

Subsec. (a)(11). Pub. L. 106-102, §216, amended par. (11) generally. Prior to amendment, par. (11) read as follows: “‘Dealer’ means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.”

Subsec. (a)(19)(A)(v). Pub. L. 106-102, §213(a)(1), added cl. (v) and struck out former cl. (v) which read as follows: “any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and”.

Subsec. (a)(19)(A)(vi), (vii). Pub. L. 106-102, §213(a)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

Subsec. (a)(19)(B)(v). Pub. L. 106-102, §213(b)(1), added cl. (v) and struck out former cl. (v) which read as follows: “any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and”.

Subsec. (a)(19)(B)(vi), (vii). Pub. L. 106-102, §213(b)(2), (3), added cl. (vi) and redesignated former cl. (vi) as (vii).

1998—Subsec. (a)(8). Pub. L. 105-353 made a technical amendment to reference in original act which appears in text as reference to title 11.

1996—Subsec. (a)(46)(C)(iii), (iv). Pub. L. 104-290, §503, added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (a)(48)(B). Pub. L. 104-290, §504, inserted at end “provided further that a business development company need not make available significant managerial assistance with respect to any company described in paragraph (46)(C)(iii), or with respect to any other company that meets such criteria as the Commission may by rule, regulation, or order permit, as consistent with the public interest, the protection of investors, and the purposes of this subchapter; and”.

Subsec. (a)(51). Pub. L. 104-290, §209(b), added par. (51).
Subsec. (c). Pub. L. 104-290, §106(c), added subsec. (c).
1990—Subsec. (a)(49), (50). Pub. L. 101-550 added pars. (49) and (50).

1987—Subsec. (a)(19). Pub. L. 100-181, §601, inserted “completed” before “fiscal years” wherever appearing in subpars. (A)(iv), (vi) and (B)(iv), (vi).

Subsec. (a)(39). Pub. L. 100-181, §602, struck out reference to Canal Zone.

Subsec. (a)(48)(B). Pub. L. 100-181, §603, substituted “paragraphs (1) through (3) of section 80a-54(a) of this title” for “sections 80a-54(a)(1) through (3) of this title”.

1982—Subsec. (a)(36). Pub. L. 97-303 inserted “any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency,” after “mineral rights.”

1980—Subsec. (a)(46) to (48). Pub. L. 96-477 added pars. (46) to (48).

1978—Subsec. (a)(8). Pub. L. 95-598 substituted “a case under title 11” for “bankruptcy”.

1970—Subsec. (a)(5). Pub. L. 91-547, §2(a)(1), substituted “under the authority of the Comptroller of the Currency” for “under section 248(k) of title 12.”

Subsec. (a)(19). Pub. L. 91-547, §2(a)(3), added par. (19). Former par. (19) redesignated (20).

Subsecs. (a)(20) to (36). Pub. L. 91-547, §2(a)(2), redesignated former pars. (19) to (35) as (20) to (36), respectively.

Subsec. (a)(37). Pub. L. 91-547, §2(a)(4), added par. (37). Former par. (37) redesignated (39).

Subsecs. (a)(38) to (44). Pub. L. 91-547, §2(a)(2), redesignated former pars. (36) to (42) as (38) to (44).

Subsec. (a)(45). Pub. L. 91-547, §2(a)(5), added par. (45).

1960—Subsec. (a)(37). Pub. L. 86-624 struck out reference to Hawaii.

1959—Subsec. (a)(37). Pub. L. 86-70 struck out reference to Alaska.

1954—Subsec. (a)(30). Act Aug. 10, 1954, substituted “section 10(a) of the Securities Act of 1933” for “section 5(b) of the Securities Act of 1933”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by sections 985(d)(1) and 986(c)(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 section 769 of Pub. L. 111-203 effective on the later of 360 days after July 21, 2010, or, to the extent a provision of subtitle B (§§761-774) of title VII of Pub. L. 111-203 requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provision of subtitle B, see section 774 of Pub. L. 111-203, set out as a note under section 77b of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-290, title II, §209(e), Oct. 11, 1996, 110 Stat. 3436, provided that: “The amendments made by this section [amending this section and section 80a-3 of this title] shall take effect on the earlier of—

“(1) 180 days after the date of enactment of this Act [Oct. 11, 1996]; or

“(2) the date on which the rulemaking required under subsection (d)(2) [set out below] is completed.”

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

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.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by act Aug. 10, 1954, effective 60 days after Aug. 10, 1954, see note set out under section 77b of this title.

REGULATIONS

Pub. L. 104-290, title II, §209(d)(2), Oct. 11, 1996, 110 Stat. 3435, provided that: “Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term, or otherwise identifying, ‘investments’ for purposes of section 2(a)(51) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(51)], as added by this Act.”

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-3. Definition of investment company

(a) Definitions

(1) When used in this subchapter, “investment company” means any issuer which—

(A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or

(C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

(2) As used in this section, "investment securities" includes all securities except (A) Government securities, (B) securities issued by employees' securities companies, and (C) securities issued by majority-owned subsidiaries of the owner which (i) are not investment companies, and (ii) are not relying on the exception from the definition of investment company in paragraph (1) or (7) of subsection (c).

(b) Exemption from provisions

Notwithstanding paragraph (1)(C) of subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities.

(2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, owning, holding, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of businesses. The filing of an application under this paragraph in good faith by an issuer other than a registered investment company shall exempt the applicant for a period of sixty days from all provisions of this subchapter applicable to investment companies as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company by paragraph (1) or (2) of this subsection.

(c) Further exemptions

Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this subchapter:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than one hundred persons (or, in the case of a qualifying venture capital

fund, 250 persons) and which is not making and does not presently propose to make a public offering of its securities. Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer. For purposes of this paragraph:

(A) Beneficial ownership by a company shall be deemed to be beneficial ownership by one person, except that, if the company owns 10 per centum or more of the outstanding voting securities of the issuer, and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(B) Beneficial ownership by any person who acquires securities or interests in securities of an issuer described in the first sentence of this paragraph shall be deemed to be beneficial ownership by the person from whom such transfer was made, pursuant to such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter, where the transfer was caused by legal separation, divorce, death, or other involuntary event.

(C)(i) The term "qualifying venture capital fund" means a venture capital fund that has not more than \$10,000,000 in aggregate capital contributions and uncalled committed capital, with such dollar amount to be indexed for inflation once every 5 years by the Commission, beginning from a measurement made by the Commission on a date selected by the Commission, rounded to the nearest \$1,000,000.

(ii) The term "venture capital fund" has the meaning given the term in section 275.203(l)-1 of title 17, Code of Federal Regulations, or any successor regulation.

(2)(A) Any person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, acting as broker, and acting as market intermediary, or any one or more of such activities, whose gross income normally is derived principally from such business and related activities.

(B) For purposes of this paragraph—

(i) the term "market intermediary" means any person that regularly holds itself out as being willing contemporaneously to engage in, and that is regularly engaged in, the business of entering into transactions on both sides of the market for a financial contract or one or more such financial contracts; and

(ii) the term "financial contract" means any arrangement that—

(I) takes the form of an individually negotiated contract, agreement, or option to

buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets;

(II) is in respect of securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function to any of the foregoing; and

(III) is entered into in response to a request from a counter party for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counter party to such arrangement.

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; or any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian, if—

(A) such fund is employed by the bank solely as an aid to the administration of trusts, estates, or other accounts created and maintained for a fiduciary purpose;

(B) except in connection with the ordinary advertising of the bank's fiduciary services, interests in such fund are not—

- (i) advertised; or
- (ii) offered for sale to the general public; and

(C) fees and expenses charged by such fund are not in contravention of fiduciary principles established under applicable Federal or State law.

(4) Any person substantially all of whose business is confined to making small loans, industrial banking, or similar businesses.

(5) Any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in one or more of the following businesses: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(6) Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4), and (5) of this subsection, or in one or more of such businesses (from which not less than 25 per centum of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding, or trading in securities.

(7)(A) Any issuer, the outstanding securities of which are owned exclusively by persons who, at the time of acquisition of such securities, are qualified purchasers, and which is not making and does not at that time propose to make a public offering of such securities. Securities that are owned by persons who received the securities from a qualified purchaser as a gift or bequest, or in a case in which the transfer was caused by legal separation, divorce, death, or other involuntary event, shall be deemed to be owned by a qualified purchaser, subject to such rules, regulations, and orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(B) Notwithstanding subparagraph (A), an issuer is within the exception provided by this paragraph if—

(i) in addition to qualified purchasers, outstanding securities of that issuer are beneficially owned by not more than 100 persons who are not qualified purchasers, if—

(I) such persons acquired any portion of the securities of such issuer on or before September 1, 1996; and

(II) at the time at which such persons initially acquired the securities of such issuer, the issuer was excepted by paragraph (1); and

(ii) prior to availing itself of the exception provided by this paragraph—

(I) such issuer has disclosed to each beneficial owner, as determined under paragraph (1), that future investors will be limited to qualified purchasers, and that ownership in such issuer is no longer limited to not more than 100 persons; and

(II) concurrently with or after such disclosure, such issuer has provided each beneficial owner, as determined under paragraph (1), with a reasonable opportunity to redeem any part or all of their interests in the issuer, notwithstanding any agreement to the contrary between the issuer and such persons, for that person's proportionate share of the issuer's net assets.

(C) Each person that elects to redeem under subparagraph (B)(ii)(II) shall receive an amount in cash equal to that person's proportionate share of the issuer's net assets, unless the issuer elects to provide such person with the option of receiving, and such person agrees to receive, all or a portion of such person's share in assets of the issuer. If the issuer elects to provide such persons with such an opportunity, disclosure concerning such opportunity shall be made in the disclosure required by subparagraph (B)(ii)(I).

(D) An issuer that is excepted under this paragraph shall nonetheless be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title relating to the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.

(E) For purposes of determining compliance with this paragraph and paragraph (1), an

issuer that is otherwise excepted under this paragraph and an issuer that is otherwise excepted under paragraph (1) shall not be treated by the Commission as being a single issuer for purposes of determining whether the outstanding securities of the issuer excepted under paragraph (1) are beneficially owned by not more than 100 persons or whether the outstanding securities of the issuer excepted under this paragraph are owned by persons that are not qualified purchasers. Nothing in this subparagraph shall be construed to establish that a person is a bona fide qualified purchaser for purposes of this paragraph or a bona fide beneficial owner for purposes of paragraph (1).

(8) [Repealed] Pub. L. 111-203, title IX, §986(c)(2), July 21, 2010, 124 Stat. 1936.

(9) Any person substantially all of whose business consists of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(10)(A) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes—

(i) no part of the net earnings of which inures to the benefit of any private shareholder or individual; or

(ii) which is or maintains a fund described in subparagraph (B).

(B) For the purposes of subparagraph (A)(ii), a fund is described in this subparagraph if such fund is a pooled income fund, collective trust fund, collective investment fund, or similar fund maintained by a charitable organization exclusively for the collective investment and reinvestment of one or more of the following:

(i) assets of the general endowment fund or other funds of one or more charitable organizations;

(ii) assets of a pooled income fund;

(iii) assets contributed to a charitable organization in exchange for the issuance of charitable gift annuities;

(iv) assets of a charitable remainder trust or of any other trust, the remainder interests of which are irrevocably dedicated to any charitable organization;

(v) assets of a charitable lead trust;

(vi) assets of a trust, the remainder interests of which are revocably dedicated to or for the benefit of 1 or more charitable organizations, if the ability to revoke the dedication is limited to circumstances involving—

(I) an adverse change in the financial circumstances of a settlor or an income beneficiary of the trust;

(II) a change in the identity of the charitable organization or organizations having the remainder interest, provided that the new beneficiary is also a charitable organization; or

(III) both the changes described in subclauses (I) and (II);

(vii) assets of a trust not described in clauses (i) through (v), the remainder inter-

ests of which are revocably dedicated to a charitable organization, subject to subparagraph (C); or

(viii) such assets as the Commission may prescribe by rule, regulation, or order in accordance with section 80a-6(c) of this title.

(C) A fund that contains assets described in clause (vii) of subparagraph (B) shall be excluded from the definition of an investment company for a period of 3 years after December 8, 1995, but only if—

(i) such assets were contributed before the date which is 60 days after December 8, 1995; and

(ii) such assets are commingled in the fund with assets described in one or more of clauses (i) through (vi) and (viii) of subparagraph (B).

(D) For purposes of this paragraph—

(i) a trust or fund is “maintained” by a charitable organization if the organization serves as a trustee or administrator of the trust or fund or has the power to remove the trustees or administrators of the trust or fund and to designate new trustees or administrators;

(ii) the term “pooled income fund” has the same meaning as in section 642(c)(5) of title 26;

(iii) the term “charitable organization” means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;

(iv) the term “charitable lead trust” means a trust described in section 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of title 26;

(v) the term “charitable remainder trust” means a charitable remainder annuity trust or a charitable remainder unitrust, as those terms are defined in section 664(d) of title 26; and

(vi) the term “charitable gift annuity” means an annuity issued by a charitable organization that is described in section 501(m)(5) of title 26.

(11) Any employee’s stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of title 26; or any governmental plan described in section 77c(a)(2)(C) of this title; or any collective trust fund maintained by a bank consisting solely of assets of one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of section 401 of title 26 or the requirements for deduction of the employer’s contribution under section 404(a)(2) of title 26, (B) contributions under governmental plans in connection with which interests, participations, or securities are exempted from the registration provisions of section 77e of this title by section 77c(a)(2)(C) of this title, and (C) advances made by an insurance company in connection with the operation of such separate account.

(12) Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company.

(13) Any security holders' protective committee or similar issuer having outstanding and issuing no securities other than certificates of deposit and short-term paper.

(14) Any church plan described in section 414(e) of title 26, if, under any such plan, no part of the assets may be used for, or diverted to, purposes other than the exclusive benefit of plan participants or beneficiaries, or any company or account that is—

(A) established by a person that is eligible to establish and maintain such a plan under section 414(e) of title 26; and

(B) substantially all of the activities of which consist of—

(i) managing or holding assets contributed to such church plans or other assets which are permitted to be commingled with the assets of church plans under title 26; or

(ii) administering or providing benefits pursuant to church plans.

(Aug. 22, 1940, ch. 686, title I, § 3, 54 Stat. 797; Oct. 21, 1942, ch. 619, title I, § 162(e), 56 Stat. 867; Pub. L. 89-485, § 13(i), July 1, 1966, 80 Stat. 243; Pub. L. 91-547, § 3(a), (b), Dec. 14, 1970, 84 Stat. 1414; Pub. L. 94-210, title III, § 308(c), Feb. 5, 1976, 90 Stat. 57; Pub. L. 96-477, title I, § 102, title VII, § 703, Oct. 21, 1980, 94 Stat. 2276, 2295; Pub. L. 100-181, title VI, §§ 604-606, Dec. 4, 1987, 101 Stat. 1260; Pub. L. 104-62, § 2(a), Dec. 8, 1995, 109 Stat. 682; Pub. L. 104-290, title II, § 209(a), (c), title V, § 508(a), Oct. 11, 1996, 110 Stat. 3432, 3435, 3447; Pub. L. 105-353, title III, § 301(c)(2), Nov. 3, 1998, 112 Stat. 3236; Pub. L. 106-102, title II, § 221(c), Nov. 12, 1999, 113 Stat. 1401; Pub. L. 108-359, § 1(a), Oct. 25, 2004, 118 Stat. 1666; Pub. L. 111-203, title IX, § 986(c)(2), July 21, 2010, 124 Stat. 1936; Pub. L. 115-174, title V, § 504, May 24, 2018, 132 Stat. 1362.)

AMENDMENTS

2018—Subsec. (c)(1). Pub. L. 115-174, § 504(1), inserted “(or, in the case of a qualifying venture capital fund, 250 persons)” after “one hundred persons” in introductory provisions.

Subsec. (c)(1)(C). Pub. L. 115-174, § 504(2), added subpar. (C).

2010—Subsec. (c)(8). Pub. L. 111-203 substituted “[Repealed]” for text of par. (8) which read as follows: “Any company subject to regulation under the Public Utility Holding Company Act of 1935.”

2004—Subsec. (c)(11). Pub. L. 108-359, which directed the substitution of “one or more of such trusts, government plans, or church plans, companies or accounts that are excluded from the definition of an investment company under paragraph (14) of this subsection” for “such trusts or government plans, or both”, was executed by making the substitution for “such trusts or governmental plans, or both”, to reflect the probable intent of Congress.

1999—Subsec. (c)(3). Pub. L. 106-102 inserted “, if—” and subpars. (A) to (C) before period at end.

1998—Subsec. (b). Pub. L. 105-353 substituted “paragraph (1)(C)” for “paragraph (3)” in introductory provisions.

1996—Subsec. (a). Pub. L. 104-290, § 209(c)(1)–(5), designated existing introductory provisions as par. (1), re-designated former pars. (1) to (3) as subpars. (A) to (C), respectively, and designated existing concluding provisions as par. (2).

Subsec. (a)(2)(C). Pub. L. 104-290, § 209(c)(6), substituted “which (i) are” for “which are” and added cl. (ii).

Subsec. (c)(1). Pub. L. 104-290, § 209(a)(1), inserted after first sentence “Such issuer shall be deemed to be an investment company for purposes of the limitations set forth in subparagraphs (A)(i) and (B)(i) of section 80a-12(d)(1) of this title governing the purchase or other acquisition by such issuer of any security issued by any registered investment company and the sale of any security issued by any registered open-end investment company to any such issuer.”

Subsec. (c)(1)(A). Pub. L. 104-290, § 209(a)(2), inserted “and is or, but for the exception provided for in this paragraph or paragraph (7), would be an investment company,” after “voting securities of the issuer,” and struck out “unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which are or would, but for the exception set forth in this subparagraph, be excluded from the definition of investment company solely by this paragraph, does not exceed 10 per centum of the value of the company’s total assets. Such issuer nonetheless is deemed to be an investment company for purposes of section 80a-12(d)(1) of this title” after “(other than short-term paper)”.

Subsec. (c)(2). Pub. L. 104-290, § 209(a)(3), designated existing provisions as subpar. (A), substituted “acting as broker, and acting as market intermediary,” for “and acting as broker,” and added subpar. (B).

Subsec. (c)(7). Pub. L. 104-290, § 209(a)(4), added par. (7) and struck out former par. (7) “Reserved.”

Subsec. (c)(14). Pub. L. 104-290, § 508(a), added par. (14). 1995—Subsec. (c)(10). Pub. L. 104-62 amended par. (10) generally. Prior to amendment, par. (10) read as follows: “Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.”

1987—Subsec. (c)(3). Pub. L. 100-181, § 604, inserted “or” after “therefor;” and struck out “; or any common trust fund or similar fund, established before June 22, 1936, by a corporation which is supervised or examined by State or Federal authority having supervision over banks, if a majority of the units of beneficial interest in such fund, other than units owned by charitable or educational institutions, are held under instruments providing for payment of income to one or more persons and of principal to another or others” after “guardian”.

Subsec. (c)(7). Pub. L. 100-181, § 605, substituted “Reserved.” for “Any company (A) which is subject to regulation under section 314 of title 49, except that this exception shall not apply to a company which the Commission finds and by order declares to be primarily engaged, directly or indirectly, in the business of investing, reinvesting, owning, holding, or trading in securities, or (B) whose entire outstanding stock is owned or controlled by a company excepted under clause (A) hereof, if the assets of the controlled company consist substantially of securities issued by companies which are subject to regulation under section 314 of title 49.”

Subsec. (c)(11). Pub. L. 100-181, § 606(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954” wherever appearing, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Pub. L. 100-181, § 606(2), (3), substituted “; or any governmental plan” for “or which holds only assets of governmental plans” and “trusts or governmental plans, or both” for “trusts”.

1980—Subsec. (c)(1). Pub. L. 96-477, § 102, designated existing provisions as subpar. (A), provided that beneficial ownership was to be deemed to be that of the holders of ten per cent of company’s outstanding securities, other than short term paper, unless, as of the date of the most recent acquisition by such company of securities of that issuer, the value of all securities owned by such company of all issuers which were or would, but for the exception set forth in subpar. (A), be excluded from the definition of investment company

solely by par. (1), did not exceed ten per cent of the value of the company's total assets, that such issuer nonetheless was deemed to be an investment company for purposes of section 80a-12(d)(1) of this title, and added subpar. (B).

Subsec. (c)(11). Pub. L. 96-477, §703, excluded from consideration as an investment company for purposes of this subchapter any employee's stock bonus, pension, or profit-sharing trust which holds only assets of governmental plans described in section 77c(a)(2)(C) of this title, redesignated former cl. (B) as (C), and added cl. (B).

1976—Subsec. (c)(7). Pub. L. 94-210 designated existing provisions as cls. (A) and (B) and, as so designated, in cl. (A) provided for applicability to section 314 of title 49 and inserted exception to exception, in cl. (B) inserted provisions relating to companies regulated under section 314 of title 49 and made changes in phraseology to conform cl. to cl. (A), and struck out proviso relating to assets of controlled company.

1970—Subsec. (b)(2). Pub. L. 91-547, §3(a), inserted "in good faith" after "paragraph" in second sentence.

Subsec. (c). Pub. L. 91-547, §3(b)(1), struck out reference to subsec. (b) in introductory text.

Subsec. (c)(4). Pub. L. 91-547, §3(b)(2), redesignated par. (5) as (4). See 1966 Amendment note with respect to repeal of former par. (4).

Subsec. (c)(5). Pub. L. 91-547, §3(b)(2), (3), redesignated par. (6) as (5) and inserted "redeemable securities," before "face-amount certificates". Former par. (5) redesignated (4).

Subsec. (c)(6). Pub. L. 91-547, §3(b)(2), redesignated par. (7) as (6), inserted reference to par. (4), and struck out reference to par. (6). Former par. (6) redesignated (5).

Subsec. (c)(7). Pub. L. 91-547, §3(b)(2), redesignated par. (9) as (7). Former par. (7) redesignated (6).

Subsec. (c)(8). Pub. L. 91-547, §3(b)(2), (4), redesignated par. (10) as (8), substituted "subject to regulation" for "with a registration in effect as a holding company", and struck out former par. (8) provision excluding as an investment company any company 90 per centum or more of the value of whose investment securities are represented by securities of a single issuer included within a class of persons enumerated in pars. (5), (6), or (7) of this subsection.

Subsecs. (c)(9), (10). Pub. L. 91-547, §3(b)(2), redesignated pars. (11) and (12) as (9) and (10), respectively. Former pars. (9) and (10) redesignated (7) and (8).

Subsec. (c)(11). Pub. L. 91-547, §3(b)(2), (5), redesignated par. (13) as (11), substituted "requirements for qualification under section 401 of title 26 [I.R.C. 1954]" for "conditions of section 165 of title 26, as amended [I.R. 1939]", and inserted provisions for exclusion as an investment company any collective trust fund maintained by a bank consisting solely of assets of such trusts or any separate account the assets of which are derived from certain sources. Former par. (11) redesignated (9).

Subsecs. (c)(12) to (15). Pub. L. 91-547, §3(b)(2), redesignated pars. (14) and (15) as (12) and (13), respectively. Former pars. (12) and (13) redesignated (10) and (11).

1966—Subsec. (c)(4). Pub. L. 89-485 repealed provisions which exempt holding company affiliates granted a general voting permit by the Board of Governors of the Federal Reserve System before 1940 and any such affiliates with a later voting permit concerning which determinations were made of being primarily engaged, directly or indirectly, in the business of holding the stock of, and managing or controlling, banks, banking associations, savings banks, or trust companies.

1942—Subsec. (c)(13). Act Oct. 31, 1942, inserted "as amended".

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-102 effective 18 months after Nov. 12, 1999, see section 225 of Pub. L. 106-102, set out as a note under section 77c of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 209 of Pub. L. 104-290 effective on earlier of 180 days after Oct. 11, 1996, or date on which required rulemaking is completed, see section 209(e) of Pub. L. 104-290 set out as a note under section 80a-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 1976 AMENDMENT

Pub. L. 94-210, title III, §308(d)(2), (3), Feb. 5, 1976, 90 Stat. 57, as amended by Pub. L. 94-555, title II, §220(c), Oct. 19, 1976, 90 Stat. 2629, provided that:

"(2) The amendment made by subsection (b) of this section [amending section 78m of this title] shall not apply to any report by any person with respect to a fiscal year of such person which began before the date of enactment of this Act [Feb. 5, 1976].

"(3) The amendment made by subsection (c) of this section [amending this section] shall take effect on the 60th day after the date of enactment of this Act [Feb. 5, 1976]."

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.

EFFECTIVE DATE OF 1942 AMENDMENT

Act Oct. 21, 1942, ch. 619, title I, §162(d), 56 Stat. 866 (Revenue Act of 1942), as amended by act Dec. 17, 1943, ch. 346, §3, 57 Stat. 602, provided: "TAXABLE YEARS TO WHICH AMENDMENTS APPLICABLE.—The amendments made by this section [to this section and sections 22, 23, and 165 of Title 26, I.R.C. 1939] shall be applicable as to both the employer and employees only with respect to taxable years of the employer beginning after December 31, 1941, except that—

"(1) In the case of a stock bonus, pension, profit-sharing, or annuity plan in effect on or before September 1, 1942,

"(A) such a plan shall not become subject to the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] until the beginning of the first taxable year beginning after December 31, 1942.

"(B) such a plan shall be considered as satisfying the requirements of section 165(a), (3), (4), and (5) and (6) [of Title 26, I.R.C. 1939] for the period beginning with the beginning of the first taxable year following December 31, 1942, and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than January 1, 1944.

"(C) if the contribution of an employer to such a plan in the employer's taxable year beginning in 1942 exceeds the maximum amount deductible for such year under section 23(p)(1), as amended by this section, the amount deductible in such year shall be not less than the sum of—

"(i) the amount paid in such taxable year prior to September 1, 1942, and deductible under section

23(a) or 23(p) prior to amendment by this section, and

“(ii) with respect to the amount paid in such taxable year on or after September 1, 1942, that proportion of the amount deductible for the taxable year under section 23(p)(1), as amended by this section, which the number of months after August 31, 1942, in the taxable year bears to twelve.

“(2) In the case of a stock bonus, pension, profit sharing or annuity plan put into effect after September 1, 1942, such a plan shall be considered as satisfying the requirements of section 165(a)(3), (4), (5), and (6) [of Title 26, I.R.C. 1939] for the period beginning with the date such plan is put into effect and ending December 31, 1944, if the provisions thereof satisfy such requirements by December 31, 1944, and if by that time such provisions are made effective for all purposes as of a date not later than the effective date of such plan or January 1, 1944, whichever is the later.”

REGULATIONS

Pub. L. 104-290, title II, §209(d)(1), Oct. 11, 1996, 110 Stat. 3435, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules to implement the requirements of section 3(c)(1)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(1)(B)), as amended by this section.”

Pub. L. 104-290, title II, §209(d)(3), Oct. 11, 1996, 110 Stat. 3436, provided that: “Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules pursuant to its authority under section 6 of the Investment Company Act of 1940 [15 U.S.C. 80a-6] to permit the ownership of securities by knowledgeable employees of the issuer of the securities or an affiliated person without loss of the exception of the issuer under paragraph (1) or (7) of section 3(c) of that Act [15 U.S.C. 80a-3(c)] from treatment as an investment company under that Act [15 U.S.C. 80a-1 et seq.]”

Pub. L. 104-290, title II, §209(d)(4), Oct. 11, 1996, 110 Stat. 3436, provided that: “Not later than 180 days after the date of enactment of this Act [Oct. 11, 1996], the Commission shall prescribe rules defining the term ‘beneficial owner’ for purposes of section 3(c)(7)(B) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(7)(B)], as amended by this Act.”

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.

PROTECTION OF CHURCH EMPLOYEE BENEFIT PLANS UNDER STATE LAW

Pub. L. 104-290, title V, §508(f), Oct. 11, 1996, 110 Stat. 3448, provided that:

“(1) REGISTRATION REQUIREMENTS.—Any security issued by or any interest or participation in any church plan, company, or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], as added by subsection (a) of this section, and any offer, sale, or purchase thereof, shall be exempt from any law of a State that requires registration or qualification of securities.

“(2) TREATMENT OF CHURCH PLANS.—No church plan described in section 414(e) of the Internal Revenue Code of 1986 [26 U.S.C. 414(e)], no person or entity eligible to establish and maintain such a plan under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], no company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940 [15 U.S.C. 80a-3(c)(14)], as added by subsection (a) of this section, and no trustee, director, officer, or employee of or volunteer for any such plan, person, entity, company, or account shall be

required to qualify, register, or be subject to regulation as an investment company or as a broker, dealer, investment adviser, or agent under the laws of any State solely because such plan, person, entity, company, or account buys, holds, sells, or trades in securities for its own account or in its capacity as a trustee or administrator of or otherwise on behalf of, or for the account of, or provides investment advice to, for, or on behalf of, any such plan, person, or entity or any company or account that is excluded from the definition of an investment company under section 3(c)(14) of the Investment Company Act of 1940, as added by subsection (a) of this section.”

§ 80a-3a. Protection of philanthropy under State law

(a) Registration requirements

A security issued by or any interest or participation in any pooled income fund, collective trust fund, collective investment fund, or similar fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title, and the offer or sale thereof, shall be exempt from any statute or regulation of a State that requires registration or qualification of securities.

(b) Treatment of charitable organizations

No charitable organization, or any trustee, director, officer, employee, or volunteer of a charitable organization acting within the scope of such person's employment or duties, shall be required to register as, or be subject to regulation as, a dealer, broker, agent, or investment adviser under the securities laws of any State because such organization or person buys, holds, sells, or trades in securities for its own account in its capacity as trustee or administrator of, or otherwise on behalf of or for the account of one or more of the following:

- (1) a charitable organization;
- (2) a fund that is excluded from the definition of an investment company under section 80a-3(c)(10)(B) of this title; or
- (3) a trust or other donative instrument described in section 80a-3(c)(10)(B) of this title, or the settlors (or potential settlors) or beneficiaries of any such trusts or other instruments.

(c) State action

Notwithstanding subsections (a) and (b), during the 3-year period beginning on December 8, 1995, a State may enact a statute that specifically refers to this section and provides prospectively that this section shall not preempt the laws of that State referred to in this section.

(d) Definitions

For purposes of this section—

(1) the term “charitable organization” means an organization described in paragraphs (1) through (5) of section 170(c) or section 501(c)(3) of title 26;

(2) the term “security” has the same meaning as in section 78c of this title; and

(3) the term “State” means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 104-62, §6, Dec. 8, 1995, 109 Stat. 685.)