

one year after the date of enactment of this Act [Dec. 14, 1970];

“(2) that part of section 5(d) which substitutes ‘interested persons’ for ‘affiliated persons’ in section 10(d) of the Investment Company Act of 1940 [section 80a-10(d) of this title] shall take effect upon the expiration of one year after the date of enactment of this Act [Dec. 14, 1970];

“(3) sections 16 and 17 (amending section 27 and 28 of the Investment Company Act of 1940 [sections 80a-27 and 80a-28 of this title]) shall take effect upon the expiration of six months after the date of enactment of this Act [Dec. 14, 1970]; and

“(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 [section 80a-35 of this title] shall take effect upon the expiration of eighteen months after the date of enactment of this Act [Dec. 14, 1970].”

§ 80a-53. Election to be regulated as business development company

(a) Eligibility

Any company defined in section 80a-2(a)(48)(A) and (B) of this title may elect to be subject to the provisions of sections 80a-54 through 80a-64 of this title by filing with the Commission a notification of election, if such company—

(1) has a class of its equity securities registered under section 78l of this title; or

(2) has filed a registration statement pursuant to section 78l of this title for a class of its equity securities.

(b) Form and manner of notification; effect

The Commission may, by rule, prescribe the form and manner in which notification of election under this section shall be given. A business development company shall be deemed to be subject to sections 80a-54 through 80a-64 of this title upon receipt by the Commission of such notification of election.

(c) Revocation or withdrawal of election

Whenever the Commission finds, on its own motion or upon application, that a business development company which has filed a notification of election pursuant to subsection (a) of this section has ceased to engage in business, the Commission shall so declare by order revoking such company's election. Any business development company may voluntarily withdraw its election under subsection (a) by filing a notice of withdrawal of election with the Commission, in a form and manner which the Commission may, by rule, prescribe. Such withdrawal shall be effective immediately upon receipt by the Commission.

(Aug. 22, 1940, ch. 686, title I, § 54, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100-181, title VI, § 625, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100-181 substituted “defined in section” for “defined in sections”.

PARITY FOR BUSINESS DEVELOPMENT COMPANIES REGARDING OFFERING AND PROXY RULES

Pub. L. 115-141, div. S, title VIII, § 803, Mar. 23, 2018, 132 Stat. 1140, provided that:

“(a) DEFINITIONS.—In this section—

“(1) the term ‘business development company’ has the meaning given the term in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a));

“(2) the term ‘Commission’ means the Securities and Exchange Commission;

“(3) the term ‘Form N-2’ means the form described in section 239.14 of title 17, Code of Federal Regulations;

“(4) the term ‘Form S-3’ means the form described in section 239.13 of title 17, Code of Federal Regulations; and

“(5) the term ‘Schedule 14A’ means the information required under section 240.14a-101 of title 17, Code of Federal Regulations.

“(b) REVISION TO RULES.—

“(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act [Mar. 23, 2018], the Commission shall make the revisions described in paragraph (2) to allow a business development company that has filed an election under section 54 of the Investment Company Act of 1940 (15 U.S.C. 80a-53) to use the securities offering and proxy rules that are available to other issuers that are required to file reports under section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a); 78o(d)).

“(2) REQUIRED REVISIONS.—The revisions described in this paragraph are revisions to—

“(A) section 230.405 of title 17, Code of Federal Regulations—

“(i) to remove the exclusion of a business development company from the definition of the term ‘well-known seasoned issuer’ under that section; and

“(ii) to add a registration statement filed on Form N-2 to the definition of the term ‘automatic shelf registration statement’ under that section;

“(B) sections 230.168 and 230.169 of title 17, Code of Federal Regulations, to remove the exclusion of a business development company from an issuer that is eligible for the exemptions under those sections;

“(C) section 230.163 of title 17, Code of Federal Regulations, to remove a business development company from the list of issuers that are ineligible for the exemption under that section;

“(D) section 230.163A of title 17, Code of Federal Regulations, to remove the communications made by a business development company from the list of communications that are ineligible for the exemption under that section;

“(E) section 230.134 of title 17, Code of Federal Regulations, to remove the exclusion of a communication relating to a business development company from the application of that section;

“(F) sections 230.138 and 230.139 of title 17, Code of Federal Regulations, to specifically include a business development company as an issuer to which those sections apply;

“(G) section 230.156 of title 17, Code of Federal Regulations, to provide that nothing in that section may be construed to prevent a business development company from qualifying for an exemption under section 230.168 or 230.169 of title 17, Code of Federal Regulations, as amended by the Commission in accordance with the requirements of this section;

“(H) section 230.164 of title 17, Code of Federal Regulations, to remove a business development company from the list of issuers that are excluded under that section;

“(I) section 230.433 of title 17, Code of Federal Regulations, to specifically include a business development company that is a well-known seasoned issuer as an issuer to which that section applies;

“(J) section 230.415 of title 17, Code of Federal Regulations, to state that the registration for securities under section 230.415(a)(1)(x) of title 17, Code of Federal Regulations, includes securities registered on Form N-2 by a business development company that would otherwise meet the eligibility requirements of Form S-3;

“(K) section 230.497 of title 17, Code of Federal Regulations, to include a process for a business development company to file a form of prospectus in

the same manner as the process for filing a form of prospectus under section 230.424(b) of title 17, Code of Federal Regulations;

“(L) sections 230.172 and 230.173 of title 17, Code of Federal Regulations, to remove the exclusion of an offering of a business development company from the application of those sections;

“(M) section 230.418 of title 17, Code of Federal Regulations, to provide that a business development company that would otherwise meet the eligibility requirements of Form S-3 shall be exempt from paragraph (a)(3) of that section;

“(N) Schedule 14A to revise item 13(b)(1) of that Schedule to include a business development company that would otherwise meet the requirements of note E of that Schedule as an issuer to which that item applies;

“(O) section 243.103 of title 17, Code of Federal Regulations, to provide that paragraph (a) of that section applies for the purposes of Form N-2; and

“(P) item 34 on Form N-2 to require a business development company to provide undertakings that are no more restrictive than the undertakings that are required of a registrant under section 229.512 of title 17, Code of Federal Regulations.

“(c) REVISION TO FORM N-2.—Not later than 1 year after the date of enactment of this Act, the Commission shall revise Form N-2—

“(1) to include an item or instruction that is similar to item 12 on Form S-3 to provide that a business development company that would otherwise meet the requirements of Form S-3 shall incorporate by reference the reports and documents filed by the business development company under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) into the registration statement of the business development company filed on Form N-2; and

“(2) to include an item or instruction that is similar to the instruction regarding automatic shelf offerings by well-known seasoned issuers on Form S-3 to provide that a business development company that is a well-known seasoned issuer may file automatic shelf offerings on Form N-2.

“(d) TREATMENT IF REVISIONS NOT COMPLETED IN TIMELY MANNER.—If the Commission fails to complete the revisions required under subsections (b) and (c) by the dates described in those subsections, a business development company, during the period beginning on the date that is 1 day after 1 year after the date of enactment of this Act and ending on the date that the Commission completes those revisions, may deem those revisions to have been completed in accordance with the actions required to be taken by the Commission under those subsections.

“(e) RULES OF CONSTRUCTION.—

“(1) TREATMENT OF SUCCESSOR REGULATIONS AND FORMS.—Any reference in this section to a regulation or form shall be construed as a reference to—

“(A) that regulation or form, as in effect on the day before the date of enactment of this Act; or

“(B) any successor to that regulation or form.

“(2) DISTRIBUTION OF SALES MATERIAL.—Nothing in this section, or in the amendments made pursuant to the requirements of this section, may be construed to prevent a business development company from distributing sales material under section 230.482 of title 17, Code of Federal Regulations.”

§ 80a-54. Acquisition of assets by business development companies

(a) Permissible assets; percentage

It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this subchapter and of the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, involved in such transactions—

(A) from the issuer of such securities, which issuer is an eligible portfolio company, from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; or

(B) from the issuer of such securities, which issuer is described in section 80a-2(a)(46)(A) and (B) of this title but is not an eligible portfolio company because it has issued a class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 78g of this title, or from any person who is an officer or employee of such issuer, if—

(i) at the time of the purchase, the business development company owns at least 50 per centum of—

(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 80a-2(a)(46)(C)(ii) of this title;

(3) securities purchased in transactions not involving any public offering from an issuer described in sections 80a-2(a)(46)(A) and (B) of this title or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any