for "if not so filled then" and "if not so filled" for "if not so filled", and substituted reference to par. (42) for par. (40) of section 80a-2(a) 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 on expiration of one year after Dec. 14, 1970, see section 30(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.

### § 80a-32. Filing of documents with Commission in civil actions

Every registered investment company which is a party and every affiliated person of such com-

pany who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commission, unless already so filed, (1) a copy of all pleadings, verdicts, or judgments filed with the court or served in connection with such action or claim, (2) a copy of any proposed settlement, compromise, or discontinuance of such action, and (3) a copy of such motions, transcripts, or other documents filed in or issued by the court or served in connection with such action or claim as may be requested in writing by the Commission. If any document referred to in clause (1) or (2)—

(A) is delivered to such company or party defendant, such document shall be filed with the Commission not later than ten days after the receipt thereof; or

(B) is filed in such court or delivered by such company or party defendant, such documents shall be filed with the Commission not later than five days after such filing or delivery.

(Aug. 22, 1940, ch. 686, title I, §33, 54 Stat. 839; Pub. L. 91-547, §19, Dec. 14, 1970, 84 Stat. 1428.)

#### AMENDMENTS

1970—Pub. L. 91-547 inserted provision for party acting in representative capacity and substituted provisions for prompt filing with the Commission of copies of all pleadings, verdicts, judgments, settlements, compromises, or discontinuances served or filed in suits by a registered investment company or a security holder thereof against an officer, director, investment adviser, trustee, or depositor of such company and of copies of motions, transcripts, or other documents if the Commission requests them for prior requirement that registered companies and their affiliated persons who are defendants in derivative suits involving an alleged breach of official duty transmit to the Commission copies of the pleadings and the record in such actions after a settlement or compromise of the action has been approved by a court of competent jurisdiction or a verdict or final judgment on the merits has been rendered, Commission use of information, and nondisclosure of identity of persons.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-547 effective Dec. 14, 1970, see section 30 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.

### § 80a-33. Destruction and falsification of reports and records

#### (a) Willful destruction

It shall be unlawful for any person, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section 80a-30(a) or 80a-31(c) of this title.

#### (b) Untrue statements or omissions

It shall be unlawful for any person to make any untrue statement of a material fact in any

registration statement, application, report, account, record, or other document filed or transmitted pursuant to this subchapter or the keeping of which is required pursuant to section 80a-30 (a) of this title. It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. For the purposes of this subsection, any part of any such document which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the person filing, transmitting, or keeping the complete document.

(Aug. 22, 1940, ch. 686, title I, §34, 54 Stat. 840.)

#### 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.

### § 80a-34. Unlawful representations and names

#### (a) Misrepresentation of guarantees

##### (1) In general

It shall be unlawful for any person, issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company—

(A) has been guaranteed, sponsored, recommended, or approved by the United States, or any agency, instrumentality or officer of the United States;

(B) has been insured by the Federal Deposit Insurance Corporation; or

(C) is guaranteed by or is otherwise an obligation of any bank or insured depository institution.

##### (2) Disclosures

Any person issuing or selling the securities of a registered investment company that is advised by, or sold through, a bank shall prominently disclose that an investment in the company is not insured by the Federal Deposit Insurance Corporation or any other government agency. The Commission may, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 1813 of title 12), adopt rules and regulations, and issue orders, consistent with the protection of investors, prescribing the manner in which the disclosure under this paragraph shall be provided.

##### (3) Definitions

The terms “insured depository institution” and “appropriate Federal banking agency” have the same meanings as given in section 1813 of title 12.

#### (b) Unlawful representation of sponsorship by United States or agency thereof

It shall be unlawful for any person registered under any section of this subchapter, to rep-