

## 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-20. Proxies; voting trusts; circular ownership**

**(a) Prohibition on use of means of interstate commerce for solicitation of proxies**

It shall be unlawful for any person, by use of the mails or any means or instrumentality of interstate commerce or otherwise, to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

**(b) Prohibition on use of means of interstate commerce for sale of voting-trust certificates**

It shall be unlawful for any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate relating to any security of a registered investment company, or any underwriter of such a certificate, by use of the mails or any means or instrumentality of interstate commerce, or otherwise, to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate.

**(c) Prohibition on purchase of securities knowingly resulting in cross-ownership or circular ownership**

No registered investment company shall purchase any voting security if, to the knowledge of such registered company, cross-ownership or circular ownership exists, or after such acquisition will exist, between such registered company and the issuer of such security. Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than 3 per centum of the outstanding voting securities of the other company. Circular ownership shall be deemed to exist between two companies if such companies are included within a group of three or more companies, each of which—

- (1) beneficially owns more than 3 per centum of the outstanding voting securities of one or more other companies of the group; and
- (2) has more than 3 per centum of its own outstanding voting securities beneficially owned by another company, or by each of two or more other companies, of the group.

**(d) Duty to eliminate existing cross-ownership or circular ownership**

If cross-ownership or circular ownership between a registered investment company and any other company or companies comes into existence upon the purchase by a registered investment company of the securities of another company, it shall be the duty of such registered company, within one year after it first knows of the existence of such cross-ownership or circular ownership, to eliminate the same.

(Aug. 22, 1940, ch. 686, title I, §20, 54 Stat. 822; Pub. L. 100-181, title VI, §614, Dec. 4, 1987, 101 Stat. 1262.)

## AMENDMENTS

1987—Subsec. (b). Pub. L. 100-181, §614(1), struck out at end “The prohibitions of this subsection shall not apply to a class of voting-trust certificates, if any certificate of such class was made the subject of a public offering by the issuer or by or through an underwriter prior to March 15, 1940.”

Subsec. (d). Pub. L. 100-181, §614(2), (3), struck out first sentence “If on the effective date of this subchapter cross-ownership or circular ownership exists between a registered investment company and any other company or companies, it shall be the duty of such registered company, within five years after such effective date, to eliminate such cross-ownership or circular ownership.” and “at any time after the effective date of this subchapter” after “If” in second sentence.

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**§ 80a-21. Loans by management companies**

It shall be unlawful for any registered management company to lend money or property to any person, directly or indirectly, if—

(a) the investment policies of such registered company, as recited in its registration statement and reports filed under this subchapter, do not permit such a loan; or

(b) such person controls or is under common control with such registered company; except that the provisions of this paragraph shall not apply to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except directors' qualifying shares.

(Aug. 22, 1940, ch. 686, title I, §21, 54 Stat. 822; Pub. L. 100-181, title VI, §615, Dec. 4, 1987, 101 Stat. 1262.)

## AMENDMENTS

1987—Subsec. (b). Pub. L. 100-181 struck out “to the extension or renewal of any such loan made prior to March 15, 1940, or” after “shall not apply”.

**§ 80a-22. Distribution, redemption, and repurchase of securities; regulations by securities associations**

**(a) Rules relating to minimum and maximum prices for purchase and sale of securities from investment company; time for resale and redemption**

A securities association registered under section 78o-3 of this title may prescribe, by rules adopted and in effect in accordance with said section and subject to all provisions of said section applicable to the rules of such an association—

- (1) a method or methods for computing the minimum price at which a member thereof may purchase from any investment company any redeemable security issued by such company and the maximum price at which a member may sell to such company any redeemable security issued by it or which he may receive

for such security upon redemption, so that the price in each case will bear such relation to the current net asset value of such security computed as of such time as the rules may prescribe; and

(2) a minimum period of time which must elapse after the sale or issue of such security before any resale to such company by a member or its redemption upon surrender by a member;

in each case for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of such company or any other result of such purchase, redemption, or sale which is unfair to holders of such other outstanding securities; and said rules may prohibit the members of the association from purchasing, selling, or surrendering for redemption any such redeemable securities in contravention of said rules.

**(b) Rules relating to purchase of securities by members from issuer investment company**

(1) Such a securities association may also, by rules adopted and in effect in accordance with section 78b-3 of this title, and notwithstanding the provisions of subsection (b)(6) thereof but subject to all other provisions of said section applicable to the rules of such an association, prohibit its members from purchasing, in connection with a primary distribution of redeemable securities of which any registered investment company is the issuer, any such security from the issuer or from any principal underwriter except at a price equal to the price at which such security is then offered to the public less a commission, discount, or spread which is computed in conformity with a method or methods, and within such limitations as to the relation thereof to said public offering price, as such rules may prescribe in order that the price at which such security is offered or sold to the public shall not include an excessive sales load but shall allow for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors. The Commission shall on application or otherwise, if it appears that smaller companies are subject to relatively higher operating costs, make due allowance therefor by granting any such company or class of companies appropriate qualified exemptions from the provisions of this section.

(2) At any time after the expiration of eighteen months from December 14, 1970 (or, if earlier, after a securities association has adopted for purposes of paragraph (1) any rule respecting excessive sales loads), the Commission may alter or supplement the rules of any securities association as may be necessary to effectuate the purposes of this subsection in the manner provided by section 78s(c) of this title.

(3) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on December 14, 1970, the provisions of this subsection shall prevail.

**(c) Conflicting rules of Commission and associations**

The Commission may make rules and regulations applicable to registered investment com-

panies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in subsection (a) of this section in respect of the rules which may be made by a registered securities association governing its members. Any rules and regulations so made by the Commission, to the extent that they may be inconsistent with the rules of any such association, shall so long as they remain in force supersede the rules of the association and be binding upon its members as well as all other underwriters and dealers to whom they may be applicable.

**(d) Sale of securities except to or through principal underwriter; price of securities**

No registered investment company shall sell any redeemable security issued by it to any person except either to or through a principal underwriter for distribution or at a current public offering price described in the prospectus, and, if such class of security is being currently offered to the public by or through an underwriter, no principal underwriter of such security and no dealer shall sell any such security to any person except a dealer, a principal underwriter, or the issuer, except at a current public offering price described in the prospectus. Nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 80a-11 of this title including any offer made pursuant to section 80a-11(b) of this title; (ii) pursuant to an offer made solely to all registered holders of the securities, or of a particular class or series of securities issued by the company proportionate to their holdings or proportionate to any cash distribution made to them by the company (subject to appropriate qualifications designed solely to avoid issuance of fractional securities); or (iii) in accordance with rules and regulations of the Commission made pursuant to subsection (b) of section 80a-12 of this title.

**(e) Suspension of right of redemption or postponement of date of payment**

No registered investment company shall suspend the right of redemption, or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption, except—

(1) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted;

(2) for any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the value of its net assets; or

(3) for such other periods as the Commission may by order permit for the protection of security holders of the company.

The Commission shall by rules and regulations determine the conditions under which (i) trading

shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection.

**(f) Restrictions on transferability or negotiability of securities**

No registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such investment company.

**(g) Issuance of securities for services or property other than cash**

No registered open-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(Aug. 22, 1940, ch. 686, title I, §22, 54 Stat. 823; Pub. L. 91-547, §12, Dec. 14, 1970, 84 Stat. 1422; Pub. L. 100-181, title VI, §616, Dec. 4, 1987, 101 Stat. 1262.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100-181, §616(1), substituted “subsection (b)(6)” for “subsection (b)(8)” in par. (1).

Pub. L. 100-181, §616(2), (3), redesignated par. (3) as (2) and substituted “section 78s(c)” for “section 78o-3(k)(2)”, redesignated par. (4) as (3), and struck out former par. (2) which read as follows: “At any time after the expiration of eighteen months from December 14, 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 78o(b)(10) of this title as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 78o(b)(8) of this title: *Provided*, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales.”

Subsec. (e). Pub. L. 100-181, §616(4), (5), in introductory provisions, substituted “redemption, or postpone” for “redemption or postpone” and “redemption, except” for “redemption except”, and, in closing provisions, struck out “Any company which, as of March 15, 1940, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a bylaw or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this subchapter, or upon the repeal or amendment of such provision, or upon the sale by such company after March 15, 1940, of any security (other than short-term paper) of which it is the issuer, whichever first occurs.”

1970—Subsec. (b). Pub. L. 91-547, §12(a), designated existing provisions as par. (1), inserted “notwithstanding the provisions of subsection (b)(8) thereof but”, and “other” in phrase “all other provisions”, substituted exclusion of “excessive sales load” for “unconscionable

or grossly excessive sales load”, provided for allowance for reasonable compensation for sales personnel, broker-dealers, and underwriters, and for reasonable sales loads to investors, and for grant by Commission of appropriate qualified exemptions from provisions of this section where on application or otherwise it appears that smaller companies are subject to relatively higher operating costs, and added pars. (2) to (4).

Subsec. (c). Pub. L. 91-547, §12(b), provided for application of rules and regulations to registered investment companies, struck out introductory phrase “After one year from the effective date of this chapter”, “registered” before “securities association” where first appearing, and substituted “prescribed in subsection (a) of this section” for “prescribed in subsections (a) and (b) of this section” and “. Any rules and regulations” for “; and any rules and regulations”.

Subsec. (d). Pub. L. 91-547, §12(c), substituted “public offering price described in the prospectus. Nothing in this subsection” for “public offering price described in the prospectus: *Provided, however*, That nothing in this subsection” and struck out “clause (1) or (2) of” before “section 80a-11(b) of this title”.

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.

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**§ 80a-23. Closed-end companies**

**(a) Issuance of securities**

No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

**(b) Sale of common stock at price below current net asset value**

No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding on August 22, 1940, or issued in accordance with the provisions of section 80a-18(d) of this title; or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

**(c) Purchase of securities of which it is issuer; exceptions**

No registered closed-end company shall purchase any securities of any class of which it is the issuer except—

(1) on a securities exchange or such other open market as the Commission may des-