The 21st century is all about technology. With the increasing need for modernization in our day-to-day lives, people are open to accepting new technologies. From using a remote for controlling devices to using voice notes for giving commands; modern technology has made space in our regular lives. Technologies like augmented reality and IoT that have gained pace in the past decade and now there’s a new addition to the pack i.e. Blockchain Technology.

Blockchain- The revolutionary technology impacting different industries miraculously was introduced in the markets with its very first modern application Bitcoin. Bitcoin is nothing but a form of digital currency (cryptocurrency) which can be used in the place of fiat money for trading. And the underlying technology behind the success of cryptocurrencies is termed as Blockchain.

There’s a common misconception among people that Bitcoin and Blockchain are one and the same, however, that is not the case. Creating cryptocurrencies is one of the applications of Blockchain technology and other than Bitcoin, there are numerous applications that are being developed on the basis of the blockchain technology.

What is a Blockchain?
What is Blockchain?

In the simplest terms, Blockchain can be described as a data structure that holds transactional records and while ensuring security, transparency, and decentralization. You can also think of it as a chain or records stored in the forms of blocks which are controlled by no single authority. A blockchain is a distributed ledger that is completely open to any and everyone on the network. Once an information is stored on a blockchain, it is extremely difficult to change or alter it.

Each transaction on a blockchain is secured with a digital signature that proves its authenticity. Due to the use of encryption and digital signatures, the data stored on the blockchain is tamper-proof and cannot be changed.

Blockchain technology allows all the network participants to reach an agreement, commonly known as consensus. All the data stored on a blockchain is recorded digitally and has a common history which is available for all the network participants. This way, the chances of any fraudulent activity or
duplication of transactions is eliminated without the need of a third-party.

In order to understand blockchain better, consider an example where you are looking for an option to send some money to your friend who lives in a different location. A general option that you can normally use can be a bank or via a payment transfer application like PayPal or Paytm. This option involves third parties in order to process the transaction due to which an extra amount of your money is deducted as transferring fee. Moreover, in cases like these, you cannot ensure the security of your money as it is highly possible that a hacker might disrupt the network and steal your money. In both the cases, it is the customer who suffers. This is where Blockchain comes in. Instead of using a bank for transferring money, if we use a blockchain in such cases, the process becomes much easier and secure. There is no extra fee involved as the funds are directly processed by you thus, eliminating the need for a third party. Moreover, the blockchain database is decentralised and is not limited to any single location meaning that all the information and records kept on the blockchain are public and decentralized. Since the information is not stored in a single place, there’s no chance of corruption of the information by any hacker.

How Does a Blockchain Work?
A blockchain is a chain of blocks that contain data or information. Despite being discovered earlier, the first successful and popular application of the Blockchain technology came into being in the year 2009 by Satoshi Nakamoto. He created the first digital cryptocurrency called Bitcoin through the use of Blockchain technology. Let’s understand how a blockchain actually works.
Each block in a blockchain network stores some information along with the hash of its previous block. A hash is a unique mathematical code which belongs to a specific block. If the information inside the block is modified, the hash of the block will be subject to modification too. The connection of blocks through unique hash keys is what makes blockchain secure.

While transactions take place on a blockchain, there are nodes on the network that validate these transactions. In Bitcoin blockchain, these nodes are called as miners and they use the concept of proof-of-work in order to process and validate transactions on the network. In order for a transaction to be valid, each block must refer to the hash of its preceding block. The transaction will take place only and only if the hash is correct. If a hacker tries to attack the network and change information of any specific block, the hash attached to the block will also get modified.

The breach will be detected as the modified hash will not match with the original one. This ensures that the blockchain is unalterable as if any change which is made to the chain of blocks will be reflected throughout the entire network and will be detected easily.

In a nutshell, here’s how blockchain allows transactions to take place:

1. A blockchain network makes use of public and private keys in order to form a digital signature ensuring security and consent.
2. Once the authentication is ensured through these keys, the need for authorization arises.
3. Blockchain allows participants of the network to perform mathematical verification and reach a consensus to agree on any particular value.
4. While making a transfer, the sender uses their private key and announces the transaction information over the network. A block is created containing information such as digital signature, timestamp, and the receiver’s public key.

5. This block of information is broadcasted through the network and the validation process starts.

6. Miners all over the network start solving the mathematical puzzle related to the transaction in order to process it. Solving this puzzle requires the miners to invest their computing power.

7. Upon solving the puzzle first, the miner receives rewards in the form of bitcoins. Such kind of problems is referred to as proof-of-work mathematical problems.

8. Once the majority of nodes in the network come to a consensus and agree to a common solution, the block is time stamped and added to the existing blockchain. This block can contain anything from money to data to messages.

9. After the new block is added to the chain, the existing copies of blockchain are updated for all the nodes on the network.

Blockchain Features

The following features make the revolutionary technology of blockchain stand out:

Decentralised
Blockchains are decentralized in nature meaning that no single person or group holds the authority of the overall network. While everybody in the network has the copy of the distributed ledger with them, no one can modify it on his or her own. This unique feature of blockchain allows transparency and security while giving power to the users.

Peer-to-Peer Network
With the use of Blockchain, the interaction between two parties through a peer-to-peer model is easily accomplished without the requirement of any third party. Blockchain uses P2P protocol which allows all the network participants to hold an identical copy of transactions, enabling approval through a machine consensus. For example, if you wish to make any transaction from one part of the world to another, you can do that with blockchain all by yourself within a few seconds. Moreover, any interruptions or extra charges will not be deducted in the transfer.

Immutable
The immutability property of a blockchain refers to the fact that any data once written on the blockchain cannot be changed. To understand immutability, consider sending email as an example. Once you send an email to a bunch of people, you cannot take it back. In order to find a way around, you’ll have to ask all the recipients to delete your email which is pretty tedious. This is how immutability works.

Once the data has been processed, it cannot be altered or changed. In case of the blockchain, if you try to change the data of one block, you’ll have to change the entire blockchain following it as each block stores the hash of its preceding block. Change in one hash will lead to change in all the following hashes. It is extremely complicated for someone to change all the hashes as it requires a lot of computational power to do so. Hence, the data stored in a blockchain is non-susceptible to alterations or hacker attacks due to immutability.

Tamper-Proof
With the property of immutability embedded in blockchains, it becomes easier to detect tampering of any data. Blockchains are considered tamper-proof as any change in even one single block can be detected and addressed smoothly. There are two key ways of detecting tampering namely, hashes and blocks.
As described earlier, each hash function associated with a block is unique. You can consider it like a fingerprint of a block. Any change in the data will lead to a change in the hash function. Since the hash function of one block is linked to next block, in order for a hacker to make any changes, he/she will have to change hashes of all the blocks after that block which is quite difficult to do.

Types of Blockchains

Types of Blockchain—Image Source

Though Blockchain has evolved to many levels since inception, there are two broad categories in which blockchains can be classified majorly i.e. Public and Private blockchains. Before heading towards the difference between these two, let's keep a check on the similarities that both public and private blockchain have:

- Both Public and Private blockchain have peer-to-peer decentralized networks.
- All the participants of the network maintain the copy of the shared ledger with them.
- The network maintains copies of the ledger and synchronizes the latest update with the help of consensus.
- The rules for immutability and safety of the ledger are decided and applied on the network so as to avoid malicious attacks.

Now that we know the similar elements of both these blockchains, let's learn about each of them in detail and the differences between them.

Public Blockchain- As the name suggests, a public blockchain is a permissionless ledger and can be accessed by any and everyone. Anyone with the access to the internet is eligible to download and access it. Moreover, one can also check the
overall history of the blockchain along with making any transactions through it. Public blockchains usually reward their network participants for performing the mining process and maintaining the immutability of the ledger. An example of the public blockchain is the Bitcoin Blockchain. Public blockchains allow the communities worldwide to exchange information openly and securely. However, an obvious disadvantage of this type of blockchain is that it can be compromised if the rules around it are not executed strictly. Moreover, the rules decided and applied initially have very little scope of modification in the later stages.

Private Blockchain- Contrary to the public blockchain, private blockchains are the ones which are shared only among the trusted participants. The overall control of the network is in the hands of the owners. Moreover, the rules of a private blockchain can be changed according to different levels of permissions, exposure, number of members, authorization etc. Private blockchains can run independently or can be integrated with other blockchains too. These are usually used by enterprises and organizations. Therefore, the level of trust required amongst the participants is higher in private blockchains.

Popular Applications of Blockchain Technology
Thought Bitcoins and cryptocurrencies are the first popular application of Blockchain technology, they are not the only ones. The nature of Blockchain technology has led businesses, industries, and entrepreneurs from all around the world to explore the technology’s potential and make revolutionary changes in different sectors.

While the basic idea of trustworthy records and giving the power in the hands of users has enormous potential, it sure has raised a lot of hype in the markets too. The magic of this technology sure has the power to transform industries given the usage is planned and executable in actual senses. Let’s separate the wheat from the chaff and find out how Blockchain can be useful in actual implementation.

Smart contracts

Different businesses deal with each other in order to exchange services or products. All the give and take terms and conditions are signed by the involved parties in the form of agreements or contracts. However, these paper-based contracts are prone to
errors and frauds which challenges the trust factor between both the parties and raises risks. Blockchain brings forward an amazing solution to this problem through Smart Contracts. Smart contracts perform similar functions as paper-based agreements. The differentiating factor about smart contracts is that these are digital as well as self-executable in nature. Self-executable meaning that when certain conditions in the code of these contracts are met, they are automatically deployed. Ethereum, an open source blockchain platform has introduced smart contracts in the Blockchain ecosystem. Smart contracts can be used for different situations or industries such as financial agreements, health insurances, real estate property documents, crowdfunding etc.

For example, Blockchain smart contracts can be used in healthcare to manage drug supply. Once the name and quantity of a drug is shipped from a manufacturing company to be delivered ahead to the pharmacist, a smart contract with all the valid data like the information of the drug, the quantity of supply etc. can be created. This smart contract will be responsible for managing the entries throughout the entire supply chain between different intermediaries. Since the smart contract works on certain defined conditions, no one can alter them or make any changes in the contract thus, ensuring trust and authenticity of the drugs.

Government Elections
No matter how secure government elections are made, the chances of frauds through anti-social elements always persists. The current voting system relies on manual processing and trust. Even if security breaches and frauds are eliminated, the chances of manual errors cannot be ignored. In such cases, the best solution is to automate the overall process with the help of smart contracts.
Blockchain smart contracts provide a modern system through which these common issues can be easily eliminated. Entries in the smart contracts will allow transparency and security while maintaining the privacy of the voters thus, enabling fair elections.

Identity management

Identity Attributes on Blockchain

The world is getting more digitized with every passing day. Consider financial transactions happening online for instance, you can easily login with your credentials and security pin in order to access your funds. However, in this case,
no one can ensure the identity of the person taking out the money. If your username and password are hacked by someone, there’s no way to secure your money. The need of the hour is to have a system that manages individual identification on the web. The distributed ledger technology used in blockchains offers you advanced methods of public-private encryption using which, you can prove your identity and digitize your documents. This unique secure identity can work as a saviour for you while conducting any financial transactions or any online interactions on a shared economy. Moreover, the gap between different government bodies and private organizations can be filled through a universal online identity solution that blockchain can provide.

**Intellectual Property Protection**

Digital content or information can easily be reproduced and distributed with the aid of the internet. Due to this, people from all around the world hold the power to copy, replicate and use it without giving credits to the actual producer of the content. There are copyright laws to protect such issues but in the current scenario, these laws aren’t appropriately defined according to common global standards. Meaning that any law which is valid in the US might not stand true in Australia.

Even if there’s any copyright applied to any intellectual property, people easily lose control over their data and suffer on financial terms. With the aid of Blockchain technology, all the copyrights can be stored in the form of smart contracts which will enable automation in businesses along with the increase in online sale thus, eliminating the redistribution risk. Blockchain for IP registry will help the authors, owners or users to get clarity of copyright. Once they register their work online, they’ll own the evidence which will be tamper-proof. As blockchain is immutable in nature, any entry once stored on the Blockchain cannot be changed or modified. The owner of the work will have the overall authority over the ownership as well as the distribution of the content.

**Conclusion**
Exploring Blockchain

Other than these few examples, the revolutionary technology of Blockchain holds a high potential of applications in many different industries and sectors. While some industries have already started adopting blockchain in their businesses, many are still exploring the best possible ways to start with. Blockchain is a new name in the world of technologies but it is definitely the one to last. Even in the early stages, the technology has gained huge popularity starting with their very first application of cryptocurrencies. More areas of applications are being discovered and tested with each passing day. Once the technology is adopted and accepted on a global level, it'll transform the way we live today.
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In this video i shall show all how the Governor of STATE OF OHIO and the DISTRICT OF COLUMBIA conspired to INITIATE the FALSE FLAG of COVID 19 to HIDE THEIR CRIMES OF STATE with a simple time line in juxtaposition to their being SERVED OUR SEC CLAIM proving PRIMA FASCIA CRIMES UPON OUR TREASURY. The time line of their actions will PROVE the FACTS of what i bring forth this day. Additionally, it appears as though by such CRIMINAL ACTS IN OBFUSCATION the SEC has place our TREASURY I DID LIEN into a unproved BLOCK CHAIN format controlled by an UNREGISTERED LLC. Yes, you read that right, our ILLEGITIMATE BANKRUPTED POST FED treasury is now being controlled by an entity in SEC documents as "Boston Security Token Exchange LLC ("BSTX") out of Boston MASSACHUSETTS as a "SELF REGULATORY ORGANIZATION" trading in equity securities, including internationally NATIONAL MARKET SECURITIES under 17 CFR § 242.600, where "ancillary records of ownership that would be maintained using distributed ledger technology" which "would not be official records of security token ownership." Instead *** "such records would be ancillary records that would reflect certain end-of-day security token position balance information as reported by market participants." HOWEVER, "Boston Security Token Exchange" is NOT REGISTERED in the Secretary of State for MASSACHUSETTS or with the DISTRICT OF COLUMBIA SEC.... THE PLOT IS AFOOT and it leads none other than to STATE OF DELAWARE with a corporation that has yet to register properly under SEC regulations. As an update on the Law/law side of this GRAND HIGH CRIME against my Son ~clay, all real parties of interest in said claim have been sent out 2nd NOTICE and NOTICED to correct their course IN Law/law and Equity of be found in default PRO CONFESSO, under "EN CACHETT" Court of Thutmose III accordance====NEXT TOPIC I WILL SPEAK ON. The internet links discussed are as follows. If absent in this introduction, I always try to add them post production as time allows. Still, if absent, much of my internet sourcing is of the corporate 'state' records in nature and as such are able to be found by anyone with the knowledge i convey herein this video unless censored post this production....which HAS been known to happen. Let all comprehend the degree to which Truth is being torted and twisted this time and season by unseen principalities on 'high' of false kings that are very MINOR is SCOPE as to WHOM I WAR UPON and SHALL BRING TO THE Law/law of the 4th Crown. The crimes against the American People and our instrumentalities of Trust SHALL BE EXPOSED proper UNDER THE Law/law dejaure and its perpetrators arrested and tried for the crimes of Treason and Sedition. The Law/law WALKS ITSELF. So Says ~lotus as LOTUS, et al. Peace be with you may and your relations, may We All have enough. namaste, ~lotus Keeper of the Crown Controller of the Crown as LOTUS, et al.

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The world's first regulated exchange for trading security tokens*
*Pending Regulatory Approval.

Boston Security Token Exchange LLC ("BSTX") is designing the world's first regulated exchange for trading security tokens. The trading platform is powered by t ZERO technology. BSTX is jointly owned by BOX Digital Markets and t ZERO.
NEW YORK--(BUSINESS WIRE)--tZERO and BOX Digital Markets LLC (“BOX Digital”) announced today they have entered into a joint venture, which is expected to become the world’s first regulated exchange for trading security tokens. Security tokens are electronic tokens defined as “securities” under U.S. law. The joint venture will seek approval from the U.S. Securities and Exchange Commission (SEC) prior to beginning operations.

“With BOX’s experience in building and operating a sophisticated equity options marketplace and tZERO’s industry leading blockchain technology, we have brought together our organizations’ combined expertise to create a more efficient capital market that will benefit traders and issuers.”

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tZERO will power the technology required to create and operate the joint venture. In addition, tZERO will manage the ongoing technology implementation, administration, maintenance and support. BOX Digital will provide executive leadership and regulatory expertise. Upon obtaining SEC approval, the joint venture will operate as a facility of BOX Options Exchange, an existing registered U.S. securities exchange.

Lisa Fall, CEO of BOX Digital, has been appointed as the new CEO of the joint venture. “We will work closely with the SEC to create a framework for the safe and efficient trading of security tokens and our joint venture with tZERO marks a significant step that brings us ever closer to creating the industry's first regulated exchange for security tokens,” said Fall. “With BOX’s experience in building and operating a sophisticated equity options marketplace and tZERO's industry leading blockchain technology, we have brought together our organizations’ combined expertise to create a more efficient capital market that will benefit traders and issuers.”

Last month, tZERO and BOX Digital entered into a letter of intent to negotiate an equal joint venture that would operate as a facility of the BOX Options Exchange for the trading of security tokens in the United States. Today’s announcement confirms the joint venture officially has been formed with tZERO and BOX Digital sharing economic ownership and board representation equally.

“There is no doubt that security tokens are the future of capital markets,” said Saum Noursalehi, CEO of tZERO. “tZERO and BOX Digital will create the first fully regulated security token exchange and fundamentally improve the way capital is raised and traded across different asset classes. Teaming up with Box
Digital will allow us to complement our alternative trading system, already under development, with a separate, regulated platform, expanding the reach of our technology to security token issuers of all types, from micro-cap issuers to SEC reporting companies.”

“I believe the greater investing community does not yet understand the extraordinary changes blockchain is going to bring to global capital markets. It is a great honor to have been selected by BOX as their partner for this historic endeavor,” added Patrick Byrne, CEO of Overstock.com and Executive Chairman on tZERO.

About BOX Digital:

BOX Digital Markets LLC is engaged in creating and developing markets for trading digital assets in a regulated environment. BOX Digital is a wholly-owned subsidiary of BOX Holdings Group LLC, which owns and operates BOX Market, an equity options marketplace and a facility of BOX Options Exchange LLC. BOX Options Exchange is a Registered National Securities Exchange under Section 6 of the Securities Exchange Act of 1934. Additional information about BOX Market and BOX Options Exchange can be found at http://www.boxoptions.com.

About tZERO:

t0.com, Inc. (“tZERO“) is a majority owned subsidiary of Overstock.com, focusing on the development and commercialization of financial technology (FinTech) based on cryptographically-secured, decentralized ledgers – more commonly known as blockchain technologies. Since its inception, tZERO has pioneered the effort to bring greater efficiency and transparency to capital markets through the integration of blockchain technology.

About Overstock.com:

Overstock.com, Inc. Common Shares (NASDAQ:OSTK) / Series A Preferred (Medici Ventures’ tZERO platform: OSTKP) / Series B Preferred (OTCQX:OSTBP) is an online retailer based in Salt Lake City, Utah that sells a broad range of products at low prices, including furniture, décor, rugs, bedding, and home improvement. In addition to home goods, Overstock.com offers a variety of products including jewelry, electronics, apparel, and more, as well as a marketplace providing customers access to hundreds of thousands of products from third-party sellers. Additional stores include Pet Adoptions and Worldstock.com dedicated to selling artisan-crafted products from around the

Forward-Looking Statements

This Press Release contains forward-looking statements, including statements relating to tZERO’s business. Other statements in this press release that include words such as “anticipate,” “may,” “believe,” “could,” “should,” “estimate,” “expect,” “intend,” “plan,” “predict,” “potential,” “forecasts,” “project,” and other similar expressions, also are forward-looking statements. Forward-looking statements are made based upon management’s current expectations and beliefs concerning future developments and their potential effects on tZERO. Such forward-looking statements are not guarantees of future performance. Various factors could affect tZERO’s actual results and could cause such results to differ materially from estimates or expectations reflected in forward-looking statements, including factors relating to legal and regulatory developments, applications and/or interpretations of existing legal and regulatory requirements, technological developments and/or difficulties, general economic conditions, conditions in the capital markets and cryptocurrency markets, changes in investor confidence regarding tZERO’s ability to successfully operate its business and develop a trading system for security tokens, and other important factors. tZERO expressly disclaims any obligation or undertaking to disseminate any updates or revisions to any forward-looking statement contained herein to reflect any change in its expectation with regard thereto or any change in events, conditions, or circumstances on which any such statement is based.

This press release is neither an offer to sell, nor a solicitation of an offer to buy, any securities, nor shall there be any sale of any securities in any jurisdiction in which such offer, solicitation or sale would be unlawful.

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COVID-19: Recent SEC Responses applicable to Investment Advisers and Funds

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- COVID-19: Recent SEC Responses applicable to Investment Advisers and Funds
As COVID-19 continues to impact global markets, the U.S. Securities and Exchange Commission (“SEC”) have recently provided certain guidance and targeted relief in recognition of the potential disruption that COVID-19 may have on market participants regulated by the Commission. The following Mayer Brown client alerts describe and take a closer look at certain COVID-19 related SEC guidance and targeted relief that primarily impacts investment advisers and funds.

- **US SEC Provides Temporary, Conditional Relief to Funds and Advisers** (authored by Stephanie Monaco and Leslie Cruz): This “Legal Update” client alert describes two SEC orders providing temporary, conditional exemptions from certain filing and delivery requirements under the Investment Advisers Act of 1940 and from in-person meeting and certain filing requirements under the Investment Company Act of 1940.

- **US SEC Staff Publishes Guidance on Annual Shareholder Meetings Related to COVID-19** (authored by Leslie Cruz and Adam Kanter): This client alert describes guidance from the SEC’s staff to assist investment companies and others affected by COVID-19 with their upcoming annual shareholder meetings.

- **US SEC Announces Flexibility in Comment Period Closing Dates Due to COVID-19 Challenges** (authored by Stephanie Monaco and Leslie Cruz): This “In Brief” client alert summarizes the SEC’s recent announcement that it will not take final action before April 24, 2020, regarding certain recent proposed actions, which have comment periods expiring in March, to allow additional time for comment submission.

Additional information and insight can be found on Mayer Brown’s dedicated website on the impact of COVID-19. If you have any questions about
the issues raised in the above alerts, please contact the above authors or any member of our Investment Management practice.

The post COVID-19: Recent SEC Responses applicable to Investment Advisers and Funds appeared first on Funds & Investment Management Law Blog.

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COVID-19 Related Circulars or Guidance (Non-Exhaustive) Published By Financial Services Regulators of Hong Kong (Last Updated: 22 April 2020)

Avoid Being Blindsided By Correspondent Banking Enforcement

COVID-19: US SEC Provides Temporary, Conditional Relief to Funds and Advisers (Updated) In response to the evolving situation surrounding the coronavirus 2019 (“COVID19”) and the uncertainty as to the duration of the nationwide disruptions to businesses and everyday activities caused by COVID-19, the US Securities and Exchange Commission (“SEC”) on March 25, 2020 extended two orders originally published on March 13, 2020 providing temporary, conditional exemptions from certain filing and delivery requirements under the Investment Advisers Act of 1940 (the “Advisers Act”) and from in-person meeting and certain filing requirements under the Investment Company Act of 1940 (the “1940 Act”). The new Advisers Act and 1940 Act orders issued on March 25 supersede and extend the filing periods covered by the original March 13 orders (each an “Original Order”) until either June 30 or August 15.
While the two March 25 orders generally kept in place the conditions required under the Original Orders, these new orders no longer require advisers or funds relying on such relevant order to briefly describe in its email correspondence to the SEC’s staff or on its website (as applicable) the reasons why it is relying on the order or (if applicable) to provide an estimated date by which it expects the required action will occur. Advisers Act Relief The Advisers Act order conditionally exempts an SEC registered investment adviser from the requirements under: • Advisers Act Rule 204-1 to file an amendment to Form ADV; • Rule 204-3(b)(2) and (b)(4) related to the delivery of Form ADV Part 2 (or a summary of material changes) to existing clients; and • Advisers Act Section 204(b) of and Rule 204(b)-1 thereunder to file Form PF (if applicable). The order also conditionally exempts “exempt reporting advisers” from the requirements under Advisers Act Rule 204-4 to file reports on Form ADV. To rely on these exemptions, the following three conditions must be satisfied: • COVID-19 Impact: The registered investment adviser or exempt reporting adviser must be unable to meet a filing deadline or delivery requirement due to circumstances related to current or potential effects of COVID-19; • Notice to the SEC: An investment adviser relying on the order with respect to the filing of Form ADV or delivery of its 2 Mayer Brown | COVID-19: US SEC Provides Temporary, Conditional Relief to Funds and Advisers (Updated) brochure, summary of material changes, or brochure supplement required by Rule 204-3(b)(2) or (b)(4), must promptly provide to the SEC via email at IARDLive@sec.gov and disclose on its public website (or if it does not have a public website, it must promptly notify its clients and/or private fund investors of) that it is relying on the order. An investment adviser relying on the order with respect to filing Form PF required by Rule 204(b)-1 must promptly notify the SEC via email at FormPF@sec.gov stating that it is relying on the order. • File/Deliver the Form ASAP (But Within 45 Days): The investment adviser must file the Form ADV or Form PF, as applicable, and deliver the brochure (or summary of material changes) and brochure supplement required by Rule 204-3(b)(2) and (b)(4) under the Advisers Act, as soon as practicable, but no later than 45 days after the original due date for filing or delivery, as applicable. This relief is limited to filing or delivery obligations for which the original due date is on or after the date of the Original Order (March 13, 2020) but on or prior to June 30, 2020. 1940 Act Relief The 1940 Act order provides exemptive relief in four areas, and also provides “no-action” relief in connection with prospectus delivery requirements, as summarized below. In Person Meeting Relief – The order exempts a registered management investment company or a business development company (“BDC”), and any investment adviser of or principal underwriter for such company, from the requirements imposed under 1940 Act Sections 15(c) and 32(a) and 1940 Act Rules 12b-1(b)(2) and 15a-4(b)(2)(ii) that votes of the board of directors of such a company be cast in person. To rely on this relief, the company must meet the following three conditions: • COVID-19 Impact – Reliance on the order must be “necessary or
appropriate” due to circumstances related to current or potential effects of COVID-19. • Group Audio – The votes required to be cast at an in-person meeting instead must be cast at a meeting in which directors may participate by any means of communication that allows all directors participating to hear each other simultaneously during the meeting. • Ratification at the Next In Person Meeting – The board of directors, including a majority of the directors who are not “interested persons” (as defined in the 1940 Act) of the company, must ratify the action taken pursuant to the exemption by vote cast at the next in-person meeting. This relief is limited to the period from and including the date of the Original Order (March 13, 2020) to August 15, 2020. This relief crystallizes the prior statements from the SEC staff regarding in person meetings under the 1940 Act. See our March 4, 2020 Legal Update “COVID-19: US SEC Staff Offers Relief for RIAs and Funds” for further detail. Form N-CEN and Form N-PORT Relief – The 1940 Act order temporarily exempts registered funds that are required to file Form N-CEN pursuant to 1940 Act Rule 30a-1, or Form N-PORT pursuant to 1940 Act Rule 30b1-9, from those form filing requirement.

To rely on this relief, the registered fund must meet the following five conditions: • COVID-19 Impact – The registered fund must be unable to meet a filing deadline due to circumstances related to current or potential effects of COVID-19. • Notice to SEC Staff – The registered fund must promptly notify the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order. • Public Statement – The registered fund must include a statement on its public website briefly stating that it is relying on the order. • File ASAP (But Within 45 Days) – The registered fund must file the report as soon as practicable, but no later than 45 days after its original due date. • Statement in the Filing Itself – Any Form N-CEN or Form N-PORT filed pursuant to the order must include a statement of the filer that it relied on the order and of the reasons why it was unable to file such report on a timely basis. This relief is limited to filing obligations for which the original due date is on or after the date of the Original Order but on or prior to June 30, 2020. Shareholder Report Transmittal Relief – The 1940 Act order temporarily exempts registered management investment companies from the requirements of 1940 Act Section 30(e) and Rule 30e-1 thereunder to transmit annual and semi-annual reports to investors. It also temporarily exempts registered unit investment trusts from the requirements of 1940 Act Section 30(e) and Rule 30e-2 thereunder to transmit annual and semi-annual reports to unitholders. To rely on the relief, the issuer must satisfy the following four conditions: • COVID-19 Impact – The registered fund must be unable to prepare or transmit the report due to circumstances related to current or potential effects of COVID-19. • Notice to SEC Staff – The registered fund must promptly notify the SEC staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on the order. • Public Statement – The registered fund must include a statement on its public website briefly stating that it is relying on the order. •
Transmit ASAP (But Within 45 and 10 Days) – The registered fund must transmit the reports to shareholders as soon as practicable, but no later than 45 days after the original due date, and file the report within 10 days of its transmission to shareholders. This relief is limited to transmittal obligations for which the original due date is on or after the date of the Original Order but on or prior to June 30, 2020. Closed-End Fund and BDC Filing Relief – The 1940 Act order provides a temporary exemption for closed-end funds and BDCs from the requirement to file with the SEC notices of their intention to call or redeem securities at least 30 days in advance under 1940 Act Sections 23(c) and 63, as applicable, and Rule 23c-2 thereunder, if the company files a Form N-23C-2 (“Notice”) with the SEC fewer than 30 days prior to, including the same business day as, the company’s call or redemption of securities of which it is the issuer. To rely on the order, the company must satisfy the following three conditions: • Notice to SEC Staff – The company must promptly notify SEC staff via email at IMEmergencyRelief@sec.gov stating that it is relying on the order. • Compliance with State Law and Governing Documents – The company must ensure that the filing of the Notice on an abbreviated time frame is permitted under relevant state law and the company’s governing documents. • Filing of a Notice – The company must file a Notice that contains all the information required by Rule 23c-2 before: • any call or redemption of existing securities; • the commencement of any offering of replacement securities; and • providing notification to the existing shareholders whose securities are being called or redeemed. This relief is limited to the period from and including the date of the Original Order to August 15, 2020. Prospectus Delivery “No-Action” Relief – The SEC stated that it would not recommend an SEC enforcement action if a registered fund does not deliver to investors its current prospectus where the prospectus is “not able to be timely delivered because of circumstances related to COVID-19.” The delivery must have been originally required on or after the date of the Original Order (March 13, 2020) but on or prior to June 30, 2020. This relief does not apply to deliveries required in connection with the initial sale of shares to an investor. To rely on this “no-action” relief, the registered fund must comply with the following four conditions: • Notice to SEC Staff – The registered fund must notify Division of Investment Management staff via email at IM-EmergencyRelief@sec.gov stating that it is relying on this SEC position. • Public Statement – The registered fund must publish on its public website that it intends to rely on the SEC position. • Prospectus on Website – The registered fund must publish its current prospectus on its public website. • Delivery to Investors ASAP (But Within 45 Days) – The registered fund must deliver the prospectus to investors as soon as practicable, but no later than 45 days after the date originally required. Questions for the SEC Staff? The press release accompanying the orders encouraged firms to contact the SEC staff with questions and concerns, and provided the following contact information for the SEC’s Division of Investment Management: • For general questions or
concerns related to impacts of coronavirus on the operations or compliance of funds and advisers, including questions about Form N-MFP and Form N-CR, please email IM-EmergencyRelief@sec.gov. • For questions regarding Form N-LIQUID, please email IM-N-LIQUID@sec.gov and simultaneously contact: Tim Husson, Associate Director, at (202) 551-6803 and Jon Hertzke, Assistant Director, at (202) 551-6247. • For questions regarding Form ADV, email IARDLive@sec.gov. • For questions regarding Form PF, email FormPF@sec.gov. In addition, advisers might find the SEC’s COVID-19 Response webpage to be a helpful resource. This webpage provides updated information on the SEC’s own operations, as well as its response to COVID-19 and related market and industry impact, with links to SEC and staff statements, speeches and guidance regarding COVID-19. Notably, the webpage also makes clear that the SEC’s enforcement and examination staff remain fully operational. Conclusion The SEC says that it will continue to monitor the COVID-19 situation, which may prompt the SEC to extend again all or some of the relief with possibly more or revised conditions imposed thereon. The SEC indicated that it may issue other relief if necessary or appropriate. While these orders can provide welcome relief to funds and advisers, it is important to note that the relief has been provided on a conditional basis, and funds and advisers might find that certain conditions are not as easy to meet as hoped. It is also unclear how certain conditions will be interpreted. For example, the release does not indicate what “promptly” means in this context, nor does it provide guidance as to the circumstances under which an adviser or fund would be “unable” to meet a certain requirement for purposes of the relief. In the past, unanswered regulatory questions such as these, unfortunately, have often been interpreted and evaluated by the SEC and its staff with the benefit of hindsight, leaving advisers and funds with uncertainty as to whether and how to proceed. This crisis will certainly pass, leaving an inquisitive SEC examination and enforcement staff. That said, oral statements that Chair Clayton made on a March 16, 2020 morning news show provide some reassurance regarding how the SEC and its staff might evaluate market participant actions in response to the COVID-19 situation. When discussing business continuity plans, he emphasized that “health and safety is paramount.” Chair Clayton recognized that with any transition (presumably referring to telework, operations and other transitions being undertaken in connection with the COVID-19 situation), there will be “bumps in the road.” He also acknowledged that although we can look to the past disruptions for guidance as to how to proceed with this one, this one “is not the same.” In addition, the SEC’s Office of Compliance Inspections and Examinations (“OCIE”) issued a statement on March 23, 2020 noting that it “believes it is important to communicate to registrants that reliance on regulatory relief will not be a risk factor utilized in determining whether OCIE commences an examination” and that it “encourage[s] registrants to utilize available regulatory relief as needed.” If you have any questions about these SEC orders, or about the SEC’s and
its staffs’ responses to COVID-19 more generally, please contact Stephanie M. Monaco, Leslie S. Cruz or any member of our Investment Management Practice. We are here to help with any questions of interpretation or assistance with compliance with the relief provided by the orders, including contacting the SEC staff if needed. In addition, we will continue to keep funds and advisers updated on any future significant SEC or staff announcements. The SEC orders are part of an evolving COVID-19 response that is moving across regulatory agencies. Please visit our website to learn more. For more information about the topics raised in this Legal Update, please contact any of the following lawyers. Stephanie M. Monaco +1 202 263 3379 smonaco@mayerbrown.com Leslie S. Cruz +1 202 263 3337 lcruz@mayerbrown.com Peter M. McCamman +1 202 263 3299 pmccamman@mayerbrown.com Adam Kanter +1 202 263 3164 akanter@mayerbrown.com.

FEDERAL REGISTER;

85 FR 2164

Multiple documents found for the citation 85 FR 2164.

- Notice of Proposed Order Directing the Exchanges and the Financial Industry Regulatory Authority To Submit a New National Market System Plan Regarding Consolidated Equity Market Data
  
  A Notice by the Securities and Exchange Commission; Pages 2164-2187

- 670th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)
  
  A Notice by the Nuclear Regulatory Commission; Pages 2163-2164

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Comment Periods for Certain Pending Actions

Certain of the Commission’s proposed actions have comment periods that have expired in March. We understand that challenges associated with COVID-19 may delay the completion and submission of some comment letters. The Commission and staff have historically considered comments submitted after a comment period closes but before adoption of a final rule or order, consistent with the Commission’s Informal and Other Procedures (17 C.F.R. 202.6). For each of the pending items listed below, the Commission will not take final action before May 1 in order to allow commenters additional time if needed.

The Commission is operational and we encourage market participants to submit comments on the most reasonable possible timeframe. The Chairman will continue to consult with fellow Commissioners and staff and make adjustments to the list above as necessary.

This page lists rulemaking activity since 2008 grouped by file number, which allows you to view the proposed rules, final rules and other actions related to a particular rulemaking. You can sort this list by most recent action, file number, or the informal short name of the rulemaking. By using the "Status" filter, you can view rulemakings that have been completed, or rulemakings that have been proposed but not yet completed. You can also filter to display rulemakings related to a specific SEC division or office. This index omits certain technical rulemakings, including updates to the EDGAR filing manual.

The Regulatory Flexibility Act ("RFA") requires each federal agency in April and October of each year to publish in the Federal Register an agenda identifying rules that the agency expects to consider in the next twelve months that are likely to have a significant economic impact on a substantial number of small entities. The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda, and that an agency is not required to consider or act on any matter that is included in the agenda. The current Unified Agenda of Federal Regulatory and Deregulatory Actions can be found at www.reginfo.gov.

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17 CFR § 270.23c-2 - Call and redemption of securities issued by registered closed-end companies.
§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c-1 (Rule N-23c-1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: Provided, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; Provided, however, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N-23C-2, 7 FR 6669, Aug. 25, 1942]

17 CFR § 270.23c-3 - Repurchase offers by closed-end companies.

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§ 270.23c-3 Repurchase offers by closed-end companies.

(a) Definitions. For purposes of this section:

   (1) Periodic interval shall mean an interval of three, six, or twelve months.

   (2) Repurchase offer shall mean an offer pursuant to this section by an investment company to repurchase common stock of which it is the issuer.
(3) **Repurchase offer amount** shall mean the amount of common stock that is the subject of a repurchase offer, expressed as a percentage of such stock outstanding on the repurchase request deadline, that an investment company offers to repurchase in a repurchase offer. The repurchase offer amount shall not be less than five percent nor more than twenty-five percent of the common stock outstanding on a repurchase request deadline. Before each repurchase offer, the repurchase offer amount for that repurchase offer shall be determined by the directors of the company.

(4) **Repurchase payment deadline** with respect to a tender of common stock shall mean the date by which an investment company must pay securities holders for any stock repurchased. A repurchase payment deadline shall occur seven days after the repurchase pricing date applicable to such tender.

(5) **Repurchase pricing date** with respect to a tender of common stock shall mean the date on which an investment company determines the net asset value applicable to the repurchase of the securities. A repurchase pricing date shall occur no later than the fourteenth day after a repurchase request deadline, or the next business day if the fourteenth day is not a business day. In no event shall an investment company determine the net asset value applicable to the repurchase of the stock before the close of business on the repurchase request deadline.

(i) For an investment company making a repurchase offer pursuant to paragraph (b) of this section, the number of days between the repurchase request deadline and the repurchase pricing date for a repurchase offer shall be the maximum number specified by the company pursuant to paragraph (b)(2)(i)(D) of this section.

(ii) For an investment company making a repurchase offer pursuant to paragraph (c) of this section, the repurchase pricing date shall be such date as the company shall disclose to security holders in the notification pursuant to paragraph (b)(4) of this section with respect to such offer.

(iii) For purposes of paragraph (b)(1) of this section, a repurchase pricing date may be a date earlier than the date determined pursuant to paragraph (a)(5) (i) or (ii) of this section if, on or immediately following the repurchase request deadline, it appears that the use of an earlier repurchase pricing date is not likely to result in significant dilution of the net asset value of either stock that is tendered for repurchase or stock that is not tendered.

(6) **Repurchase request** shall mean the tender of common stock in response to a repurchase offer.
(7) Repurchase request deadline with respect to a repurchase offer shall mean the date by which an investment company must receive repurchase requests submitted by security holders in response to that offer or withdrawals or modifications of previously submitted repurchase requests. The first repurchase request deadline after the effective date of the registration statement for the common stock that is the subject of a repurchase offer, or after a shareholder vote adopting the fundamental policy specifying a company’s periodic interval, whichever is later, shall occur no later than two periodic intervals thereafter.

(b) Periodic repurchase offers. A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock at periodic intervals, pursuant to repurchase offers made to all holders of the stock, Provided that:

(1) The company shall repurchase the stock for cash at the net asset value determined on the repurchase pricing date and shall pay the holders of the stock by the repurchase payment deadline except as provided in paragraph (b) (3) of this section. The company may deduct from the repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the company and is reasonably intended to compensate the company for expenses directly related to the repurchase. A company may not condition a repurchase offer upon the tender of any minimum amount of shares.

(2)

(i) The company shall repurchase the security pursuant to a fundamental policy, changeable only by a majority vote of the outstanding voting securities of the company, stating:

(A) That the company will make repurchase offers at periodic intervals pursuant to this section, as this section may be amended from time to time;

(B) The periodic intervals between repurchase request deadlines;

(C) The dates of repurchase request deadlines or the means of determining the repurchase request deadlines; and

(D) The maximum number of days between each repurchase request deadline and the next repurchase pricing date.

(ii) The company shall include a statement in its annual report to shareholders of the following:

(A) Its policy under paragraph (b)(2)(i) of this section; and
(B) With respect to repurchase offers by the company during the period covered by the annual report, the number of repurchase offers, the repurchase offer amount and the amount tendered in each repurchase offer, and the extent to which in any repurchase offer the company repurchased stock pursuant to the procedures in paragraph (b)(5) of this section.

(iii) A company shall be deemed to be making repurchase offers pursuant to a policy within paragraph (b)(2)(i) of this section if:

(A) The company makes repurchase offers to its security holders at periodic intervals and, before May 14, 1993, has disclosed in its registration statement its intention to make or consider making such repurchase offers; and

(B) The company’s board of directors adopts a policy specifying the matters required by paragraph (b)(2)(i) of this section, and the periodic interval specified therein conforms generally to the frequency of the company's prior repurchase offers.

(3)

(i) The company shall not suspend or postpone a repurchase offer except pursuant to a vote of a majority of the directors, including a majority of the directors who are not interested persons of the company, and only:

(A) If the repurchase would cause the company to lose its status as a regulated investment company under Subchapter M of the Internal Revenue Code [26 U.S.C. 851-860];

(B) If the repurchase would cause the stock that is the subject of the offer that is either listed on a national securities exchange or quoted in an inter-dealer quotation system of a national securities association to be neither listed on any national securities exchange nor quoted on any inter-dealer quotation system of a national securities association;

(C) For any period during which the New York Stock Exchange or any other market in which the securities owned by the company are principally traded is closed, other than customary week-end and holiday closings, or during which trading in such market is restricted;

(D) For any period during which an emergency exists as a result of which disposal by the company of securities owned by it is not reasonably practicable, or during which it is not reasonably practicable for the company fairly to determine the value of its net assets; or
(E) For such other periods as the Commission may by order permit for the protection of security holders of the company.

(ii) If a repurchase offer is suspended or postponed, the company shall provide notice to security holders of such suspension or postponement. If the company renews the repurchase offer, the company shall send a new notification to security holders satisfying the requirements of paragraph (b)(4) of this section.

(4)

(i) No less than twenty-one and no more than forty-two days before each repurchase request deadline, the company shall send to each holder of record and to each beneficial owner of the stock that is the subject of the repurchase offer a notification providing the following information:

(A) A statement that the company is offering to repurchase its securities from security holders at net asset value;

(B) Any fees applicable to such repurchase;

(C) The repurchase offer amount;

(D) The dates of the repurchase request deadline, repurchase pricing date, and repurchase payment deadline, the risk of fluctuation in net asset value between the repurchase request deadline and the repurchase pricing date, and the possibility that the company may use an earlier repurchase pricing date pursuant to paragraph (a)(5)(iii) of this section;

(E) The procedures for security holders to tender their shares and the right of the security holders to withdraw or modify their tenders until the repurchase request deadline;

(F) The procedures under which the company may repurchase such shares on a pro rata basis pursuant to paragraph (b)(5) of this section;

(G) The circumstances in which the company may suspend or postpone a repurchase offer pursuant to paragraph (b)(3) of this section;

(H) The net asset value of the common stock computed no more than seven days before the date of the notification and the means by which security holders may ascertain the net asset value thereafter; and

(I) The market price, if any, of the common stock on the date on which such net asset value was computed, and the means by which security holders may ascertain the market price thereafter.
(ii) The company shall file three copies of the notification with the Commission within three business days after sending the notification to security holders. Those copies shall be accompanied by copies of Form N-23c-3 (§ 274.221 of this chapter) (“Notification of Repurchase Offer”). The format of the copies shall comply with the requirements for registration statements and reports under § 270.8b-12 of this chapter.

(iii) For purposes of sending a notification to a beneficial owner pursuant to paragraph (b)(4)(i) of this section, where the company knows that shares of common stock that is the subject of a repurchase offer are held of record by a broker, dealer, voting trustee, bank, association or other entity that exercises fiduciary powers in nominee name or otherwise, the company shall follow the procedures for transmitting materials to beneficial owners of securities that are set forth in § 240.14a-13 of this chapter.

(5) If security holders tender more than the repurchase offer amount, the company may repurchase an additional amount of stock not to exceed two percent of the common stock outstanding on the repurchase request deadline. If the company determines not to repurchase more than the repurchase offer amount, or if security holders tender stock in an amount exceeding the repurchase offer amount plus two percent of the common stock outstanding on the repurchase request deadline, the company shall repurchase the shares tendered on a pro rata basis; Provided, however, That this provision shall not prohibit the company from:

(i) Accepting all stock tendered by persons who own, beneficially or of record, an aggregate of not more than a specified number which is less than one hundred shares and who tender all of their stock, before prorating stock tendered by others; or

(ii) Accepting by lot stock tendered by security holders who tender all stock held by them and who, when tendering their stock, elect to have either all or none or at least a minimum amount or none accepted, if the company first accepts all stock tendered by security holders who do not so elect.

(6) The company shall permit tenders of stock for repurchase to be withdrawn or modified at any time until the repurchase request deadline but shall not permit tenders to be withdrawn or modified thereafter.

(7)

(i) The current net asset value of the company's common stock shall be computed no less frequently than weekly on such day and at such specific time or times during the day that the board of directors of the company shall set.
(ii) The current net asset value of the company’s common stock shall be computed daily on the five business days preceding a repurchase request deadline at such specific time or times during the day that the board of directors of the company shall set.

(iii) For purposes of section 23(b) [15 U.S.C. 80a-23(b)], the current net asset value applicable to a sale of common stock by the company shall be the net asset value next determined after receipt of an order to purchase such stock. During any period when the company is offering its common stock, the current net asset value of the common stock shall be computed no less frequently than once daily, Monday through Friday, at the specific time or times during the day that the board of directors of the company shall set, except on:

(A) Days on which changes in the value of the company’s portfolio securities will not materially affect the current net asset value of the common stock;

(B) Days during which no order to purchase its common stock is received, other than days when the net asset value would otherwise be computed pursuant to paragraph (b)(7)(i) of this section; or

(C) Customary national, local, and regional business holidays described or listed in the prospectus.

(8) The board of directors of the investment company satisfies the fund governance standards defined in § 270.0-1(a)(7).

(9) Any senior security issued by the company or other indebtedness contracted by the company either shall mature by the next repurchase pricing date or shall provide for the redemption or call of such security or the repayment of such indebtedness by the company by the next repurchase pricing date, either in whole or in part, without penalty or premium, as necessary to permit the company to repurchase securities in such repurchase offer amount as the directors of the company shall determine in compliance with the asset coverage requirements of section 18 [15 U.S.C. 80a-18] or 61 [15 U.S.C. 80a-60], as applicable.

(10)

(i) From the time a company sends a notification to shareholders pursuant to paragraph (b)(4) of this section until the repurchase pricing date, a percentage of the company’s assets equal to at least 100 percent of the repurchase offer amount shall consist of assets that can be sold or disposed of in the ordinary course of business, at approximately the price at which the company has valued the investment, within a period equal to the period
between a repurchase request deadline and the repurchase payment deadline, or of assets that mature by the next repurchase payment deadline.

(ii) In the event that the company's assets fail to comply with the requirements in paragraph (b)(10)(i) of this section, the board of directors shall cause the company to take such action as it deems appropriate to ensure compliance.

(iii) In supervising the company's operations and portfolio management by the investment adviser, the company's board of directors shall adopt written procedures reasonably designed, taking into account current market conditions and the company's investment objectives, to ensure that the company's portfolio assets are sufficiently liquid so that the company can comply with its fundamental policy on repurchases, and comply with the liquidity requirements of paragraph (b)(10)(i) of this section. The board of directors shall review the overall composition of the portfolio and make and approve such changes to the procedures as the board deems necessary.

(11) The company, or any underwriter for the company, shall comply, as if the company were an open-end company, with the provisions of section 24(b) [15 U.S.C. 80a-24(b)] and rules issued thereunder with respect to any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors.

(c) Discretionary repurchase offers. A registered closed-end company or a business development company may repurchase common stock of which it is the issuer from the holders of the stock pursuant to a repurchase offer that is not made pursuant to a fundamental policy and that is made to all holders of the stock not earlier than two years after another offer pursuant to this paragraph (c) if the company complies with the requirements of paragraphs (b) (1), (3), (4), (5), (6), (7)(ii), (8), (10)(i), and (10)(ii) of this section.

(d) Exemption from the definition of redeemable security. A company that makes repurchase offers pursuant to paragraph (b) or (c) of this section shall not be deemed thereby to be an issuer of redeemable securities within section 2(a)(32) [15 U.S.C. 80a-2(a)(32)].


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Findings Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z–4 [1] of this title, and facts otherwise disclosed and ascertained, it is found that investment companies are affected with a national public interest in that, among other things—

(1) the securities issued by such companies, which constitute a substantial part of all securities publicly offered, are distributed, purchased, paid for, exchanged, transferred, redeemed, and repurchased by use of the mails and means and instrumentalities of interstate commerce, and in the case of the numerous companies which issue redeemable securities this process of distribution and redemption is continuous;

(2) the principal activities of such companies—investing, reinvesting, and trading in securities—are conducted by use of the mails and means and instrumentalities of interstate commerce, including the facilities of national securities exchanges, and constitute a substantial part of all transactions effected in the securities markets of the Nation;

(3) such companies customarily invest and trade in securities issued by, and may dominate and control or otherwise affect the policies and management of, companies engaged in business in interstate commerce;

(4)
such companies are media for the investment in the national economy of a substantial part of the national savings and may have a vital effect upon the flow of such savings into the capital markets; and

(5)

the activities of such companies, extending over many States, their use of the instrumentalities of interstate commerce and the wide geographic distribution of their security holders, make difficult, if not impossible, effective State regulation of such companies in the interest of investors.

(b) Policy

Upon the basis of facts disclosed by the record and reports of the Securities and Exchange Commission made pursuant to section 79z–4 of this title, and facts otherwise disclosed and ascertained, it is declared that the national public interest and the interest of investors are adversely affected—

(1)

when investors purchase, pay for, exchange, receive dividends upon, vote, refrain from voting, sell, or surrender securities issued by investment companies without adequate, accurate, and explicit information, fairly presented, concerning the character of such securities and the circumstances, policies, and financial responsibility of such companies and their management;

(2)

when investment companies are organized, operated, managed, or their portfolio securities are selected, in the interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, in the interest of underwriters, brokers, or dealers, in the interest of special classes of their security holders, or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies’ security holders;

(3)

when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of the holders of their outstanding securities;

(4)

when the control of investment companies is unduly concentrated through pyramiding or inequitable methods of control, or is inequitably distributed, or when investment companies are managed by irresponsible persons;

(5)
when investment companies, in keeping their accounts, in maintaining reserves, and in computing their earnings and the asset value of their outstanding securities, employ unsound or misleading methods, or are not subjected to adequate independent scrutiny;

(6) when investment companies are reorganized, become inactive, or change the character of their business, or when the control or management thereof is transferred, without the consent of their security holders;

(7) when investment companies by excessive borrowing and the issuance of excessive amounts of senior securities increase unduly the speculative character of their junior securities; or

(8) when investment companies operate without adequate assets or reserves.

It is declared that the policy and purposes of this subchapter, in accordance with which the provisions of this subchapter shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the conditions enumerated in this section which adversely affect the national public interest and the interest of investors.

(Aug. 22, 1940, ch. 686, title I, § 1, 54 Stat. 789.)

15 U.S. Code § 80a–2. Definitions; applicability; rulemaking considerations

(a) DEFINITIONS When used in this subchapter, unless the context otherwise requires—

(1) “Advisory board” means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, of an investment company, and
which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members “directors” within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

(2) “Affiliated company” means a company which is an affiliated person.

(3) “Affiliated person” of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

(4) “Assignment” includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but does not include an assignment of partnership interests incidental to the death or withdrawal of a minority of the members of the partnership having only a minority interest in the partnership business or to the admission to the partnership of one or more members who, after such admission, shall be only a minority of the members and shall have only a minority interest in the business.

(5) “Bank” means (A) a depository institution (as defined in section 1813 of title 12) or a branch or agency of a foreign bank (as such terms are defined in section 3101 of title 12), (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a
receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

(6) The term “broker” has the same meaning as given in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c], except that such term does not include any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(7) “Commission” means the Securities and Exchange Commission.

(8) “Company” means a corporation, a partnership, an association, a joint-stock company, a trust, a fund, or any organized group of persons whether incorporated or not; or any receiver, trustee in a case under title 11 or similar official or any liquidating agent for any of the foregoing, in his capacity as such.

(9) “Control” means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 per centum of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25 per centum of the voting securities of any company shall be presumed not to control such company. A natural person shall be presumed not to be a controlled person within the meaning of this subchapter. Any such presumption may be rebutted by evidence, but except as hereinafter provided, shall continue until a determination to the contrary made by the Commission by order either on its own motion or on application by an interested person. If an application filed hereunder is not granted or denied by the Commission within sixty days after filing thereof, the determination sought by the application shall be deemed to have been temporarily granted pending final determination of the Commission thereon. The Commission, upon its own motion or upon application, may by order revoke or modify any order issued under this paragraph whenever it shall find that the determination embraced in such original order is no longer consistent with the facts.

(10) “Convicted” includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(11)
The term “dealer” has the same meaning as given in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], but does not include an insurance company or investment company.

(12) “Director” means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated, including any natural person who is a member of a board of trustees of a management company created as a common-law trust.

(13) “Employees’ securities company” means any investment company or similar issuer all of the outstanding securities of which (other than short-term paper) are beneficially owned (A) by the employees or persons on retainer of a single employer or of two or more employers each of which is an affiliated company of the other, (B) by former employees of such employer or employers, (C) by members of the immediate family of such employees, persons on retainer, or former employees, (D) by any two or more of the foregoing classes of persons, or (E) by such employer or employers together with any one or more of the foregoing classes of persons.

(14) “Exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(15) “Face-amount certificate” means any certificate, investment contract, or other security which represents an obligation on the part of its issuer to pay a stated or determinable sum or sums at a fixed or determinable date or dates more than twenty-four months after the date of issuance, in consideration of the payment of periodic installments of a stated or determinable amount (which security shall be known as a face-amount certificate of the “installment type”); or any security which represents a similar obligation on the part of a face-amount certificate company, the consideration for which is the payment of a single lump sum (which security shall be known as a “fully paid” face-amount certificate).

(16) “Government security” means any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to
authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing.

(17) “Insurance company” means a company which is organized as an insurance company, whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and which is subject to supervision by the insurance commissioner or a similar official or agency of a State; or any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(18) “Interstate commerce” means trade, commerce, transportation, or communication among the several States, or between any foreign country and any State, or between any State and any place or ship outside thereof.

(19)“Interested person” of another person means—
(A) when used with respect to an investment company—
(i) any affiliated person of such company,
(ii) any member of the immediate family of any natural person who is an affiliated person of such company,
(iii) any interested person of any investment adviser of or principal underwriter for such company,
(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company,
(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—
(I) the investment company;
(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or
(III)
any account over which the investment company's investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) the investment company;

(II) any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services; or

(III) any account for which the investment company's investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or principal underwriter or with the principal executive officer of such other investment company:

Provided, That no person shall be deemed to be an interested person of an investment company solely by reason of (aa) his being a member of its board of directors or advisory board or an owner of its securities, or (bb) his membership in the immediate family of any person specified in clause (aa) of this proviso; and

(B) when used with respect to an investment adviser of or principal underwriter for any investment company—

(i) any affiliated person of such investment adviser or principal underwriter,

(ii) any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter,

(iii) any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued either by such investment adviser of principal underwriter or by a controlling person or such investment adviser or principal underwriter,
(iv) any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

(v) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed shares for—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account over which the investment adviser has brokerage placement discretion,

(vi) any person or any affiliated person of a person (other than a registered investment company) that, at any time during the 6-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to—

(I) any investment company for which the investment adviser or principal underwriter serves as such;

(II) any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such; or

(III) any account for which the investment adviser has borrowing authority, and

(vii) any natural person whom the Commission by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or
principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter.

For the purposes of this paragraph (19), “member of the immediate family” means any parent, spouse of a parent, child, spouse of a child, spouse, brother, or sister, and includes step and adoptive relationships. The Commission may modify or revoke any order issued under clause (vii) of subparagraph (A) or (B) of this paragraph whenever it finds that such order is no longer consistent with the facts. No order issued pursuant to clause (vii) of subparagraph (A) or (B) of this paragraph shall become effective until at least sixty days after the entry thereof, and no such order shall affect the status of any person for the purposes of this subchapter or for any other purpose for any period prior to the effective date of such order.

(20) “Investment adviser” of an investment company means (A) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company, as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (B) any other person who pursuant to contract with a person described in clause (A) of this paragraph regularly performs substantially all of the duties undertaken by such person described in said clause (A); but does not include (i) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (ii) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (iii) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (iv) any person the character and amount of whose compensation for such services must be approved by a court, or (v) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

(21) “Investment banker” means any person engaged in the business of underwriting securities issued by other persons, but does not include an investment company, any person who acts as an underwriter in isolated transactions but not as a part of a regular business, or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

(22)
“Issuer” means every person who issues or proposes to issue any security, or has outstanding any security which it has issued.

(23) “Lend” includes a purchase coupled with an agreement by the vendor to repurchase; “borrow” includes a sale coupled with a similar agreement.

(24) “Majority-owned subsidiary” of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(25) “Means or instrumentality of interstate commerce” includes any facility of a national securities exchange.


(27) “Periodic payment plan certificate” means (A) any certificate, investment contract, or other security providing for a series of periodic payments by the holder, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (B) any security the issuer of which is also issuing securities of the character described in clause (A) of this paragraph and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (A) have upon completing the periodic payments for which such securities provide.

(28) “Person” means a natural person or a company.

(29) “Principal underwriter” of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. “Principal underwriter” of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a
primary distribution of securities, (A) is in privity of contract with the issuer or an affiliated person of the issuer; (B) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (C) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

(30) “Promoter” of a company or a proposed company means a person who, acting alone or in concert with other persons, is initiating or directing, or has within one year initiated or directed, the organization of such company.

(31) “Prospectus”, as used in section 80a–22 of this title, means a written prospectus intended to meet the requirements of section 10(a) of the Securities Act of 1933 [15 U.S.C. 77j(a)] and currently in use. As used elsewhere, “prospectus” means a prospectus as defined in the Securities Act of 1933 [15 U.S.C. 77a et seq.].

(32) “Redeemable security” means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer’s current net assets, or the cash equivalent thereof.

(33) “Reorganization” means (A) a reorganization under the supervision of a court of competent jurisdiction; (B) a merger or consolidation; (C) a sale of 75 per centum or more in value of the assets of a company; (D) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (E) a voluntary dissolution or liquidation of a company; (F) a recapitalization or other procedure or transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (G) an exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (H) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(34) “Sale”, “sell”, “offer to sell”, or “offer for sale” includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security, for value. Any security given or delivered with,
or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

(35) “Sales load” means the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer (or in the case of a unit investment trust, by the depositor or trustee), less any portion of such difference deducted for trustee’s or custodian’s fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. In the case of a periodic payment plan certificate, “sales load” includes the sales load on any investment company securities in which the payments made on such certificate are invested, as well as the sales load on the certificate itself.

(36) “Security” means any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, 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, or, in general, any interest or instrument commonly known as a “security”, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

(37) “Separate account” means an account established and maintained by an insurance company pursuant to the laws of any State or territory of the United States, or of Canada or any province thereof, under which income, gains and losses, whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account without regard to other income, gains, or losses of the insurance company.

(38) “Short-term paper” means any note, draft, bill of exchange, or banker's acceptance payable on demand or having a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof payable on demand or having a maturity likewise limited; and such other classes
of securities, of a commercial rather than an investment character, as the Commission may designate by rules and regulations.

(39) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(40) "Underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission. As used in this paragraph the term "issuer" shall include, in addition to an issuer, any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. When the distribution of the securities in respect of which any person is an underwriter is completed such person shall cease to be an underwriter in respect of such securities or the issuer thereof.

(41) "Value", with respect to assets of registered investment companies, except as provided in subsection (b) of section 80a–28 of this title, means—

(A) as used in sections 80a–3, 80a–5, and 80a–12 of this title, (i) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (ii) with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (iii) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(B) as used elsewhere in this subchapter, (i) with respect to securities for which market quotations are readily available, the market value of such securities; and (ii) with respect to other securities and assets, fair value as determined in good faith by the board of directors;

in each case as of such time or times as determined pursuant to this subchapter, and the rules and regulations issued by the Commission hereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: Provided, That the value so determined is not in excess of the higher of market value or asset value of such securities in
the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies. For purposes of the valuation of those assets of a registered diversified company which are not subject to the limitations provided for in section 80a–5(b) (1) of this title, the Commission may, by rules and regulations or orders, permit any security to be carried at cost, if it shall determine that such procedure is consistent with the general intent and purposes of this subchapter. For purposes of sections 80a–5 and 80a–12 of this title in lieu of values determined as provided in clause (A) above, the Commission shall by rules and regulations permit valuation of securities at cost or other basis in cases where it may be more convenient for such company to make its computations on such basis by reason of the necessity or desirability of complying with the provisions of any United States revenue laws or rules and regulations issued thereunder, or the laws or the rules and regulations issued thereunder of any State in which the securities of such company may be qualified for sale. The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections 80a–8, 80a–29, and 80a–30 of this title.

(42) “Voting security” means any security presently entitling the owner or holder thereof to vote for the election of directors of a company. A specified percentage of the outstanding voting securities of a company means such amount of its outstanding voting securities as entitles the holder or holders thereof to cast said specified percentage of the aggregate votes which the holders of all the outstanding voting securities of such company are entitled to cast. The vote of a majority of the outstanding voting securities of a company means the vote, at the annual or a special meeting of the security holders of such company duly called, (A) of 67 per centum or more of the voting securities present at such meeting, if the holders of more than 50 per centum of the outstanding voting securities of such company are present or represented by proxy; or (B) of more than 50 per centum of the outstanding voting securities of such company, whichever is the less.

(43) “Wholly-owned subsidiary” of a person means a company 95 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a wholly-owned subsidiary of such person.

(44)

(45) “Savings and loan association” means a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, and a receiver, conservator, or other liquidating agent of any such institution.

(46) “Eligible portfolio company” means any issuer which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is neither an investment company as defined in section 80a–3 of this title (other than a small business investment company which is licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] and which is a wholly-owned subsidiary of the business development company) nor a company which would be an investment company except for the exclusion from the definition of investment company in section 80a–3(c) of this title; and

(C) satisfies one of the following:

(i) it does not have any 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 7 of the Securities Exchange Act of 1934 [15 U.S.C. 78g];

(ii) it is controlled by a business development company, either alone or as part of a group acting together, and such business development company in fact exercises a controlling influence over the management or policies of such eligible portfolio company and, as a result of such control, has an affiliated person who is a director of such eligible portfolio company;

(iii) it has total assets of not more than $4,000,000, and capital and surplus (shareholders’ equity less retained earnings) of not less than $2,000,000, except that the Commission may adjust such amounts by rule, regulation, or order to
reflect changes in 1 or more generally accepted indices or other indicators for small businesses; or

(iv) it meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of this subchapter.

(47)“Making available significant managerial assistance” by a business development company means—

(A) any arrangement whereby a business development company, through its directors, officers, employees, or general partners, offers to provide, and, if accepted, does so provide, significant guidance and counsel concerning the management, operations, or business objectives and policies of a portfolio company;

(B) the exercise by a business development company of a controlling influence over the management or policies of a portfolio company by the business development company acting individually or as part of a group acting together which controls such portfolio company; or

(C) with respect to a small business investment company licensed by the Small Business Administration to operate under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], the making of loans to a portfolio company.

For purposes of subparagraph (A), the requirement that a business development company make available significant managerial assistance shall be deemed to be satisfied with respect to any particular portfolio company where the business development company purchases securities of such portfolio company in conjunction with one or more other persons acting together, and at least one of the persons in the group makes available significant managerial assistance to such portfolio company, except that such requirement will not be deemed to be satisfied if the business development company, in all cases, makes available significant managerial assistance solely in the manner described in this sentence.

(48)“Business development company” means any closed-end company which—

(A) is organized under the laws of, and has its principal place of business in, any State or States;

(B) is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 80a-54(a) of this title, and makes available
significant managerial assistance with respect to the issuers of such securities, provided that a business development company must make available significant managerial assistance only with respect to the companies which are treated by such business development company as satisfying the 70 per centum of the value of its total assets condition of section 80a–54 of this title; and 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

(C) has elected pursuant to section 80a–53(a) of this title to be subject to the provisions of sections 80a–54 through 80a–64 of this title.

(49) "Foreign securities authority" means any foreign government or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters.

(50) "Foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above.

(51) (A) "Qualified purchaser" means—

(i) any natural person (including any person who holds a joint, community property, or other similar shared ownership interest in an issuer that is excepted under section 80a–3(c)(7) of this title with that person's qualified purchaser spouse) who owns not less than $5,000,000 in investments, as defined by the Commission;

(ii) any company that owns not less than $5,000,000 in investments and that is owned directly or indirectly by or for 2 or more natural persons who are related
as siblings or spouse (including former spouses), or direct lineal descendants by birth or adoption, spouses of such persons, the estates of such persons, or foundations, charitable organizations, or trusts established by or for the benefit of such persons:

(iii) any trust that is not covered by clause (ii) and that was not formed for the specific purpose of acquiring the securities offered, as to which the trustee or other person authorized to make decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a person described in clause (i), (ii), or (iv); or

(iv) any person, acting for its own account or the accounts of other qualified purchasers, who in the aggregate owns and invests on a discretionary basis, not less than $25,000,000 in investments.

(B) The Commission may adopt such rules and regulations applicable to the persons and trusts specified in clauses (i) through (iv) of subparagraph (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.

(C) The term "qualified purchaser" does not include a company that, but for the exceptions provided for in paragraph (1) or (7) of section 80a–3(c) of this title, would be an investment company (hereafter in this paragraph referred to as an "excepted investment company”), unless all beneficial owners of its outstanding securities (other than short-term paper), determined in accordance with section 80a–3(c)(1)(A) of this title, that acquired such securities on or before April 30, 1996 (hereafter in this paragraph referred to as “pre-amendment beneficial owners”), and all pre-amendment beneficial owners of the outstanding securities (other than short-term paper) of any excepted investment company that, directly or indirectly, owns any outstanding securities of such excepted investment company, have consented to its treatment as a qualified purchaser. Unanimous consent of all trustees, directors, or general partners of a company or trust referred to in clause (ii) or (iii) of subparagraph (A) shall constitute consent for purposes of this subparagraph.

(52) The terms “security future” and “narrow-based security index” have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(55)].
The term “credit rating agency” has the same meaning as in section 3 of the Securities Exchange Act of 1934 [15 U.S.C. 78c].

(54) The terms “commodity pool”, “commodity pool operator”, “commodity trading advisor”, “major swap participant”, “swap”, “swap dealer”, and “swap execution facility” have the same meanings as in section 1a of title 7.

(b) Applicability to government
No provision in this subchapter shall apply to, or be deemed to include, the United States, a State, or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(c) Consideration of promotion of efficiency, competition, and capital formation
Whenever pursuant to this subchapter the Commission is engaged in rulemaking and is required to consider or determine whether an action is consistent with the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

15 U.S. Code § 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).


(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 interests 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.
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).

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.

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.

(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.


15 U.S. Code § 80a–4. Classification of investment companies

For the purposes of this subchapter, investment companies are divided into three principal classes, defined as follows:

(1) “Face-amount certificate company” means an investment company which is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or which has been engaged in such business and has any such certificate outstanding.

(2) “Unit investment trust” means an investment company which (A) is organized under a trust indenture, contract of custodianship or agency, or similar instrument, (B) does not have a board of directors, and (C) issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities; but does not include a voting trust.

(3) “Management company” means any investment company other than a face-amount certificate company or a unit investment trust.


15 U.S. Code § 80a–5. Subclassification of management companies

U.S. Code
(a) Open-end and closed-end companies
For the purposes of this subchapter, management companies are divided into open-end and closed-end companies, defined as follows:

(1) “Open-end company” means a management company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

(2) “Closed-end company” means any management company other than an open-end company.

(b) Diversified and non-diversified companies
Management companies are further divided into diversified companies and non-diversified companies, defined as follows:

(1) “Diversified company” means a management company which meets the following requirements: At least 75 per centum of the value of its total assets is represented by cash and cash items (including receivables), Government securities, securities of other investment companies, and other securities for the purposes of this calculation limited in respect of any one issuer to an amount not greater in value than 5 per centum of the value of the total assets of such management company and to not more than 10 per centum of the outstanding voting securities of such issuer.

(2) “Non-diversified company” means any management company other than a diversified company.

(c) Loss of status as diversified company
A registered diversified company which at the time of its qualification as such meets the requirements of paragraph (1) of subsection (b) shall not lose its status as a diversified company because of any subsequent discrepancy between the value of its various investments and the requirements of said paragraph, so long as any such discrepancy existing immediately after its acquisition of any security or other property is neither wholly nor partly the result of such acquisition.


15 U.S. Code § 80a–6. Exemptions

(a) Exemption of specified investment companies
The following investment companies are exempt from the provisions of this subchapter:

(1)
Any company which since the effective date of this subchapter or within five years prior to such date has been reorganized under the supervision of a court of competent jurisdiction, if (A) such company was not an investment company at the commencement of such reorganization proceedings, (B) at the conclusion of such proceedings all outstanding securities of such company were owned by creditors of such company or by persons to whom such securities were issued on account of creditors' claims, and (C) more than 50 per centum of the voting securities of such company, and securities representing more than 50 per centum of the net asset value of such company, are currently owned beneficially by not more than twenty-five persons; but such exemption shall terminate if any security of which such company is the issuer is offered for sale or sold to the public after the conclusion of such proceedings by the issuer or by or through any underwriter. For the purposes of this paragraph, any new company organized as part of the reorganization shall be deemed the same company as its predecessor; and beneficial ownership shall be determined in the manner provided in section 80a–3(c)(1) of this title.

(2) Any issuer as to which there is outstanding a writing filed with the Commission by the Federal Savings and Loan Insurance Corporation stating that exemption of such issuer from the provisions of this subchapter is consistent with the public interest and the protection of investors and is necessary or appropriate by reason of the fact that such issuer holds or proposes to acquire any assets or any product of any assets which have been segregated (A) from assets of any company which at the filing of such writing is an insured institution within the meaning of section 1724(a) of title 12, or (B) as a part of or in connection with any plan for or condition to the insurance of accounts of any company by said corporation or the conversion of any company into a Federal savings and loan association. Any such writing shall expire when canceled by a writing similarly filed or at the expiration of two years after the date of its filing, whichever first occurs; but said corporation may, nevertheless, before, at, or after the expiration of any such writing file another writing or writings with respect to such issuer.

(3) Any company which prior to March 15, 1940, was and now is a wholly-owned subsidiary of a registered face-amount certificate company and was prior to said date and now is organized and operating under the insurance laws of any State and subject to supervision and examination by the insurance commissioner thereof, and which prior to March 15, 1940, was and now is engaged, subject to such laws, in business substantially all of which consists of issuing and selling only to residents of such State and investing the proceeds from, securities providing for or representing participations or interests in
intangible assets consisting of mortgages or other liens on real estate or notes or bonds secured thereby or in a fund or deposit of mortgages or other liens on real estate or notes or bonds secured thereby or having outstanding such securities so issued and sold.

(4)

(A) Any company that is not engaged in the business of issuing redeemable securities, the operations of which are subject to regulation by the State in which the company is organized under a statute governing entities that provide financial or managerial assistance to enterprises doing business, or proposing to do business, in that State if—

(i) the organizational documents of the company that the activities of the company are limited to the promotion of economic, business, or industrial development in the State through the provision of financial or managerial assistance to enterprises doing business, or proposing to do business, in that State, and such other activities that are incidental or necessary to carry out that purpose;

(ii) immediately following each sale of the securities of the company by the company or any underwriter for the company, not less than 80 percent of the securities of the company being offered in such sale, on a class-by-class basis, are held by persons who reside or who have a substantial business presence in that State;

(iii) the securities of the company are sold, or proposed to be sold, by the company or by any underwriter for the company, solely to accredited investors, as that term is defined in section 77b(a)(15) of this title, or to such other persons that the Commission, as necessary or appropriate in the public interest and consistent with the protection of investors, may permit by rule, regulation, or order; and

(iv) the company does not purchase any security issued by an investment company or by any company that would be an investment company except for the exclusions from the definition of the term “investment company” under paragraph (1) or (7) of section 80a–3(c) of this title, other than—

(I) any debt security that meets such standards of credit-worthiness as the Commission shall adopt; or

(II) any security issued by a registered open-end investment company that is required by its investment policies to invest not less than 65 percent of its total
assets in securities described in subclause (I) or securities that are determined by such registered open-end investment company to be comparable in quality to securities described in subclause (I).

(B) Notwithstanding the exemption provided by this paragraph, section 80a–9 of this title (and, to the extent necessary to enforce section 80a–9 of this title, sections 80a–37 through 80a–50 of this title) shall apply to a company described in this paragraph as if the company were an investment company registered under this subchapter.

(C) Any company proposing to rely on the exemption provided by this paragraph shall file with the Commission a notification stating that the company intends to do so, in such form and manner as the Commission may prescribe by rule.

(D) Any company meeting the requirements of this paragraph may rely on the exemption provided by this paragraph upon filing with the Commission the notification required by subparagraph (C), until such time as the Commission determines by order that such reliance is not in the public interest or is not consistent with the protection of investors.

(E) The exemption provided by this paragraph may be subject to such additional terms and conditions as the Commission may by rule, regulation, or order determine are necessary or appropriate in the public interest or for the protection of investors.

(b) Exemption of employees’ security company upon application; matters considered
Upon application by any employees’ security company, the Commission shall by order exempt such company from the provisions of this subchapter and of the rules and regulations hereunder, if and to the extent that such exemption is consistent with the protection of investors. In determining the provisions to which such an order of exemption shall apply, the Commission shall give due weight, among other things, to the form of organization and the capital structure of such company, the persons by whom its voting securities, evidences of indebtedness, and other securities are owned and controlled, the prices at which securities issued by such company are sold and the sales load thereon, the disposition of the proceeds of such sales, the character of the securities in which such proceeds are invested, and any relationship between such company and the issuer of any such security.

(c) Exemption of persons, securities or any class or classes of persons as necessary and appropriate in public interest
The Commission, by rules and regulations upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation thereunder, if and to the extent that such exemption is 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.

(d) **Exemption of Closed-End Investment Companies**

The Commission, by rules and regulations or order, shall exempt a closed-end investment company from any or all provisions of this subchapter, but subject to such terms and conditions as may be necessary or appropriate in the public interest or for the protection of investors, if—

1. the aggregate sums received by such company from the sale of all its outstanding securities, plus the aggregate offering price of all securities of which such company is the issuer and which it proposes to offer for sale, do not exceed $10,000,000, or such other amount as the Commission may set by rule, regulation, or order;

2. no security of which such company is the issuer has been or is proposed to be sold by such company or any underwriter therefor, in connection with a public offering, to any person who is not a resident of the State under the laws of which such company is organized or otherwise created; and

3. such exemption is not contrary to the public interest or inconsistent with the protection of investors.

(e) **Application of Certain Specified Provisions of Subchapter to Otherwise Exempt Companies**

If, in connection with any rule, regulation, or order under this section exempting any investment company from any provision of section 80a–7 of this title, the Commission deems it necessary or appropriate in the public interest or for the protection of investors that certain specified provisions of this subchapter pertaining to registered investment companies shall be applicable in respect of such company, the provisions so specified shall apply to such company, and to other persons in their transactions and relations with such company, as though such company were a registered investment company.

(f) **Exemption of Closed-End Company Treated as Business Development Company**

Any closed-end company which—

1.
elects to be treated as a business development company pursuant to section 80a–53 of this title; or

(2) would be excluded from the definition of an investment company by section 80a–3(c)(1) of this title, except that it presently proposes to make a public offering of its securities as a business development company, and has notified the Commission, in a form and manner which the Commission may, by rule, prescribe, that it intends in good faith to file, within 90 days, a notification of election to become subject to the provisions of sections 80a–54 through 80a–64 of this title,

shall be exempt from sections 80a–1 through 80a–52 of this title, except to the extent provided in sections 80a–58 through 80a–64 of this title.


15 U.S. Code § 80a–7. Transactions by unregistered investment companies

• U.S. Code

• Notes

(prev | next)

(a) Prohibition of transactions in interstate commerce by companiesNo investment company organized or otherwise created under the laws of the United States or of a State and having a board of directors, unless registered under section 80a–8 of this title, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, by the use of the mails or any means or instrumentality of interstate commerce, any security or any interest in a security, whether the issuer of such security is such investment company or another person; or offer for sale, sell, or deliver after sale any such security or
interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any \textit{means or instrumentality of interstate commerce};

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, by use of the mails or any \textit{means or instrumentality of interstate commerce}, any security or any interest in a security, whether the \textit{issuer} of such security is such \textit{investment company} or another \textit{person};

(3) control any \textit{investment company} which does any of the acts enumerated in paragraphs (1) and (2) of this subsection;

(4) engage in any business in \textit{interstate commerce}; or

(5) control any \textit{company} which is engaged in any business in \textit{interstate commerce}. The provisions of this subsection shall not apply to transactions of an \textit{investment company} which are merely incidental to its dissolution.

(b)\textbf{Prohibition of transactions in interstate commerce by depositors or trustees of companies} No depositor or trustee of or underwriter for any \textit{investment company}, organized or otherwise created under the laws of the United \textit{States} or of a \textit{State} and not having a board of \textit{directors}, unless such \textit{company} is registered under \textit{section 80a–8 of this title} or exempt under \textit{section 80a–6 of this title}, shall directly or indirectly—

(1) \textit{offer for sale, sell, or deliver after sale}, by use of the mails or any \textit{means or instrumentality of interstate commerce}, any security or any interest in a security of which such \textit{company} is the \textit{issuer}; or \textit{offer for sale, sell, or deliver after sale} any such security or interest, having reason to believe that such security or interest will be made the subject of a public offering by use of the mails or any \textit{means or instrumentality of interstate commerce};

(2) purchase, redeem, or otherwise acquire or attempt to acquire, by use of the mails or any \textit{means or instrumentality of interstate commerce}, any security or any interest in a security of which such \textit{company} is the \textit{issuer}; or

(3) \textit{sell} or purchase for the account of such \textit{company}, by use of the mails or any \textit{means or instrumentality of interstate commerce}, any security or interest in a security, by whomever issued.

The provisions of this subsection shall not apply to transactions which are merely incidental to the dissolution of an \textit{investment company}.
(c) Prohibition of transactions in interstate commerce by promoters of proposed investment companies

No promoter of a proposed investment company, and no underwriter for such a promoter, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any preorganization certificate or subscription for such a company.

(d) Prohibition of transactions in interstate commerce by companies not organized under laws of the United States or a State; exceptions

No investment company, unless organized or otherwise created under the laws of the United States or of a State, and no depositor or trustee of or underwriter for such a company not so organized or created, shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to offer for sale, sell, or deliver after sale, in connection with a public offering, any security of which such company is the issuer. Notwithstanding the provisions of this subsection and of section 80a–8(a) of this title, the Commission is authorized, upon application by an investment company organized or otherwise created under the laws of a foreign country, to issue a conditional or unconditional order permitting such company to register under this subchapter, and to make a public offering of its securities by use of the mails and means or instrumentalities of interstate commerce, if the Commission finds that, by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of this subchapter against such company and that the issuance of such order is otherwise consistent with the public interest and the protection of investors.

(e) Disclosure by exempt charitable organizations

Each fund that is excluded from the definition of an investment company under section 80a–3(c)(10)(B) of this title shall provide, to each donor to such fund, at the time of the donation or within 90 days after December 8, 1995, whichever is later, written information describing the material terms of the operation of such fund.


15 U.S. Code § 80a–8. Registration of investment companies
(a) NOTIFICATION OF REGISTRATION; EFFECTIVE DATE OF REGISTRATION
Any investment company organized or otherwise created under the laws of the United States or of a State may register for the purposes of this subchapter by filing with the Commission a notification of registration, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon receipt by the Commission of such notification of registration.

(b) REGISTRATION STATEMENT; CONTENTS
Every registered investment company shall file with the Commission, within such reasonable time after registration as the Commission shall fix by rules and regulations, an original and such copies of a registration statement, in such form and containing such of the following information and documents as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors:

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification and subclassifications, as defined in sections 80a–4 and 80a–5 of this title, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or either of them; (G) making loans to other persons; and (H) portfolio turn-over (including a statement showing the aggregate dollar amount of purchases and sales of portfolio securities, other than Government securities, in each of the last three full fiscal years preceding the filing of such registration statement);

(2) a recital of all investment policies of the registrant, not enumerated in paragraph (1), which are changeable only if authorized by shareholder vote;

(3) a recital of all policies of the registrant, not enumerated in paragraphs (1) and (2), in respect of matters which the registrant deems matters of fundamental policy;
the name and address of each affiliated person of the registrant; the name and principal address of every company, other than the registrant, of which each such person is an officer, director, or partner; a brief statement of the business experience for the preceding five years of each officer and director of the registrant; and

the information and documents which would be required to be filed in order to register under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

The Commission shall make provision, by permissive rules and regulations or order, for the filing of the following, or so much of the following as the Commission may designate, in lieu of the information and documents required pursuant to subsection (b):

(1) copies of the most recent registration statement filed by the registrant under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and currently effective under such Act, or if the registrant has not filed such a statement, copies of a registration statement filed by the registrant under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] and currently effective under such Act;

(2) copies of any reports filed by the registrant pursuant to section 78m or 78o(d) of this title; and

(3) a report containing reasonably current information regarding the matters included in copies filed pursuant to paragraphs (1) and (2) of this subsection, and such further information regarding matters not included in such copies as the Commission is authorized to require under subsection (b).

If the registrant is a unit investment trust substantially all of the assets of which are securities issued by another registered investment company, the Commission is authorized to prescribe for the registrant, by rules and regulations or order, a registration statement which eliminates inappropriate duplication of information contained in the registration statement filed under this section by such other investment company.

If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant
to section 80a–29 (a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title, the Commission shall notify such company by registered mail or by certified mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section 80a–29(a) or (b) of this title, or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section 80a–33(b) of this title; and

(2) that such suspension or revocation is in the public interest.

(f) CESSATION OF EXISTENCE AS INVESTMENT COMPANY

Whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the taking effect of such order the registration of such company shall cease to be in effect. If necessary for the protection of investors, an order under this subsection may be made upon appropriate conditions. The Commission's denial of any application under this subsection shall be by order.

15 U.S. Code § 80a-9. Ineligibility of certain affiliated persons and underwriters

(a) PERSONS DEEMED INELIGIBLE FOR SERVICE WITH INVESTMENT COMPANIES, ETC.; INVESTMENT ADVISER

It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face-amount certificate company:

(1) any person who within 10 years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, investment adviser, municipal securities dealer, government securities broker, government securities dealer, bank, transfer agent, credit rating agency, or entity or person required to be registered under the Commodity Exchange Act [7 U.S.C. 1 et seq.], or as an affiliated person, salesman, or employee of any investment company, bank, insurance company, or entity or person required to be registered under the Commodity Exchange Act, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security; or

(3)
a **company** any **affiliated person** of which is ineligible, by reason of paragraph (1) or (2) of this subsection, to serve or act in the foregoing capacities. For the purposes of paragraphs (1) to (3) of this subsection, the term “**investment adviser**” shall include an **investment adviser** as defined in subchapter II of this chapter.

**(b) CERTAIN PERSONS SERVING INVESTMENT COMPANIES; ADMINISTRATIVE ACTION OF COMMISSION**

The **Commission** may, after notice and opportunity for hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time as it in its discretion shall deem appropriate in the public interest, any **person** from serving or acting as an employee, officer, **director**, member of an **advisory board**, **investment adviser** or depositor of, or principal underwriter for, a registered **investment company** or **affiliated person** of such **investment adviser**, depositor, or principal underwriter, if such **person**—

(1) has willfully made or caused to be made in any registration statement, application or report filed with the **Commission** under this subchapter any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to **state** in any such registration statement, application, or report any material fact which was required to be stated therein;

(2) has willfully violated any provision of the **Securities Act of 1933** [15 U.S.C. 77a et seq.], or of the **Securities Exchange Act of 1934** [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the **Commodity Exchange Act** [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other **person** of the **Securities Act of 1933** [15 U.S.C. 77a et seq.], or of the **Securities Exchange Act of 1934** [15 U.S.C. 78a et seq.], or of subchapter II of this chapter, or of this subchapter, or of the **Commodity Exchange Act** [7 U.S.C. 1 et seq.], or of any rule or regulation under any of such statutes;

(4) has been found by a **foreign financial regulatory authority** to have—

(A) made or caused to be made in any application for registration or report required to be filed with a **foreign securities authority**, or in any proceeding before a **foreign securities authority** with respect to registration, any statement that was at the time and in light of the circumstances under which it was made false or misleading with respect to any material fact, or has omitted to **state** in any
application or report to a foreign securities authority any material fact that is required to be stated therein;

(B) violated any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade; or

(C) aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any foreign statute or regulation regarding transactions in securities or contracts of sale of a commodity for future delivery traded on or subject to the rules of a contract market or any board of trade;

(5) within 10 years has been convicted by a foreign court of competent jurisdiction of a crime, however denominated by the laws of the relevant foreign government, that is substantially equivalent to an offense set forth in paragraph (1) of subsection (a); or

(6) by reason of any misconduct, is temporarily or permanently enjoined by any foreign court of competent jurisdiction from acting in any of the capacities, set forth in paragraph (2) of subsection (a), or a substantially equivalent foreign capacity, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

(c) APPLICATION OF INELIGIBLE PERSON FOR EXEMPTION

Any person who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application, either unconditionally or on an appropriate temporary or other conditional basis, if it is established that the prohibitions of such subsection (a) as applied to such person, are unduly or disproportionately severe or that the conduct of such person has been such as not to make it against the public interest or protection of investors to grant such application.

(d) MONEY PENALTIES IN ADMINISTRATIVE PROCEEDINGS

(1) AUTHORITY OF COMMISSION

(A) In general In any proceeding instituted pursuant to subsection (b) against any person, the Commission may impose a civil penalty if it finds, on the record after notice and opportunity for hearing, that such penalty is in the public interest, and that such person—

(i)
has willfully violated any provision of the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subchapter II of this chapter, or this subchapter, or the rules or regulations thereunder;

(ii) has willfully aided, abetted, counseled, commanded, induced, or procured such a violation by any other person; or

(iii) has willfully made or caused to be made in any registration statement, application, or report required to be filed with the Commission under this subchapter, any statement which was, at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such registration statement, application, or report any material fact which was required to be stated therein;\footnote{1}

(B) Cease-and-desist proceedings In any proceeding instituted pursuant to subsection (f) against any person, the Commission may impose a civil penalty if the Commission finds, on the record, after notice and opportunity for hearing, that such person—

(i) is violating or has violated any provision of this subchapter, or any rule or regulation issued under this subchapter; or

(ii) is or was a cause of the violation of any provision of this subchapter, or any rule or regulation issued under this subchapter.

(2) Maximum amount of penalty

(A) First tier
The maximum amount of penalty for each act or omission described in paragraph (1) shall be $5,000 for a natural person or $50,000 for any other person.

(B) Second tier
Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $50,000 for a natural person or $250,000 for any other person if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier
Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $100,000 for a natural person or $500,000 for any other person if—

(i)
the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(3) Determination of Public Interest
In considering under this section whether a penalty is in the public interest, the Commission may consider—

(A) whether the act or omission for which such penalty is assessed involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement;

(B) the harm to other persons resulting either directly or indirectly from such act or omission;

(C) the extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior;

(D) whether such person previously has been found by the Commission, another appropriate regulatory agency, or a self-regulatory organization to have violated the Federal securities laws, State securities laws, or the rules of a self-regulatory organization, has been enjoined by a court of competent jurisdiction from violations of such laws or rules, or has been convicted by a court of competent jurisdiction of violations of such laws or of any felony or misdemeanor described in section 80b–3(e)(2) of this title;

(E) the need to deter such person and other persons from committing such acts or omissions; and

(F) such other matters as justice may require.

(4) Evidence Concerning Ability to Pay
In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the respondent's ability to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of such person’s ability to continue in business and the collectability of a penalty, taking into account any other claims of the
United States or third parties upon such person's assets and the amount of such person's assets.

(e) Authority to enter order requiring accounting and disgorgement
In any proceeding in which the Commission may impose a penalty under this section, the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(f) Cease-and-desist proceedings
(1) Authority of Commission
If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(2) Hearing
The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(3) Temporary order
(A) In general
Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor
Protection Corporation, prior to the completion of the proceeding, the **Commission** may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the **Commission** deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the **Commission**, notwithstanding section 80a–39(a) of this title, determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the **Commission** or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(B)Applicability
This paragraph shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

(4)Review of temporary orders
(A)Commission review
At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the **Commission** to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior **Commission** hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the **Commission** shall hold a hearing and render a decision on such application at the earliest possible time.

(B)Judicial review
Within—
(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior **Commission** hearing, or
(ii) 10 days after the **Commission** renders a decision on an application and hearing under subparagraph (A), with respect to any temporary cease-and-desist order entered without a prior **Commission** hearing,
the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the
District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent’s application under subparagraph (A) of this paragraph.

(C) No automatic stay of temporary order  
The commencement of proceedings under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of the Commission’s order.

(D) Exclusive review  
Section 80a–42 of this title shall not apply to a temporary order entered pursuant to this section.

(5) Authority to enter order requiring accounting and disgorgement  
In any cease-and-desist proceeding under subsection (f)(1), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

(g) Corporate or other trustees performing functions of investment advisers  
For the purposes of this section, the term “investment adviser” includes a corporate or other trustee performing the functions of an investment adviser.


15 U.S. Code § 80a–10. Affiliations or interest of directors, officers, and employees

- U.S. Code
(a) INTERESTED PERSONS OF COMPANY WHO MAY SERVE ON BOARD OF DIRECTORS

No registered investment company shall have a board of directors more than 60 per centum of the members of which are persons who are interested persons of such registered company.

(b) EMPLOYMENT AND USE OF DIRECTORS, OFFICERS, ETC., AS REGULAR BROKER, PRINCIPAL UNDERWRITER, OR INVESTMENT BANKER

No registered investment company shall—

(1) employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers;

(2) use as a principal underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an interested person, unless a majority of the board of directors of such registered company shall be persons who are not such principal underwriters or interested persons of any of such principal underwriters; or

(3) have as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company shall be persons who are not investment bankers or affiliated persons of any investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company of the character described in section 80a-12(d)(3)(A) and (B) of this title.

(c) OFFICERS, DIRECTORS, OR EMPLOYEES OF ONE BANK OR BANK HOLDING COMPANY AS MAJORITY OF BOARD OF DIRECTORS OF COMPANY; EXCEPTIONS

No registered investment company shall have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank (together with its affiliates and subsidiaries) or any one bank holding company (together with its affiliates and subsidiaries) (as such terms are defined in section 1841 of title 12) or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 1467a of title 12),[1] except that, if on March 15, 1940, any registered investment company had a majority of its directors consisting of persons who are directors, officers, or employees of any
one **bank**, such **company** may continue to have the same percentage of its board of **directors** consisting of **persons** who are **directors**, officers, or employees of such **bank**.

(d)**EXCEPTION TO LIMITATION OF NUMBER OF INTERESTED PERSONS WHO MAY SERVE ON BOARD OF DIRECTORS**Notwithstanding subsections (a) and (b)(2) of this section, a registered **investment company** may have a board of **directors** all the members of which, except one, are interested **persons** of the **investment adviser** of such **company**, or are officers or employees of such **company**, if—

(1) such **investment company** is an **open-end company**;

(2) such **investment adviser** is registered under subchapter II of this chapter and is engaged principally in the business of rendering investment supervisory services as defined in subchapter II;

(3) no **sales load** is charged on securities issued by such **investment company**;

(4) any premium over net asset value charged by such **company** upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed 2 per centum;

(5) no **sales** or promotion expenses are incurred by such registered **company**; but expenses incurred in complying with laws regulating the issue or **sale** of securities shall not be deemed **sales** or promotion expenses;

(6) such **investment adviser** is the only **investment adviser** to such **investment company**, and such **investment adviser** does not receive a management fee exceeding 1 per centum per annum of the value of such **company**’s net assets averaged over the year or taken as of a definite date or dates within the year;

(7) all executive salaries and executive expenses and office rent of such **investment company** are paid by such **investment adviser**; and

(8) such **investment company** has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.

(e)**DEATH, DISQUALIFICATION, OR RESIGNATION OF DIRECTORS AS SUSPENSION OF LIMITATION PROVISIONS**If by reason of the death, disqualification, or bona fide resignation of any **director** or **directors**, the requirements of the foregoing provisions of this section or of **section 80a–15(f)(1) of this title** in respect of **directors** shall not be
met by a registered investment company, the operation of such provision shall be suspended as to such registered company—

(1) for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors;

(2) for a period of sixty days if a vote of stockholders is required to fill the vacancy or vacancies; or

(3) for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

(f) Officer, director, etc., of company acting as principal underwriter of security acquired by company

No registered investment company shall knowingly purchase or otherwise acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person (other than a company of the character described in section 80a–12(d)(3)(A) and (B) of this title) of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless in acquiring such security such registered company is itself acting as a principal underwriter for the issuer. The Commission, by rules and regulations upon its own motion or by order upon application, may conditionally or unconditionally exempt any transaction or classes of transactions from any of the provisions of this subsection, if and to the extent that such exemption is consistent with the protection of investors.

(g) Advisory boards; restrictions on membership

In the case of a registered investment company which has an advisory board, such board, as a distinct entity, shall be subject to the same restrictions as to its membership as are imposed upon a board of directors by this section.

(h) Application of section to unincorporated registered management companies

In the case of a registered management company which is an unincorporated company not having a board of directors, the provisions of this section shall apply as follows:

(1) the provisions of subsection (a), as modified by subsection (e), shall apply to the board of directors of the depositor of such company;

(2)
the provisions of subsections (b) and (c), as modified by subsection (e), shall apply to the board of directors of the depositor and of every investment adviser of such company; and

(3) the provisions of subsection (f) shall apply to purchases and other acquisitions for the account of such company of securities a principal underwriter of which is the depositor or an investment adviser of such company, or an affiliated person of such depositor or investment adviser.


15 U.S. Code § 80a–11. Offers to exchange securities

- U.S. Code

- Notes

(a) Approval by Commission for exchanges of securities on basis other than relative net asset value

It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (A) an offer by a principal underwriter means an offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (B) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (1) at the time of the receipt by the offeror of the acceptance of the offer or (2) at such later times as is specified in the offer.
(b) APPLICATION OF SECTION TO OFFERS PURSUANT TO PLAN OF REORGANIZATION

The provisions of this section shall not apply to any offer made pursuant to any plan of reorganization, which is submitted to and requires the approval of the holders of at least a majority of the outstanding shares of the class or series to which the security owned by the offeree belongs.

(c) APPLICATION OF SECTION TO SPECIFIC EXCHANGE OFFERS

The provisions of subsection (a) shall be applicable, irrespective of the basis of exchange, (1) to any offer of exchange of any security of a registered open-end company for a security of a registered unit investment trust or registered face-amount certificate company; and (2) to any type of offer of exchange of the securities of registered unit investment trusts or registered face-amount certificate companies for the securities of any other investment company.


15 U.S. Code § 80a–12. Functions and activities of investment companies

• U.S. Code
• Notes

(a) PURCHASE OF SECURITIES ON MARGIN; JOINT TRADING ACCOUNTS; SHORT SALES OF SECURITIES; EXCEPTIONS

It shall be unlawful for any registered investment company, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors—

(1) to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;

(2) to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a participant; or

(3)
to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.

(b) DISTRIBUTION BY INVESTMENT COMPANY OF SECURITIES OF WHICH IT IS ISSUER
It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 80a–10(d) of this title) to act as a distributor of securities of which it is the issuer, except through an underwriter, 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.

(c) LIMITATIONS ON COMMITMENTS AS UNDERWRITER
It shall be unlawful for any registered diversified company to make any commitment as underwriter, if immediately thereafter the amount of its outstanding underwriting commitments, plus the value of its investments in securities of issuers (other than investment companies) of which it owns more than 10 per centum of the outstanding voting securities, exceeds 25 per centum of the value of its total assets.

(d) LIMITATIONS ON ACQUISITION BY INVESTMENT COMPANIES OF SECURITIES OF OTHER SPECIFIC BUSINESSES
(1)
(A) It shall be unlawful for any registered investment company (the “acquiring company”) and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any other investment company (the “acquired company”), and for any investment company (the “acquiring company”) and any company or companies controlled by such acquiring company to purchase or otherwise acquire any security issued by any registered investment company (the “acquired company”), if the acquiring company and any company or companies controlled by it immediately after such purchase or acquisition own in the aggregate—
(i) more than 3 per centum of the total outstanding voting stock of the acquired company;
(ii) securities issued by the acquired company having an aggregate value in excess of 5 per centum of the value of the total assets of the acquiring company; or
(iii) securities issued by the acquired company and all other investment companies (other than treasury stock of the acquiring company) having an aggregate value in excess of 10 per centum of the value of the total assets of the acquiring company.
(B) It shall be unlawful for any registered open-end investment company (the “acquired company”), any principal underwriter therefor, or any broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], knowingly to sell or otherwise dispose of any security issued by the acquired company to any other investment company (the “acquiring company”) or any company or companies controlled by the acquiring company, if immediately after such sale or disposition—

(i) more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or

(ii) more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.

(C) It shall be unlawful for any investment company (the “acquiring company”) and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.

(D) The provisions of this paragraph shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 80a–11 of this title or of a plan of reorganization of any company (other than a plan devised for the purpose of evading the foregoing provisions).

(E) The provisions of this paragraph shall not apply to a security (or securities) purchased or acquired by an investment company if—

(i) the depositor of, or principal underwriter for, such investment company is a broker or dealer registered under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or a person controlled by such a broker or dealer;

(ii) such security is the only investment security held by such investment company (or such securities are the only investment securities held by such investment company, if such investment company is a registered unit investment trust that issues two or more classes or series of securities, each of
which provides for the accumulation of shares of a different investment company); and

(iii) the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated—

(aa) either to seek instructions from its security holders with regard to the voting of all proxies with respect to such security and to vote such proxies only in accordance with such instructions, or to vote the shares held by it in the same proportion as the vote of all other holders of such security, and

(bb) in the event that such investment company is not a registered investment company, to refrain substituting such security unless the Commission shall have approved such substitution in the manner provided in section 80a–26 of this title.

(F) The provisions of this paragraph shall not apply to securities purchased or otherwise acquired by a registered investment company if—

(i) immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and

(ii) such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than 1½ per centum.

No issuer of any security purchased or acquired by a registered investment company pursuant to this subparagraph shall be obligated to redeem such security in an amount exceeding 1 per centum of such issuer’s total outstanding securities during any period of less than thirty days. Such investment company shall exercise voting rights by proxy or otherwise with respect to any security purchased or acquired pursuant to this subparagraph in the manner prescribed by subparagraph (E) of this subsection.

(G)

(i) This paragraph does not apply to securities of a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the “acquired company”) purchased or otherwise acquired by a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the “acquiring company”) if—
(I) the acquired company and the acquiring company are part of the same group of investment companies;

(II) the securities of the acquired company, securities of other registered open-end investment companies and registered unit investment trusts that are part of the same group of investment companies, Government securities, and short-term paper are the only investments held by the acquiring company;

(III) with respect to—

(aa) securities of the acquired company, the acquiring company does not pay and is not assessed any charges or fees for distribution-related activities, unless the acquiring company does not charge a sales load or other fees or charges for distribution-related activities; or

(bb) securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired company, are not excessive under rules adopted pursuant to section 80a–22(b) of this title or section 80a–22(c) of this title by a securities association registered under section 15A of the Securities Exchange Act of 1934 [15 U.S.C. 78o–3], or the Commission;

(IV) the acquired company has a policy that prohibits it from acquiring any securities of registered open-end investment companies or registered unit investment trusts in reliance on this subparagraph or subparagraph (F); and

(V) such acquisition is not in contravention of such rules and regulations as the Commission may from time to time prescribe with respect to acquisitions in accordance with this subparagraph, as necessary and appropriate for the protection of investors.

(ii) For purposes of this subparagraph, the term “group of investment companies” means any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.

(H) For the purposes of this paragraph, the value of an investment company’s total assets shall be computed as of the time of a purchase or acquisition or as closely thereto as is reasonably possible.
(I) In any action brought to enforce the provisions of this paragraph, the **Commission** may join as a party the **issuer** of any security purchased or otherwise acquired in violation of this paragraph, and the court may issue any order with respect to such **issuer** as may be necessary or appropriate for the enforcement of the provisions of this paragraph.

(J) The **Commission**, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any **person**, security, or transaction, or any class or classes of **persons**, securities, or transactions from any provision of this paragraph, if and to the extent that such exemption is consistent with the public interest and the protection of investors.

(2) It shall be unlawful for any registered **investment company** and any **company** or companies controlled by such registered **investment company** to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of **reorganization** of any **company**, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any **insurance company** of which such registered **investment company** and any **company** or companies controlled by such registered **company** do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered **company** and any **company** or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such **insurance company**.

(3) It shall be unlawful for any registered **investment company** and any **company** or companies controlled by such registered **investment company** to purchase or otherwise acquire any security issued by or any other interest in the business of any **person** who is a **broker**, a **dealer**, is engaged in the business of underwriting, or is either an **investment adviser** of an **investment company** or an **investment adviser** registered under subchapter II of this chapter, unless (A) such **person** is a corporation all the outstanding securities of which (other than **short-term paper**, securities representing **bank** loans, and **directors’ qualifying shares**) are, or after such acquisition will be, owned by one or more registered investment companies; and (B) such **person** is primarily engaged in the business of underwriting and distributing securities issued by other **persons**, selling securities to customers, or any one or more of such or related activities, and the gross income of such **person** normally is derived principally from such business or related activities.
(e) Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc. Notwithstanding any provisions of this subchapter, any registered investment company may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities; provided—

(1) That the securities issued by such corporation (other than short-term paper and securities representing bank loans) shall consist solely of one class of common stock and shall have been originally issued or sold for investment to registered investment companies only;

(2) That the aggregate cost of the securities of such corporation purchased by such registered investment company does not exceed 5 per centum of the value of the total assets of such registered company at the time of any purchase or acquisition of such securities; and

(3) That the aggregate paid-in capital and surplus of such corporation does not exceed $100,000,000.

For the purpose of paragraph (1) of section 80a–5(b) of this title any investment in any such corporation shall be deemed to be an investment in an investment company.

(f) Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations

Notwithstanding any provisions of this chapter, any registered face-amount certificate company may organize not more than two face-amount certificate companies and acquire and own all or any part of the capital stock thereof only if such stock is acquired and held for investment: Provided, That the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 80a–28 of this title for a face-amount company organized on or after March 15, 1940: And provided further, That the aggregate cost to such registered company of all such capital stock issued by face-amount certificate companies organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of said section 80a–28 for a company organized on or after March 15, 1940. Nothing contained in this
subsection shall be deemed to prevent the sale of any such stock to any other person if the original purchase was made by such registered face-amount certificate company in good faith for investment and not for resale.

(g) **EXCEPTIONS TO LIMITATION ON OWNERSHIP BY INVESTMENT COMPANY OF SECURITIES OF INSURANCE COMPANY**

Notwithstanding the provisions of this section any registered investment company and any company or companies controlled by such registered company may purchase or otherwise acquire from another investment company or any company or companies controlled by such registered company more than 10 per centum of the total outstanding voting stock of any insurance company owned by any such company or companies, or may acquire the securities of any insurance company if the Commission by order determines that such acquisition is in the public interest because the financial condition of such insurance company will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the promotion of a new insurance company or the acquisition of the securities of any newly created insurance company by a registered investment company, alone or with other persons. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar official or agency of the United States or any State, or to affect the right under State law of any insurance company to acquire securities of any other insurance company or insurance companies.

(a) **PROHIBITED ACTIONS FOR REGISTERED INVESTMENT COMPANIES**

No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

1. change its subclassification as defined in section 80a–5(a)(1) and (2) of this title or its subclassification from a diversified to a nondiversified company;

2. **borrow** money, issue senior securities, underwrite securities issued by other persons, purchase or sell real estate or commodities or make loans to other persons, except in each case in accordance with the recitals of policy contained in its registration statement in respect thereto;

3. deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, deviate from any investment policy which is changeable only if authorized by shareholder vote, or deviate from any policy recited in its registration statement pursuant to section 80a–8(b)(3) of this title; or

4. change the nature of its business so as to cease to be an investment company.

(b) **MAJORITY EQUIVALENT FOR COMMON-LAW TRUSTS**

In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of subsection (a) be deemed the equivalent of the vote of a majority of the outstanding voting securities, and 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 such a meeting.

(c) **LIMITATION ON ACTIONS**

1. **IN GENERAL** Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any registered investment company, or any employee, officer, director, or investment adviser thereof, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information available to the public—

   **(A)** conduct or have direct investments in business operations in Sudan described in section 3(d) of the Sudan Accountability and Divestment Act of 2007 (50 U.S.C. 1701 note); or

   **(B)**
engage in investment activities in Iran described in section 8532(c) of title 22.

(2) APPLICABILITY

(A) Rule of construction
Nothing in paragraph (1) shall be construed to create, imply, diminish, change, or affect in any way whether or not a private right of action exists under subsection (a) or any other provision of this chapter.

(B) Disclosures
Paragraph (1) shall not apply to a registered investment company, or any employee, officer, director, or investment adviser thereof, unless the investment company makes disclosures in accordance with regulations prescribed by the Commission.

(3) PERSON DEFINED
For purposes of this subsection the term “person” includes the Federal Government and any State or political subdivision of a State.


- U.S. Code
- Notes

(a) PUBLIC OFFERINGS
No registered investment company organized after August 22, 1940, and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless—

(1) such company has a net worth of at least $100,000;

(2) such company has previously made a public offering of its securities, and at the time of such offering had a net worth of at least $100,000; or

(3) provision is made in connection with and as a condition of the registration of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] which in the opinion of the Commission adequately insures (A) that after the effective
date of such registration statement such company will not issue any security or receive any proceeds of any subscription for any security until firm agreements have been made with such company by not more than twenty-five responsible persons to purchase from it securities to be issued by it for an aggregate net amount which plus the then net worth of the company, if any, will equal at least $100,000; (B) that said aggregate net amount will be paid in to such company before any subscriptions for such securities will be accepted from any persons in excess of twenty-five; (C) that arrangements will be made whereby any proceeds so paid in, as well as any sales load, will be refunded to any subscriber on demand without any deduction, in the event that the net proceeds so received by the company do not result in the company having a net worth of at least $100,000 within ninety days after such registration statement becomes effective.

At any time after the occurrence of the event specified in clause (C) of paragraph (3) of this subsection the Commission may issue a stop order suspending the effectiveness of the registration statement of such securities under the Securities Act of 1933 [15 U.S.C. 77a et seq.] and may suspend or revoke the registration of such company under this subchapter.

(b) STUDY ON EFFECTS OF SIZE

The Commission is authorized, at such times as it deems that any substantial further increase in size of investment companies creates any problem involving the protection of investors or the public interest, to make a study and investigation of the effects of size on the investment policy of investment companies and on security markets, on concentration of control of wealth and industry, and on companies in which investment companies are interested, and from time to time to report the results of its studies and investigations and its recommendations to the Congress.


- U.S. Code
- Notes

(a) WRITTEN CONTRACT TO SERVE OR ACT AS INVESTMENT ADVISER; CONTENTS It shall be unlawful for any person to serve or act as investment adviser of a
registered investment company, except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company, and—

(1) precisely describes all compensation to be paid thereunder;

(2) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company;

(3) provides, in substance, that it may be terminated at any time, without the payment of any penalty, by the board of directors of such registered company or by vote of a majority of the outstanding voting securities of such company on not more than sixty days' written notice to the investment adviser; and

(4) provides, in substance, for its automatic termination in the event of its assignment.

(b) WRITTEN CONTRACT WITH COMPANY FOR SALE BY PRINCIPAL UNDERWRITER OF SECURITY OF WHICH COMPANY IS ISSUER; CONTENTS

It shall be unlawful for any principal underwriter for a registered open-end company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, except pursuant to a written contract with such company, which contract—

(1) shall continue in effect for a period more than two years from the date of its execution, only so long as such continuance is specifically approved at least annually by the board of directors or by vote of a majority of the outstanding voting securities of such company; and

(2) provides, in substance, for its automatic termination in the event of its assignment.

(c) APPROVAL OF CONTRACT TO UNDERTAKE SERVICE AS INVESTMENT ADVISER OR PRINCIPAL UNDERWRITER BY MAJORITY OF NONINTERESTED DIRECTORS

In addition to the requirements of subsections (a) and (b) of this section, it shall be unlawful for any registered investment company having a board of directors to enter into, renew, or perform any contract or agreement, written or oral, whereby a person undertakes regularly to serve or act as investment adviser of or principal underwriter for such company, unless the terms of such contract or agreement and any renewal thereof have been approved by the vote
of a majority of directors, who are not parties to such contract or agreement or interested persons of any such party, cast in person at a meeting called for the purpose of voting on such approval. It shall be the duty of the directors of a registered investment company to request and evaluate, and the duty of an investment adviser to such company to furnish, such information as may reasonably be necessary to evaluate the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company. It shall be unlawful for the directors of a registered investment company, in connection with their evaluation of the terms of any contract whereby a person undertakes regularly to serve or act as investment adviser of such company, to take into account the purchase price or other consideration any person may have paid in connection with a transaction of the type referred to in paragraph (1), (3), or (4) of subsection (f).

(d) Equivalent of Vote of Majority of Outstanding Voting Securities in Case of Common-law Trust

In the case of a common-law trust of the character described in section 80a–16(c) of this title, either written approval by holders of a majority of the outstanding shares of beneficial interest or the vote of a majority of such outstanding shares cast in person or by proxy at a meeting called for the purpose shall for the purposes of this section be deemed the equivalent of the vote of a majority of the outstanding voting securities, and 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 such a meeting.

(e) Exemption of Advisory Boards or Members from Provisions of This Section

Nothing contained in this section shall be deemed to require or contemplate any action by an advisory board of any registered company or by any of the members of such a board.

(f) Receipt of Benefits by Investment Adviser from Sale of Securities or Other Interest in Such Investment Adviser Resulting in Assignment of Investment Advisory Contract

(1) An investment adviser, or a corporate trustee performing the functions of an investment adviser, of a registered investment company or an affiliated person of such investment adviser or corporate trustee may receive any amount or benefit in connection with a sale of securities of, or a sale of any other interest in, such investment adviser or corporate trustee which results in an assignment of an investment advisory contract with such company or the change in control of or identity of such corporate trustee, if—

(A) for a period of three years after the time of such action, at least 75 per centum of the members of the board of directors of such registered company or such corporate trustee (or successor thereto, by reorganization or otherwise) are not
(i) interested persons of the investment adviser of such company or such corporate trustee, or (ii) interested persons of the predecessor investment adviser or such corporate trustee; and

(B) there is not imposed an unfair burden on such company as a result of such transaction or any express or implied terms, conditions, or understandings applicable thereto.

(2)

(A) For the purpose of paragraph (1)(A) of this subsection, interested persons of a corporate trustee shall be determined in accordance with section 80a–2(a)(19) (B) of this title: Provided, That no person shall be deemed to be an interested person of a corporate trustee solely by reason of (i) his being a member of its board of directors or advisory board or (ii) his membership in the immediate family of any person specified in clause (i) of this subparagraph.

(B) For the purpose of paragraph (1)(B) of this subsection, an unfair burden on a registered investment company includes any arrangement, during the two-year period after the date on which any such transaction occurs, whereby the investment adviser or corporate trustee or predecessor or successor investment advisers or corporate trustee or any interested person of any such adviser or any such corporate trustee receives or is entitled to receive any compensation directly or indirectly (i) from any person in connection with the purchase or sale of securities or other property to, from, or on behalf of such company, other than bona fide ordinary compensation as principal underwriter for such company, or (ii) from such company or its security holders for other than bona fide investment advisory or other services.

(3) If—

(A) an assignment of an investment advisory contract with a registered investment company results in a successor investment adviser to such company, or if there is a change in control of or identity of a corporate trustee of a registered investment company, and such adviser or trustee is then an investment adviser or corporate trustee with respect to other assets substantially greater in amount than the amount of assets of such company, or

(B) as a result of a merger of, or a sale of substantially all the assets by, a registered investment company with or to another registered investment company with assets substantially greater in amount, a transaction occurs which would be subject to paragraph (1)(A) of this subsection,
such discrepancy in size of assets shall be considered by the Commission in determining whether or to what extent an application under section 80a–6(c) of this title for exemption from the provisions of paragraph (1)(A) of this subsection should be granted.

(4) Paragraph (1)(A) of this subsection shall not apply to a transaction in which a controlling block of outstanding voting securities of an investment adviser to a registered investment company or of a corporate trustee performing the functions of an investment adviser to a registered investment company is—

(A) distributed to the public and in which there is, in fact, no change in the identity of the persons who control such investment adviser or corporate trustee, or

(B) transferred to the investment adviser or the corporate trustee, or an affiliated person or persons of such investment adviser or corporate trustee, or is transferred from the investment adviser or corporate trustee to an affiliated person or persons of the investment adviser or corporate trustee: Provided, That (i) each transferee (other than such adviser or trustee) is a natural person and (ii) the transferees (other than such adviser or trustee) owned in the aggregate more than 25 per centum of such voting securities for a period of at least six months prior to such transfer.


15 U.S. Code § 80a–16. Board of directors

- U.S. Code
- Notes

(a) Election of directors

No person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders of the outstanding voting securities of the company at such
an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions of this subsection shall not apply to members of an advisory board.

Nothing herein shall, however, preclude a registered investment company from dividing its directors into classes if its charter, certificate of incorporation, articles of association, by-laws, trust indenture, or other instrument or the law under which it is organized, so provides and prescribes the tenure of office of the several classes: Provided, That no class shall be elected for a shorter period than one year or for a longer period than five years and the term of office of at least one class shall expire each year.

(b) Term vacancies

Any vacancy on the board of directors of a registered investment company which occurs in connection with compliance with section 80a–15(f)(1) (A) of this title and which must be filled by a person who is not an interested person of either party to a transaction subject to section 80a–15(f)(1) (A) of this title shall be filled only by a person (1) who has been selected and proposed for election by a majority of the directors of such company who are not such interested persons, and (2) who has been elected by the holders of the outstanding voting securities of such company, except that in the case of the death, disqualification, or bona fide resignation of a director selected and elected pursuant to clauses (1) and (2) of this subsection (b), the vacancy created thereby may be filled as provided in subsection (a).

(c) Trustees of common-law trusts

The foregoing provisions of this section shall not apply to a common-law trust existing on August 22, 1940, under an indenture of trust which does not provide for the election of trustees by the shareholders. No natural person shall serve as trustee of such a trust, which is registered as an investment company, after the holders of record of not less than two-thirds of the outstanding shares of beneficial interests in such trust have declared that he be removed from that office either by declaration in writing filed with the custodian of the securities of the trust or by votes cast in person or by proxy at a meeting called for the purpose. Solicitation of such a declaration shall be deemed a solicitation of a proxy within the meaning of section 80a–20(a) of this title.
The trustees of such a trust shall promptly call a meeting of shareholders for the purpose of voting upon the question of removal of any such trustee or trustees when requested in writing so to do by the record holders of not less than 10 per centum of the outstanding shares.

Whenever ten or more shareholders of record who have been such for at least six months preceding the date of application, and who hold in the aggregate either shares having a net asset value of at least $25,000 or at least 1 per centum of the outstanding shares, whichever is less, shall apply to the trustees in writing, stating that they wish to communicate with other shareholders with a view to obtaining signatures to a request for a meeting pursuant to this subsection and accompanied by a form of communication and request which they wish to transmit, the trustees shall within five business days after receipt of such application either—

(1) afford to such applicants access to a list of the names and addresses of all shareholders as recorded on the books of the trust; or

(2) inform such applicants as to the approximate number of shareholders of record, and the approximate cost of mailing to them the proposed communication and form of request.

If the trustees elect to follow the course specified in paragraph (2) of this subsection the trustees, upon the written request of such applicants, accompanied by a tender of the material to be mailed and of the reasonable expenses of mailing, shall, with reasonable promptness, mail such material to all shareholders of record at their addresses as recorded on the books, unless within five business days after such tender the trustees shall mail to such applicants and file with the Commission, together with a copy of the material to be mailed, a written statement signed by at least a majority of the trustees to the effect that in their opinion either such material contains untrue statements of fact or omits to state facts necessary to make the statements contained therein not misleading, or would be in violation of applicable law, and specifying the basis of such opinion.

After opportunity for hearing upon the objections specified in the written statement so filed, the Commission may, and if demanded by the trustees or by such applicants shall, enter an order either sustaining one or more of such objections or refusing to sustain any of them. If the Commission shall enter an order refusing to sustain any of such objections, or if, after the entry of an order sustaining one or more of such objections, the Commission shall find, after notice and opportunity for hearing, that all objections so sustained have been met, and shall enter an order so declaring, the trustees shall mail copies of such
15 U.S. Code § 80a–17. Transactions of certain affiliated persons and underwriters

- **U.S. Code**
- **Notes**

(a) **PROHIBITED TRANSACTIONS**

It shall be unlawful for any **affiliated person** or promoter of or principal underwriter for a registered **investment company** (other than a **company** of the character described in section 80a–12(d)(3)(A) and (B) of this title), or any **affiliated person** of such a **person**, promoter, or principal underwriter, acting as principal—

1. knowingly to **sell** any security or other property to such registered **company** or to any **company** controlled by such registered **company**, unless such **sale** involves solely (A) securities of which the buyer is the **issuer**, (B) securities of which the seller is the **issuer** and which are part of a general offering to the holders of a class of its securities, or (C) securities deposited with the trustee of a **unit investment trust** or periodic payment plan by the depositor thereof;

2. knowingly to purchase from such registered **company**, or from any **company** controlled by such registered **company**, any security or other property (except securities of which the seller is the **issuer**);

3. to **borrow** money or other property from such registered **company** or from any **company** controlled by such registered **company** (unless the borrower is controlled by the lender) except as permitted in **section 80a–21(b) of this title**; or

4. to loan money or other property to such registered **company**, or to any **company** controlled by such registered **company**, in contravention of such rules, regulations, or orders as 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), prescribe or issue consistent with the protection of investors.

(b) Application for exemption of proposed transaction from certain restrictions
Notwithstanding subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of said subsection. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under this subchapter; and

(3) the proposed transaction is consistent with the general purposes of this subchapter.

(c) Sale or purchase of merchandise from any company or furnishing of services incident to lessor-lessee relationship
Notwithstanding subsection (a), a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

(d) Joint or joint and several participation with company in transactions
It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company (other than a company of the character described in section 80a-12(d)(3) (A) and (B) of this title), or any affiliated person of such a person or principal underwriter, acting as principal to effect any transaction in which such registered company, or a company controlled by such registered company, is a joint or a joint and several participant with such person, principal underwriter, or affiliated person, in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant. Nothing contained in this subsection shall be deemed to preclude any affiliated person from acting as manager of any underwriting syndicate or other group in which such registered or controlled company is a participant and receiving compensation therefor.
(e) Acceptance of compensation, commissions, fees, etc. It shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from such registered company) for the purchase or sale of any property to or for such registered company or any controlled company thereof, except in the course of such person's business as an underwriter or broker; or

(2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected on a securities exchange, or (B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) Custody of securities

(1) Every registered management company shall place and maintain its securities and similar investments in the custody of (A) a bank or banks having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts; or (B) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], subject to such rules, regulations, and orders as the Commission may from time to time prescribe for the protection of investors; or (C) such registered company, but only in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors.

(2) Subject to such rules, regulations, and orders as the Commission may adopt as necessary or appropriate for the protection of investors, a registered management company or any such custodian, with the consent of the registered management company for which it acts as custodian, may deposit all or any part of the securities owned by such registered management company in a system for the central handling of securities established by a national securities exchange or national securities association registered with the Commission under the Securities Exchange Act of 1934 [15 U.S.C. 78a et
seq.], or such other person as may be permitted by the Commission, pursuant to which system all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of such securities.

(3) Rules, regulations, and orders of the Commission under this subsection, among other things, may make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and may provide for or require periodic or other inspections by any or all of the following: Independent public accountants, employees and agents of the Commission, and such other persons as the Commission may designate.

(4) No member of a national securities exchange which trades in securities for its own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(5) If a registered company maintains its securities and similar investments in the custody of a qualified bank or banks, the cash proceeds from the sale of such securities and similar investments and other cash assets of the company shall likewise be kept in the custody of such a bank or banks, or in accordance with such rules and regulations or orders as the Commission may from time to time prescribe for the protection of investors, except that such a registered company may maintain a checking account in a bank or banks having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts with the balance of such account or the aggregate balances of such accounts at no time in excess of the amount of the fidelity bond, maintained pursuant to subsection (g) covering the officers or employees authorized to draw on such account or accounts.

(6) 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 conditions under which a bank, or an affiliated person of a bank, either of which is an affiliated person, promoter, organizer, or sponsor of, or principal underwriter for, a registered management company, may serve as custodian of that registered management company.

(g) Bonding of officers and employees having access to securities or funds

The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer or employee of a registered
management **investment company** who may singly, or jointly with others, have access to securities or funds of any registered **company**, either directly or through authority to draw upon such funds or to direct generally the disposition of such securities (unless the officer or employee has such access solely through his position as an officer or employee of a **bank** be bonded by a reputable fidelity **insurance company** against larceny and embezzlement in such reasonable minimum amounts as the **Commission** may prescribe.

(h) **PROVISIONS IN CHARTER, BY-LAWS, ETC., PROTECTING AGAINST LIABILITY FOR WILLFUL MISFEASANCE, ETC.**

After one year from the effective date of this subchapter, neither the charter, certificate of incorporation, articles of association, indenture of trust, nor the by-laws of any registered **investment company**, nor any other instrument pursuant to which such a **company** is organized or administered, shall contain any provision which protects or purports to protect any **director** or officer of such **company** against any liability to the **company** or to its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, gross negligence or reckless disregard of the duties involved in the conduct of his office.

(i) **PROVISIONS IN CONTRACTS PROTECTING AGAINST WILLFUL MISFEASANCE, ETC.**

After one year from the effective date of this subchapter no contract or agreement under which any **person** undertakes to act as **investment adviser** of, or principal underwriter for, a registered **investment company** shall contain any provision which protects or purports to protect such **person** against any liability to such **company** or its security holders to which he would otherwise be subject by reason of willful misfeasance, bad faith, or gross negligence, in the performance of his duties, or by reason of his reckless disregard of his obligations and duties under such contract or agreement.

(j) **RULES AND REGULATIONS PROHIBITING FRAUDULENT, DECEPTIVE OR MANIPULATIVE COURSES OF CONDUCT**

It shall be unlawful for any **affiliated person** of or principal underwriter for a registered **investment company** or any **affiliated person** of an **investment adviser** of or principal underwriter for a registered **investment company**, to engage in any act, practice, or course of business in connection with the purchase or **sale**, directly or indirectly, by such **person** of any security held or to be acquired by such registered **investment company** in contravention of such rules and regulations as the **Commission** may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business as are fraudulent, deceptive or manipulative. Such rules and regulations may include requirements for the adoption of codes of ethics by registered investment companies and **investment advisers** of, and principal
underwriters for, such investment companies establishing such standards as are
reasonably necessary to prevent such acts, practices, or courses of business.

1261; Pub. L. 106–102, title II, §§ 211(a), 212, Nov. 12, 1999, 113 Stat. 1396; Pub.

15 U.S. Code § 80a–18.Capital
structure of investment companies

• U.S. Code

• Notes

(a) Qualifications on Issuance of Senior Securities
It shall be unlawful for any registered closed-end company to issue any class of senior security, or to sell any such security of which it is the issuer, unless—
(1) if such class of senior security represents an indebtedness—
(A) immediately after such issuance or sale, it will have an asset coverage of at least 300 per centum;
(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution, upon any class of the capital stock of such investment company, or the purchase of any such capital stock, unless, in every such case, such class of senior securities has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 300 per centum after deducting the amount of such dividend, distribution, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such senior security representing indebtedness has an asset coverage of at least 200 per centum at the time of declaration thereof after deducting the amount of such dividend; and
(C) provision is made either—
(i) that, if on the last business day of each of twelve consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, the holders of such securities voting as a class shall be entitled to elect at least a majority of the members of the board of directors of such
registered company, such voting right to continue until such class of senior security shall have an asset coverage of 110 per centum or more on the last business day of each of three consecutive calendar months, or

(ii) that, if on the last business day of each of twenty-four consecutive calendar months such class of senior securities shall have an asset coverage of less than 100 per centum, an event of default shall be deemed to have occurred;

(2) if such class of senior security is a stock—

(A) immediately after such issuance or sale it will have an asset coverage of at least 200 per centum;

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in common stock of the issuer), or the declaration of any other distribution, upon the common stock of such investment company, or the purchase of any such common stock, unless in every such case such class of senior security has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least 200 per centum after deducting the amount of such dividend, distribution or purchase price, as the case may be;

(C) provision is made to entitle the holders of such senior securities, voting as a class, to elect at least two directors at all times, and, subject to the prior rights, if any, of the holders of any other class of senior securities outstanding, to elect a majority of the directors if at any time dividends on such class of securities shall be unpaid in an amount equal to two full years’ dividends on such securities, and to continue to be so represented until all dividends in arrears shall have been paid or otherwise provided for;

(D) provision is made requiring approval by the vote of a majority of such securities, voting as a class, of any plan of reorganization adversely affecting such securities or of any action requiring a vote of security holders as in section 80a–13(a) of this title provided; and

(E) such class of stock shall have complete priority over any other class as to distribution of assets and payment of dividends, which dividends shall be cumulative.

(b) Asset coverage in respect of senior securities
The asset coverage in respect of a senior security provided for in subsection (a) may be determined on the basis of values calculated as of a time within forty-
eight hours (not including Sundays or holidays) next preceding the time of such
determination. The time of issue or sale shall, in the case of an offering of such
securities to existing stockholders of the issuer, be deemed to be the first date
on which such offering is made, and in all other cases shall be deemed to be the
time as of which a firm commitment to issue or sell and to take or purchase such
securities shall be made.

(c) Prohibitions relating to issuance of senior securities
Notwithstanding the provisions of subsection (a) it shall be unlawful for any
registered closed-end investment company to issue or sell any senior security
representing indebtedness if immediately thereafter such company will have
outstanding more than one class of senior security representing indebtedness, or
to issue or sell any senior security which is a stock if immediately thereafter
such company will have outstanding more than one class of senior
security which is a stock, except that (1) any such class of indebtedness or
stock may be issued in one or more series: Provided, That no such series shall
have a preference or priority over any other series upon the distribution of the
assets of such registered closed-end company or in respect of the payment of
interest or dividends, and (2) promissory notes or other evidences of
indebtedness issued in consideration of any loan, extension, or renewal thereof,
made by a bank or other person and privately arranged, and not intended to be
publicly distributed, shall not be deemed to be a separate class of senior
securities representing indebtedness within the meaning of this subsection.

(d) Warrants and rights to subscription
It shall be unlawful for any registered management company to issue any
warrant or right to subscribe to or purchase a security of which such company is
the issuer, except in the form of warrants or rights to subscribe expiring not
later than one hundred and twenty days after their issuance and issued
exclusively and ratably to a class or classes of such company's security holders;
except that any warrant may be issued in exchange for outstanding warrants in
connection with a plan of reorganization.

(e) Application of section to specific senior securities
The provisions of this section shall not apply to any senior securities issued or sold by any registered closed-end company—
(1) for the purpose of refunding through payment, purchase, redemption, retirement,
or exchange, any senior security of such registered investment company except
that no senior security representing indebtedness shall be so issued or sold for
the purpose of refunding any senior security which is a stock; or
(2) pursuant to any plan of reorganization (other than for refunding as referred to
in paragraph (1) of this subsection), provided—
(A) that such senior securities are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities, and if such senior securities represent indebtedness they are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities representing indebtedness, of any registered investment company which is a party to such plan of reorganization; or

(B) that the total amount of such senior securities so issued or sold pursuant to such plan does not exceed the total amount of senior securities of all the companies which are parties to such plan, and the total amount of senior securities representing indebtedness so issued or sold pursuant to such plan does not exceed the total amount of senior securities representing indebtedness of all such companies, or, alternatively, the total amount of such senior securities so issued or sold pursuant to such plan does not have the effect of increasing the ratio of senior securities representing indebtedness to the securities representing stock or the ratio of senior securities representing stock to securities junior thereto when compared with such ratios as they existed before such reorganization.

(f) Senior securities securing loans from bank; securities not included in “senior security”

(1) It shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer, except that any such registered company shall be permitted to borrow from any bank; Provided, That immediately after any such borrowing there is an asset coverage of at least 300 per centum for all borrowings of such registered company: And provided further, That in the event that such asset coverage shall at any time fall below 300 per centum such registered company shall, within three days thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least 300 per centum.

(2) “Senior security” shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: Provided, That (A) such company has outstanding no class or series of stock which is not so preferred over all other classes or series, or (B) the only other outstanding class of the issuer’s stock consists of a common stock upon which no dividend (other
than a liquidating dividend) is permitted to be paid and which in the aggregate represents not more than one-half of 1 per centum of the issuer's outstanding voting securities. For the purpose of insuring fair and equitable treatment of the holders of the outstanding voting securities of each class or series of stock of such company, the Commission may by rule, regulation, or order direct that any matter required to be submitted to the holders of the outstanding voting securities of such company shall not be deemed to have been effectively acted upon unless approved by the holders of such percentage (not exceeding a majority) of the outstanding voting securities of each class or series of stock affected by such matter as shall be prescribed in such rule, regulation, or order.

(g) “Senior security” defined

Unless otherwise provided: “Senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and “senior security representing indebtedness” means any senior security other than stock.

The term “senior security”, when used in subparagraphs (B) and (C) of paragraph (1) of subsection (a), shall not include any promissory note or other evidence of indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged, and not intended to be publicly distributed; nor shall such term, when used in this section, include any such promissory note or other evidence of indebtedness in any case where such a loan is for temporary purposes only and in an amount not exceeding 5 per centum of the value of the total assets of the issuer at the time when the loan is made. A loan shall be presumed to be for temporary purposes if it is repaid within sixty days and is not extended or renewed; otherwise it shall be presumed not to be for temporary purposes. Any such presumption may be rebutted by evidence.

(h) “Asset coverage” defined

“Asset coverage” of a class of senior security representing an indebtedness of an issuer means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer. “Asset coverage” of a class of senior security of an issuer which is a stock means the ratio which the value of the total assets of such issuer, less all liabilities and indebtedness not represented by senior securities, bears to the aggregate amount of senior securities representing indebtedness of such issuer plus the aggregate of the involuntary liquidation preference of such class of senior security which is a stock. The involuntary liquidation preference of a class of senior security which is a stock shall be deemed to mean the
amount to which such class of senior security would be entitled on involuntary liquidation of the issuer in preference to a security junior to it.

(i) Future issuance of stock as voting stock; exceptions
Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered management company (except a common-law trust of the character described in section 80a-16(c) of this title) shall be a voting stock and have equal voting rights with every other outstanding voting stock: Provided, That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding on March 15, 1940, or any firm contract entered into before March 15, 1940, to purchase such securities from such company nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

(j) Securities issued by registered face-amount certificate company
Notwithstanding any provision of this subchapter, it shall be unlawful, after August 22, 1940, for any registered face-amount certificate company—

(1) to issue, except in accordance with such rules, regulations, or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors, any security other than (A) a face-amount certificate; (B) a common stock having a par value and being without preference as to dividends or distributions and having at least equal voting rights with any outstanding security of such company; or (C) short-term payment or promissory notes or other indebtedness issued in consideration of any loan, extension, or renewal thereof, made by a bank or other person and privately arranged and not intended to be publicly offered;

(2) if such company has outstanding any security, other than such face-amount certificates, common stock, promissory notes, or other evidence of indebtedness, to make any distribution or declare or pay any dividend on any capital security in contravention of such rules and regulations or orders as the Commission may prescribe in the public interest or as necessary or appropriate for the protection of investors or to insure the financial integrity of such company, to prevent the impairment of the company’s ability to meet its obligations upon its face-amount certificates; or

(3) to issue any of its securities except for cash or securities including securities of which such company is the issuer.

(k) Application of section to companies operating under Small Business Investment Act provisions
The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.], and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration.


15 U.S. Code § 80a–19. Payments or distributions

- U.S. Code

- Notes

(a) DIVIDENDS; RESTRICTION; EXCEPTION. It shall be unlawful for any registered investment company to pay any dividend, or to make any distribution in the nature of a dividend payment, wholly or partly from any source other than —

(1) such company’s accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other properties; or

(2) such company’s net income so determined for the current or preceding fiscal year;

unless such payment is accompanied by a written statement which adequately discloses the source or sources of such payment. The Commission may prescribe the form of such statement by rules and regulations in the public interest and for the protection of investors.

(b) LONG-TERM CAPITAL GAINS; LIMITATION
It shall be unlawful in contravention of such rules, regulations, or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors for any registered investment company to distribute long-term capital gains, as defined in title 26, more often than once every twelve months.


15 U.S. Code § 80a–20. Proxies; voting trusts; circular ownership

- U.S. Code

- Notes

(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.


15 U.S. Code § 80a–21. Loans by management companies

- U.S. Code
- Notes

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.

(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 78o–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 companies 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.


15 U.S. Code § 80a–23. Closed-end companies

- U.S. Code
- Notes

(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.
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 designate by rules and regulations or orders: Provided, That if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of such class by letter or report addressed to stockholders of such class; or

(2) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or

(3) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors in order to insure that such purchases are made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased.


15 U.S. Code § 80a–24. Registration of securities under Securities Act of 1933

Notes

Registration statement; contents

In registering under the Securities Act of 1933 [15 U.S.C. 77a et seq.], any security of which it is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in schedule A of said Act [15 U.S.C. 77aa], may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this subchapter, and of such reports filed by such company pursuant to section 80a–
29 of this title or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

(2) such additional information and documents (including a prospectus) as the Commission shall prescribe by rules and regulations as necessary or appropriate in the public interest or for the protection of investors.

(b) Filing of three copies of advertisement, pamphlet, etc. in connection with public offering; time of filing

It shall be unlawful for any of the following companies, or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to make use of the mails or any means or instrumentalities of interstate commerce, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter:

(1) any registered open-end company;
(2) any registered unit investment trust; or
(3) any registered face-amount certificate company.

(c) Additional requirement for prospectuses relating to periodic payment plan certificates or face-amount certificate

In addition to the powers relative to prospectuses granted the Commission by section 10 of the Securities Act of 1933 [15 U.S.C. 77j], the Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate or face-amount certificate registered under the Securities Act of 1933 [15 U.S.C. 77a et seq.], on or after the effective date of this subchapter be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(d) Application of other provisions to securities of investment companies, face-amount certificate companies, and open-end companies or unit investment trust

The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 [15 U.S.C. 77c(a)(8)] shall not apply to any security of which an investment company is the issuer. The exemption provided by paragraph (11) of said section 3(a) [15 U.S.C. 77c(a)(11)] shall not apply to any security of which a registered investment company is the issuer. The exemption provided by section 4(3) [1] of the Securities Act of 1933 [15 U.S.C. 77d(a)(3)] shall not apply to any
transaction in a security issued by a face-amount certificate company or in a redeemable security issued by an open-end management company or unit investment trust if any other security of the same class is currently being offered or sold by the issuer or by or through an underwriter in a distribution which is not exempted from section 5 of said Act [15 U.S.C. 77e], except to such extent and subject to such terms and conditions as the Commission, having due regard for the public interest and the protection of investors, may prescribe by rules or regulations with respect to any class of persons, securities, or transactions.

(e) Amendment of registration statements relating to securities issued by face-amount certificate companies, open-end management companies or unit investment trusts
For the purposes of section 11 of the Securities Act of 1933, as amended [15 U.S.C. 77k] the effective date of the latest amendment filed shall be deemed the effective date of the registration statement with respect to securities sold after such amendment shall have become effective. For the purposes of section 13 of the Securities Act of 1933, as amended [15 U.S.C. 77m], no such security shall be deemed to have been bona fide offered to the public prior to the effective date of the latest amendment filed pursuant to this subsection. Except to the extent the Commission otherwise provides by rules or regulations as appropriate in the public interest or for the protection of investors, no prospectus relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust which varies for the purposes of subsection (a)(3) of section 10 of the Securities Act of 1933 [15 U.S.C. 77j(a)(3)] from the latest prospectus filed as a part of the registration statement shall be deemed to meet the requirements of said section 10 [15 U.S.C. 77j] unless filed as part of an amendment to the registration statement under said Act [15 U.S.C. 77a] et seq.] and such amendment has become effective.

(f) Registration of indefinite amount of securities
(1) Registration of securities
Upon the effective date of its registration statement, as provided by section 8 of the Securities Act of 1933 [15 U.S.C. 77h], a face-amount certificate company, open-end management company, or unit investment trust, shall be deemed to have registered an indefinite amount of securities.

(2) Payment of registration fees
Not later than 90 days after the end of the fiscal year of a company or trust referred to in paragraph (1), the company or trust, as applicable, shall pay a registration fee to the Commission, calculated in the manner specified in section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)], based on the aggregate sales price for which its securities (including, for purposes of this paragraph, all securities issued pursuant to a dividend reinvestment plan) were sold pursuant to a registration of an indefinite amount.
of securities under this subsection during the previous fiscal year of
the company or trust, reduced by—
(A) the aggregate redemption or repurchase price of the securities of
the company or trust during that year; and
(B) the aggregate redemption or repurchase price of the securities of
the company or trust during any prior fiscal year ending not more than 1 year
before October 11, 1996, that were not used previously by the company or trust
to reduce fees payable under this section.

(3) INTEREST DUE ON LATE PAYMENT
A company or trust paying the fee required by this subsection or any portion
thereof more than 90 days after the end of the fiscal year of the company or trust
shall pay to the Commission interest on unpaid amounts, at the average
investment rate for Treasury tax and loan accounts published by the Secretary of
the Treasury pursuant to section 3717(a) of title 31. The payment of interest
pursuant to this paragraph shall not preclude the Commission from bringing an
action to enforce the requirements of paragraph (2).

(4) RULEMAKING AUTHORITY
The Commission may adopt rules and regulations to implement this subsection.

(g) ADDITIONAL PROSPECTUSES
In addition to any prospectus permitted or required by section 10(a) of
the Securities Act of 1933 [15 U.S.C. 77j(a)], the Commission shall permit, by
rules or regulations deemed necessary or appropriate in the public interest or for
the protection of investors, the use of a prospectus for purposes of section 5(b)
(1) of that Act [15 U.S.C. 77e(b)(1)] with respect to securities issued by a
registered investment company. Such a prospectus, which may include
information the substance of which is not included in the prospectus specified in
section 10(a) of the Securities Act of 1933, shall be deemed to be permitted by
section 10(b) of that Act [15 U.S.C. 77j(b)].
15 U.S. Code § 80a–25. Reorganization plans; reports by Commission

(a) **Filing of reorganization plan and other information with Commission**
Any person who, by use of the mails or any means or instrumentality of interstate commerce or otherwise, solicits or permits the use of his name to solicit any proxy, consent, authorization, power of attorney, ratification, deposit, or dissent in respect of any plan of reorganization of any registered investment company shall file with, or mail to, the Commission for its information, within twenty-four hours after the commencement of any such solicitation, a copy of such plan and any deposit agreement relating thereto and of any proxy, consent, authorization, power of attorney, ratification, instrument of deposit, or instrument of dissent in respect thereto, if or to the extent that such documents shall not already have been filed with the Commission.

(b) **Advisory report by Commission at request of shareholders**
The Commission is authorized, if so requested, prior to any solicitation of security holders with respect to any plan of reorganization, by any registered investment company which is, or any of the securities of which are, the subject of or is a participant in any such plan, or if so requested by the holders of 25 per centum of any class of its outstanding securities, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders. In such event any registered investment company, in respect of which the Commission shall have rendered any such advisory report, shall mail promptly a copy of such advisory report to all its security holders affected by any such plan: Provided, That such advisory report shall have been received by it at least forty-eight hours (not including Sundays and holidays) before final action is taken in relation to such plan at any meeting of security holders called to act in relation thereto, or any adjournment of any such meeting, or if no meeting be called, then prior to the final date of acceptance of such plan by security holders. In respect of securities not registered as to ownership, in lieu of mailing a copy of such advisory report, such registered company shall publish promptly a statement of the existence of such advisory report in a newspaper of general circulation in its principal place of
business and shall make available copies of such advisory report upon request. Notwithstanding the provision of this section the Commission shall not render such advisory report although so requested by any such investment company or such security holders if the fairness or feasibility of said plan is in issue in any proceeding pending in any court of competent jurisdiction unless such plan is submitted to the Commission for that purpose by such court.

(c) ENJOINDER OF PLAN OF REORGANIZATION

Any district court of the United States in the State of incorporation of a registered investment company, or any such court for the district in which such company maintains its principal place of business, is authorized to enjoin the consummation of any plan of reorganization of such registered investment company upon proceedings instituted by the Commission (which is authorized so to proceed upon behalf of security holders of such registered company, or any class thereof), if such court shall determine that any such plan is not fair and equitable to all security holders.

(d) APPLICATION OF SECTION TO REORGANIZATIONS UNDER TITLE 11

Nothing contained in this section shall in any way affect or derogate from the powers of the courts of the United States and the Commission with reference to reorganizations contained in title 11.


15 U.S. Code § 80a–26. Unit investment trusts

- U.S. Code
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(a) CUSTODY AND SALE OF SECURITIES

No principal underwriter for or depositor of a registered unit investment trust shall sell, except by surrender to the trustee for redemption, any security of which such trust is the issuer (other than short-term paper), unless the trust indenture, agreement of custodianship, or other instrument pursuant to which such security is issued—

(1) designates one or more trustees or custodians, each of which is a bank, and provides that each such trustee or custodian shall have at all times an aggregate capital, surplus, and undivided profits of a specified minimum amount, which
shall not be less than $500,000 (but may also provide, if such trustee or custodian publishes reports of condition at least annually, pursuant to law or to the requirements of its supervising or examining authority, that for the purposes of this paragraph the aggregate capital, surplus, and undivided profits of such trustee or custodian shall be deemed to be its aggregate capital, surplus, and undivided profits as set forth in its most recent report of condition so published); (2) provides, in substance, (A) that during the life of the trust the trustee or custodian, if not otherwise remunerated, may charge against and collect from the income of the trust, and from the corpus thereof if no income is available, such fees for its services and such reimbursement for its expenses as are provided for in such instrument; (B) that no such charge or collection shall be made except for services theretofore performed or expenses theretofore incurred; (C) that no payment to the depositor of or a principal underwriter for such trust, or to any affiliated person or agent of such depositor or underwriter, shall be allowed the trustee or custodian as an expense (except that provision may be made for the payment to any such person of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services, of a character normally performed by the trustee or custodian itself); and (D) that the trustee or custodian shall have possession of all securities and other property in which the funds of the trust are invested, all funds held for such investment, all equalization, redemption, and other special funds of the trust, and all income upon, accretions to, and proceeds of such property and funds, and shall segregate and hold the same in trust (subject only to the charges and collections allowed under clauses (A), (B), and (C) of this paragraph) until distribution thereof to the security holders of the trust; (3) provides, in substance, that the trustee or custodian shall not resign until either (A) the trust has been completely liquidated and the proceeds of the liquidation distributed to the security holders of the trust, or (B) a successor trustee or custodian, having the qualifications prescribed in paragraph (1) of this subsection, has been designated and has accepted such trusteeship or custodianship; and (4) provides, in substance, (A) that a record will be kept by the depositor or an agent of the depositor of the name and address of, and the shares issued by the trust and held by, every holder of any security issued pursuant to such instrument, insofar as such information is known to the depositor or agent; and (B) that whenever a security is deposited with the trustee in substitution for any security in which such security holder has an undivided interest, the depositor or the
agent of the depositor will, within five days after such substitution, either deliver or mail to such security holder a notice of substitution, including an identification of the securities eliminated and the securities substituted, and a specification of the shares of such security holder affected by the substitution.

(b) 
**Bank or Affiliated Person of Bank as Trustee or Custodian**

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 conditions under which a **bank**, or an **affiliated person** of a **bank**, either of which is an **affiliated person** of a principal underwriter for, or depositor of, a registered **unit investment trust**, may serve as trustee or custodian under subsection (a)(1).

(c) 
**Substitution of Securities**

It shall be unlawful for any depositor or trustee of a registered **unit investment trust** holding the security of a single **issuer** to substitute another security for such security unless the **Commission** shall have approved such substitution. The **Commission** shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this subchapter.

(d) 
**Binding Contract or Agreement Embodying Applicable Provisions Deemed to Qualify Non-Complying Instrument by Which Securities Were Issued**

In the event that a trust indenture, agreement of custodianship, or other instrument pursuant to which securities of a registered **unit investment trust** are issued does not comply with the requirements of subsection (a), such instrument will be deemed to meet such requirements if a written contract or agreement binding on the parties and embodying such requirements has been executed by the depositor on the one part and the trustee or custodian on the other part, and three copies of such contract or agreement have been filed with the **Commission**.

(e) 
**Liquidation of Unit Investment Trust**

Whenever the **Commission** has reason to believe that a **unit investment trust** is inactive and that its liquidation is in the interest of the security holders of such trust, the **Commission** may file a complaint seeking the liquidation of such trust in the district court of the United States in any district wherein any trustee of such trust resides or has its principal place of business. A copy of such complaint shall be served on every trustee of such trust, and notice of the proceeding shall be given such other interested **persons** in such manner and at such times as the court may direct. If the court determines that such liquidation is in the interest of the security holders of such trust, the court shall order such liquidation and, after payment of necessary expenses, the distribution of the
proceeds to the security holders of the trust in such manner and on such terms as may to the court appear equitable.

(f) **Exemption**

(1) **In General**
Subsection (a) does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account.

(2) **Limitation on Sales** It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract—
(A) unless the fees and charges deducted under the contract, in the aggregate, are reasonable in relation to the services rendered, the expenses expected to be incurred, and the risks assumed by the insurance company, and, beginning on the earlier of August 1, 1997, or the earliest effective date of any registration statement or amendment thereto for such contract following October 11, 1996, the insurance company so represents in the registration statement for the contract; and
(B) unless the insurance company—
(i) complies with all other applicable provisions of this section, as if it were a trustee or custodian of the registered separate account;
(ii) files with the insurance regulatory authority of the State which is the domiciliary State of the insurance company, an annual statement of its financial condition, which most recent statement indicates that the insurance company has a combined capital and surplus, if a stock company, or an unassigned surplus, if a mutual company, of not less than $1,000,000, or such other amount as the Commission may from time to time prescribe by rule, as necessary or appropriate in the public interest or for the protection of investors; and
(iii) together with its registered separate accounts, is supervised and examined periodically by the insurance authority of such State.

(3) **Fees and Charges**
For purposes of paragraph (2), the fees and charges deducted under the contract shall include all fees and charges imposed for any purpose and in any manner.

(4) **Regulatory Authority**
The Commission may issue such rules and regulations to carry out paragraph (2) (A) as it determines are necessary or appropriate in the public interest or for the protection of investors.


15 U.S. Code § 80a–27. Periodic payment plans

- U.S. Code

Notes

(a) Sale of certificates; restrictions

It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if —

1. the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;

2. more than one-half of any of the first twelve monthly payments thereon, or their equivalent, is deducted for sales load;

3. the amount of sales load deducted from any one of such first payments exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;

4. the first payment on such certificate is less than $20, or any subsequent payment is less than $10;

5. if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character described in clause (C), paragraph (2), of section 80a–26(a) of this title)
exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(6) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(b) Exemptions
If it appears to the Commission, upon application or otherwise, that smaller companies are subjected to relatively higher operating costs and that in order to make due allowance therefor it is necessary or appropriate in the public interest and consistent with the protection of investors that a provision or provisions of paragraph (1), (2), or (3) of subsection (a) relative to sales load be relaxed in the case of certain registered investment companies issuing periodic payment plan certificates, or certain specified classes of such companies, the Commission is authorized by rules and regulations or order to grant any such company or class of companies appropriate qualified exemptions from the provisions of said paragraphs.

(c) Sale of certificates; requirements It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, unless—

(1) such certificate is a redeemable security; and

(2) the proceeds of all payments on such certificate (except such amounts as are deducted for sales load) are deposited with a trustee or custodian having the qualifications prescribed in paragraph (1) of section 80a–26(a) of this title for the trustees of unit investment trusts, and are held by such trustee or custodian under an indenture or agreement containing, in substance, the provisions required by paragraphs (2) and (3) of section 80a–26(a) of this title for the trust indentures of unit investment trusts.

(d) Surrender of certificates; regulations
Notwithstanding subsection (a) of this section, it shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provide that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the
certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15 per centum of the gross payments made by the certificate holder. The Commission may make rules and regulations applicable to such underwriters and depositors specifying such reserve requirements as it deems necessary or appropriate in order for such underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(e) REFUND PRIVILEGES; NOTICE; RULES

With respect to any periodic payment plan certificate sold subject to the provisions of subsection (d) of this section, the registered investment company issuing such periodic payment plan certificate, or any depositor of or underwriter for such company, shall in writing (1) inform each certificate holder who has missed three payments or more, within thirty days following the expiration of fifteen months after the issuance of the certificate, or, if any such holder has missed one payment or more after such period of fifteen months but prior to the expiration of eighteen months after the issuance of the certificate, at any time prior to the expiration of such eighteen-month period, of his right to surrender his certificate as specified in subsection (d) of this section, and (2) inform the certificate holder of (A) the value of the holder’s account as of the time the written notice was given to such holder, and (B) the amount to which he is entitled as specified in subsection (d) of this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection.

(f) CHARGES, STATEMENT; RULES; SURRENDER OF CERTIFICATES; REGULATIONS

With respect to any periodic payment plan (other than a plan under which the amount of sales load deducted from any payment thereon does not exceed 9 per centum of such payment), the custodian bank for such plan shall mail to each certificate holder, within sixty days after the issuance of the certificate, a statement of charges to be deducted from the projected payments on the certificate and a notice of his right of withdrawal as specified in this section. The Commission may make rules specifying the method, form, and contents of the notice required by this subsection. The certificate holder may within forty-five days of the mailing of the notice specified in this subsection surrender his certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from the underwriter or depositor, equal to the difference between the gross payments made and the net amount invested. The Commission may make rules and regulations applicable to underwriters and depositors of companies issuing any such certificate specifying such reserve requirements as it deems necessary or appropriate in order for such
underwriters and depositors to carry out the obligations to refund sales charges required by this subsection.

(g) Governing provisions; election
Notwithstanding the provisions of subsections (a) and (d), a registered investment company issuing periodic payment plan certificates may elect, by written notice to the Commission, to be governed by the provisions of subsection (h) rather than the provisions of subsections (a) and (d) of this section.

(h) Sale of certificates; restrictions
Upon making the election specified in subsection (g), it shall be unlawful for any such electing registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate, if—
(1) the sales load on such certificate exceeds 9 per centum of the total payments to be made thereon;
(2) more than 20 per centum of any payment thereon is deducted for sales load, or an average of more than 16 per centum is deducted for sales load from the first forty-eight monthly payments thereon, or their equivalent;
(3) the amount of sales load deducted from any one of the first twelve monthly payments, the thirteenth through twenty-fourth monthly payments, the twenty-fifth through thirty-sixth monthly payments, or the thirty-seventh through forty-eighth monthly payments, or their equivalents, respectively, exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment;
(4) the deduction for sales load on the excess of the payment or payments in any month over the minimum monthly payment, or its equivalent, to be made on the certificate exceeds the sales load applicable to payments subsequent to the first forty-eight monthly payments or their equivalent;
(5) the first payment on such certificate is less than $20, or any subsequent payment is less than $10;
(6) if such registered company is a management company, the proceeds of such certificate or the securities in which such proceeds are invested are subject to management fees (other than fees for administrative services of the character
described in clause (C) of paragraph (2) of section 80a–26(a) of this title) exceeding such reasonable amount as the Commission may prescribe, whether such fees are payable to such company or to investment advisers thereof; or

(7) if such registered company is a unit investment trust the assets of which are securities issued by a management company, the depositor of or principal underwriter for such trust, or any affiliated person of such depositor or underwriter, is to receive from such management company or any affiliated person thereof any fee or payment on account of payments on such certificate exceeding such reasonable amount as the Commission may prescribe.

(i) Applicability to registered separate account funding variable insurance contracts

(1) This section does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2).

(2) It shall be unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless—

(A) such contract is a redeemable security; and

(B) the insurance company complies with section 80a–26(f) of this title and any rules or regulations issued by the Commission under section 80a–26(f) of this title.

(j) Termination of sales

(1) Effective 30 days after September 29, 2006, it shall be unlawful, subject to subsection (i)—

(A) for any registered investment company to issue any periodic payment plan certificate; or

(B) for such company, or any depositor of or underwriter for any such company, or any other person, to sell such a certificate.

(2) No invalidation of existing certificates

Paragraph (1) shall not be construed to alter, invalidate, or otherwise affect any rights or obligations, including rights of redemption, under any periodic payment plan certificate issued and sold before 30 days after September 29, 2006.

(a) ISSUANCE OR SALE OF CERTIFICATES

It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless—

(1) such company, if organized before March 15, 1940, was actively and continuously engaged in selling face-amount certificates on and before that date, and has outstanding capital stock worth upon a fair valuation of assets not less than $50,000; or if organized on or after March 15, 1940, has capital stock in an amount not less than $250,000 which has been bona fide subscribed and paid for in cash; and

(2) such company maintains at all times minimum certificate reserves on all its outstanding face-amount certificates in an aggregate amount calculated and adjusted as follows:

(A) the reserves for each certificate of the installment type shall be based on assumed annual, semi-annual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first certificate year shall amount to at least 50 per centum of the required gross annual payment for such year and the reserve payment or payments for each of the second to fifth certificate years inclusive shall amount to at least 93 per centum of each such year’s required gross annual payment and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year’s required gross annual payment:

Provided, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as
and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken;

(B) if the foregoing minimum percentages of the gross annual payments required under the provisions of such certificate should produce reserve payments larger than are necessary at 3½ per centum per annum compounded annually to provide the minimum maturity or face amount of the certificate when due, the reserve shall be based upon reserve payments accumulated as provided under preceding subparagraph (A) of this paragraph except that in lieu of the 3½ per centum rate specified therein, such rate shall be lowered to the minimum rate, expressed in multiples of one-eighth of 1 per centum, which will accumulate such reserve payments to the maturity value when due;

(C) if the actual annual gross payment to be made by the certificate holder on any certificate issued prior to or after the effective date of this chapter is less than the amount of any assumed reserve payment or payments for a certificate year, such company shall maintain as a part of such minimum certificate reserves a deficiency reserve equal to the total present value of future deficiencies in the gross payments, calculated at a rate not to exceed 3½ per centum per annum compounded annually;

(D) for each certificate of the installment type the amount of the reserve shall at any time be at least equal to (1) the then amount of the reserve payments set up under subparagrapghs (A) or (B) of this paragraph; (2) the accumulations on such reserve payments as computed under subparagraphs (A) or (B) of this paragraph; (3) the amount of any deficiency reserve required under subparagraph (C) of this paragraph; and (4) such amount as shall have been credited to the account of each certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in such certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(E) for each certificate which is fully paid, including any fully paid obligations resulting from or effected upon the maturity of the previously issued certificate,
and for each paid-up certificate issued as provided in subsection (f) of this section prior to maturity, the amount of the reserve shall at any time be at least equal to (1) such amount as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, will provide the amount or amounts payable when due and (2) such amount as shall have been credited to the account of each such certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity amount specified in the certificate, plus any accumulations on any amount or amounts so credited, at a rate not exceeding 3½ per centum per annum compounded annually;

(F) for each certificate of the installment type under which gross payments have been made by or credited to the holder thereof covering a payment period or periods or any part thereof beyond the then current payment period as defined by the terms of such certificate, and for which period or periods no reserve has been set up under subparagraph (A) or (B) of this paragraph, an advance payment reserve shall be set up and maintained in the amount of the present value of any such unapplied advance gross payments, computed at a rate not to exceed 3½ per centum per annum compounded annually;

(G) such appropriate contingency reserves for death and disability benefits and for reinstatement rights on any such certificate providing for such benefits or rights as the Commission shall prescribe by rule, regulation, or order based upon the experience of face-amount companies in relation to such contingencies.

At no time shall the aggregate certificate reserves herein required by subparagraphs (A) to (F) of this paragraph, be less than the aggregate surrender values and other amounts to which all certificate holders may be then entitled. For the purpose of this subsection, no certificate of the installment type shall be deemed to be outstanding if before a surrender value has been attained the holder thereof has been in continuous default in making his payments thereon for a period of one year.

(b) Asset requirements prior to sale of certificates
It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, unless such company has, in cash or qualified investments, assets having a value not less than the aggregate amount of the capital stock requirement and certificate reserves as computed under the provisions of subsection (a) hereof. As used in this subsection, “qualified investments” means investments of a kind which life-insurance companies are permitted to invest in or hold under the provisions of the Code of the District of Columbia as heretofore or hereafter amended, and such other investments as the Commission shall by
rule, regulation, or order authorize as **qualified investments**. Such investments shall be valued in accordance with the provisions of said Code where such provisions are applicable. Investments to which such provisions do not apply shall be valued in accordance with such rules, regulations, or orders as the **Commission** shall prescribe for the protection of investors.

(c) Certificate reserve requirements

The **Commission** shall by rule, regulation, or order, in the public interest or for the protection of investors, require a registered **face-amount certificate company** to deposit and maintain, upon such terms and conditions as the **Commission** shall prescribe and as are appropriate for the protection of investors, with one or more institutions having the qualifications required by paragraph (1) of **section 80a-26(a) of this title** for a trustee of a **unit investment trust**, all or any part of the investments maintained by such **company** as certificate reserve requirements under the provisions of subsection (b) hereof: Provided, however, That where **qualified investments** are maintained on deposit by such **company** in respect of its liabilities under certificates issued to or held by residents of any **State** as required by the statute of such **State** or by any order, regulation, or requirement of such **State** or any official or agency thereof, the amount so on deposit, but not to exceed the amount of reserves required by subsection (a) hereof for the certificates so issued or held, shall be deducted from the amount of **qualified investments** that may be required to be deposited hereunder.

Assets which are **qualified investments** under subsection (b) and which are deposited under or as permitted by this subsection, may be used and shall be considered as a part of the assets required to be maintained under the provisions of said subsection (b).

(d) Provisions required in certificate

It shall be unlawful for any registered **face-amount certificate company** to issue or **sell** any face-amount certificate, or to collect or accept any payment on any such certificate issued by such **company** on or after the effective date of this subchapter, unless such certificate contains a provision or provisions to the effect—

(1) that, in respect of any certificate of the installment type, during the first **certificate year** the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the reserve payments as specified in subparagraph (A) or (B) of paragraph (2) of subsection (a) and at the end of such **certificate year**, a value payable in cash at least equal to 50 per centum of the amount of the gross annual payment required thereby for such year;

(2)
that, in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by numbered items (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 50 per centum of the amount of such reserve. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(3) that, in respect of any certificate of the installment type, the holder of the certificate, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof, shall be entitled to a value payable in cash equal to the then amount of any advance payment reserve under such certificate required by subparagraph (F) of paragraph (2) of subsection (a) hereof in addition to any other amounts due the holder hereunder;

(4) that at any time prior to maturity, in respect of any certificate which is fully paid, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by item (1) of subparagraph (E) of paragraph (2) of subsection (a) hereof, less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser: Provided, however, That such surrender charge shall not apply as to any obligations of a fully paid type resulting from the maturity of a previously issued certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate;

(5) that in respect of any certificate, the holder of the certificate, upon maturity, upon surrender thereof for cash or upon receipt of a paid-up certificate as provided in subsection (f) hereof, shall be entitled to a value payable in cash equal to the then amount of the reserve, if any, for such certificate required by item (4) of subparagraph (D) of paragraph (2) of subsection (a) hereof or item (2) of subparagraph (E) of paragraph (2) of said subsection (a) in addition to any other amounts due the holder hereunder.

The term “certificate year” as used in this section in respect of any certificate of the installment type means a period or periods for which one year's payment or payments as provided by the certificate have been made thereon by the holder and the certificate maintained in force by such payments for the time for which the same have been made, and in respect of any certificate which is fully paid or
paid-up means any year ending on the anniversary of the date of issuance of the certificate.

Any certificate may provide for loans or advances by the company to the certificate holder on the security of such certificate upon terms prescribed therein but at an interest rate not exceeding 6 per centum per annum. The amount of the required reserves, deposits, and the surrender values thereof available to the holder may be adjusted to take into account any unpaid balance on such loans or advances and interest thereon, for the purposes of this subsection and subsections (b) and (c) hereof.

Any certificate may provide that the company at its option may, prior to the maturity thereof, defer any payment or payments to the certificate holder to which he may be entitled under this subsection, for a period of not more than thirty days: Provided, That in the event such option is exercised by the company, interest shall accrue on any payment or payments due to the holder, for the period of such deferment at a rate equal to that used in accumulating the reserves for such certificate: And provided further, That the Commission may, by rules and regulations or orders in the public interest or for the protection of investors, make provision for any other deferment upon such terms and conditions as it shall prescribe.

(e) Liability of holder to legal action for unpaid amount of certificate
It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, which certificate makes the holder liable to any legal action or proceeding for any unpaid amount on such certificate.

(f) Optional right to paid up certificate in lieu of cash surrender value
It shall be unlawful for any registered face-amount certificate company to issue or sell any face-amount certificate, or to collect or accept any payment on any such certificate issued by such company on or after the effective date of this subchapter, (1) unless such face-amount certificate contains a provision or provisions to the effect that the holder shall have an optional right to receive a paid-up certificate in lieu of the then attained cash surrender value provided therein and in the amount of such value plus accumulations thereon at a rate to be specified in the paid-up certificate equal to that used in computing the reserve on the original certificate under subparagraph (A) or (B) of paragraph (2) of subsection (a) of this section, such paid-up certificate to become due and payable at the end of a period equal to the balance of the term of such original certificate before maturity; and during the period prior to maturity such paid-up certificate shall have a cash value upon surrender thereof equal to the then amount of the reserve therefor; and (2) unless such face-amount certificate contains a further provision or provisions to the effect that if the holder be in
continuous default in his payments on such certificate for a period of six months without having exercised his option to receive a paid-up certificate, as herein provided, the company at the expiration of such six months shall pay the surrender value in cash if such value is less than $100 or if such value is $100 or more shall issue such paid-up certificate to such holder and such payment or issuance, plus the payment of all other amounts to which he may be then entitled under the original certificate, shall operate to cancel his original certificate: Provided, That in lieu of the issuance of a new paid-up certificate the original certificate may be converted into a paid-up certificate with the same effect; and (3) unless, where such certificate provides, in the event of default, for the deferment of payments thereon by the holder or of the due dates of such payments or of the maturity date of the certificate, it shall also provide in effect for the right of reinstatement by the holder of the certificate after default and for an option in the holder, at the time of reinstatement, to make up the payment or payments for the default period next preceding such reinstatement with interest thereon not exceeding 6 per centum per annum, with the same effect as if no such default in making such payments had occurred.

The term “default” as used in this subsection shall, without restricting its usual meaning, include a failure to make a payment or payments as and when provided by the certificate.

(g) Application of section to company issuing certificates only to holders of previously issued certificates

The foregoing provisions of this section shall not apply to a face-amount certificate company which on or before the effective date of this chapter has discontinued the offering of face-amount certificates to the public and issues face-amount certificates only to the holders of certificates previously issued pursuant to an obligation expressed or implied in such certificates.

(h) Declaration or payment of dividends

It shall be unlawful for any registered face-amount certificate company which does not maintain the minimum certificate reserve on all its outstanding face-amount certificates issued prior to the effective date of this chapter, in an aggregate amount calculated and adjusted as provided in this section to declare or pay any dividends on the shares of such company for or during any calendar year which shall exceed one-third of the net earnings for the next preceding calendar year or which shall exceed 10 per centum of the aggregate net earnings for the next preceding five calendar years, whichever is the lesser amount, or any dividend which shall have been forbidden by the Commission pursuant to the provision of the next sentence of this paragraph. At least thirty days before such company shall declare, pay, or distribute any dividend, it shall give the Commission written notice of its intention to declare,
pay, or distribute the same; and if at any time it shall appear to the Commission that the declaration, payment or distribution of any dividend for or during any calendar year might impair the financial integrity of such company or its ability to meet its liabilities under its outstanding face-amount certificates, it may by order forbid the declaration, distribution, or payment of any such dividend.

(i) Application of section to certificates issued prior to effective date of section

The foregoing provisions of this section shall apply to all face-amount certificates issued prior to the effective date of this subsection; to the collection or acceptance of any payment on such certificates; to the issuance of face-amount certificates to the holders of such certificates pursuant to an obligation expressed or implied in such certificates; to the provisions of such certificates; to the minimum certificate reserves and deposits maintained with respect thereto; and to the assets that the issuer of such certificate was and is required to have with respect to such certificates. With respect to all face-amount certificates issued after the effective date of this subsection, the provisions of this section shall apply except as hereinafter provided.

(1) Notwithstanding subparagraph (A) of paragraph (2) of subsection (a), the reserves for each certificate of the installment type shall be based on assumed annual, semiannual, quarterly, or monthly reserve payments according to the manner in which gross payments for any certificate year are made by the holder, which reserve payments shall be sufficient in amount, as and when accumulated at a rate not to exceed 3½ per centum per annum compounded annually, to provide the minimum maturity or face amount of the certificate when due. Such reserve payments may be graduated according to certificate years so that the reserve payment or payments for the first three certificate years shall amount to at least 80 per centum of the required gross annual payment for such years; the reserve payment or payments for the fourth certificate year shall amount to at least 90 per centum of such year's required gross annual payment; the reserve payment or payments for the fifth certificate year shall amount to at least 93 per centum of such year's gross annual payment; and for the sixth and each subsequent certificate year the reserve payment or payments shall amount to at least 96 per centum of each such year's required gross annual payment:

Provided, That such aggregate reserve payments shall amount to at least 93 per centum of the aggregate gross annual payments required to be made by the holder to obtain the maturity of the certificate. The company may at its option take as loading from the gross payment or payments for a certificate year, as and when made by the certificate holder, an amount or amounts equal in the aggregate for such year to not more than the excess, if any, of the gross payment or payments required to be made by the holder for such year, over and
above the percentage of the gross annual payment required herein for such year for reserve purposes. Such loading may be taken by the company prior to or after the setting up of the reserve payment or payments for such year and the reserve payment or payments for such year may be graduated and adjusted to correspond with the amount of the gross payment or payments made by the certificate holder for such year less the loading so taken.

(2) Notwithstanding paragraphs (1) and (2) of subsection (d), (A) in respect of any certificate of the installment type, during the first certificate year, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than 80 per centum of the amount of the gross payments made on the certificate; and (B) in respect of any certificate of the installment type, at any time after the expiration of the first certificate year and prior to maturity, the holder of the certificate, upon surrender thereof, shall be entitled to a value payable in cash not less than the then amount of the reserve for such certificate required by clauses (1) and (2) of subparagraph (D) of paragraph (2) of subsection (a), less a surrender charge that shall not exceed 2 per centum of the face or maturity amount of the certificate, or 15 per centum of the amount of such reserve, whichever is the lesser, but in no event shall such value be less than 80 per centum of the gross payments made on the certificate. The amount of the surrender value for the end of each certificate year shall be set out in the certificate.


15 U.S. Code § 80a–29. Reports and financial statements of investment companies and affiliated persons

- **U.S. Code**

- **Notes**

(a) **Annual report by company**
Every registered investment company shall file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are
required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(a)] and the rules and regulations issued thereunder.

(b) Semi-annual or quarterly filing of information; copies of periodic or interim reports sent to security holders

Every registered investment company shall file with the Commission—

(1) such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company filed under this subchapter; and

(2) copies of every periodic or interim report or similar communication containing financial statements and transmitted to any class of such company’s security holders, such copies to be filed not later than ten days after such transmission.

Any information or documents contained in a report or other communication to security holders filed pursuant to paragraph (2) of this subsection may be incorporated by reference in any report subsequently or concurrently filed pursuant to paragraph (1) of this subsection.

(c) Minimizing reporting burdens

(1) The Commission shall take such action as it deems necessary or appropriate, consistent with the public interest and the protection of investors, to avoid unnecessary reporting by, and minimize the compliance burdens on, registered investment companies and their affiliated persons in exercising its authority—

(A) under subsection (f); and

(B) under subsection (b)(1), if the Commission requires the filing of information, documents, and reports under that subsection on a basis more frequently than semiannually.

(2) Action taken by the Commission under paragraph (1) shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the reporting burdens on registered investment companies; and

(B) the utility of such information, documents, and reports to the Commission in relation to the costs to registered investment companies and their affiliated persons of providing such information, documents, and reports.

(d) Reports under this section in lieu of reports under other provisions of law
The Commission shall issue rules and regulations permitting the filing with the Commission, and with any national securities exchange concerned, of copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsections (a) and (b), in lieu of any reports and documents required of such company under section 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)].

(e) Semiannual Reports to Stockholders

Every registered investment company shall transmit to its stockholders, at least semiannually, reports containing such of the following information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations for the protection of investors, which reports shall not be misleading in any material respect in the light of the reports required to be filed pursuant to subsections (a) and (b):

1. A balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet;

2. A list showing the amounts and values of securities owned on the date of such balance sheet;

3. A statement of income, for the period covered by the report, which shall be itemized at least with respect to each category of income and expense representing more than 5 per centum of total income or expense;

4. A statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than 5 per centum of the total charges or credits during the period covered by the report;

5. A statement of the aggregate remuneration paid by the company during the period covered by the report (A) to all directors and to all members of any advisory board for regular compensation; (B) to each director and to each member of an advisory board for special compensation; (C) to all officers; and (D) to each person of whom any officer or director of the company is an affiliated person; and

6. A statement of the aggregate dollar amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report.

Provided, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types
of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

(f) **ADDITIONAL INFORMATION**

The Commission may, by rule, require that semiannual reports containing the information set forth in subsection (e) include such other information as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(g) **CERTIFICATE OF INDEPENDENT PUBLIC ACCOUNTANTS**

Financial statements contained in annual reports required pursuant to subsections (a) and (e), if required by the rules and regulations of the Commission, shall be accompanied by a certificate of independent public accountants. The certificate of such independent public accountants shall be based upon an audit not less in scope or procedures followed than that which independent public accountants would ordinarily make for the purpose of presenting comprehensive and dependable financial statements, and shall contain such information as the Commission may prescribe, by rules and regulations in the public interest or for the protection of investors, as to the nature and scope of the audit and the findings and opinion of the accountants. Each such report shall state that such independent public accountants have verified securities owned, either by actual examination, or by receipt of a certificate from the custodian, as the Commission may prescribe by rules and regulations.

(h) **DUTIES AND LIABILITIES OF AFFILIATED PERSONS**

Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment adviser, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.

(i) **DISCLOSURE TO CHURCH PLAN PARTICIPANTS**

A person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a–3(c)(14) of this title shall provide disclosure to plan participants, in writing, and not less frequently than annually, and for new participants joining such a plan after May 31, 1996, as soon as is practicable after joining such plan, that—
the plan, or any company or account maintained to manage or hold plan assets and interests in such plan, company, or account, are not subject to registration, regulation, or reporting under this subchapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or State securities laws; and

(2) plan participants and beneficiaries therefore will not be afforded the protections of those provisions.

(j)NOTICE TO COMMISSION
The Commission may issue rules and regulations to require any person that maintains a church plan that is excluded from the definition of an investment company solely by reason of section 80a–3(c)(14) of this title to file a notice with the Commission containing such information and in such form as the Commission may prescribe as necessary or appropriate in the public interest or consistent with the protection of investors.


15 U.S. Code § 80a–30.Accounts and records

- U.S. Code
- Notes

(a)MAINTENANCE OF RECORDS

(1)IN GENERAL
Each registered investment company, and each underwriter, broker, dealer, or investment adviser that is a majority-owned subsidiary of such a company, shall maintain and preserve such records (as defined in section 78c(a)(37) of this title) for such period or periods as the Commission, by rules and regulations, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Each investment adviser that is not a majority-owned subsidiary of, and each depositor of any registered investment company, and each principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall
prescribe by rules and regulations, such records as are necessary or appropriate to record such person's transactions with such registered company. Each person having custody or use of the securities, deposits, or credits of a registered investment company shall maintain and preserve all records that relate to the custody or use by such person of the securities, deposits, or credits of the registered investment company for such period or periods as the Commission, by rule or regulation, may prescribe, as necessary or appropriate in the public interest or for the protection of investors.

(2) Minimizing compliance burden
In exercising its authority under this subsection, the Commission shall take such steps as it deems necessary or appropriate, consistent with the public interest and for the protection of investors, to avoid unnecessary recordkeeping by, and minimize the compliance burden on, persons required to maintain records under this subsection (hereafter in this section referred to as “subject persons”). Such steps shall include considering, and requesting public comment on—

(A) feasible alternatives that minimize the recordkeeping burdens on subject persons;

(B) the necessity of such records in view of the public benefits derived from the independent scrutiny of such records through Commission examination;

(C) the costs associated with maintaining the information that would be required to be reflected in such records; and

(D) the effects that a proposed recordkeeping requirement would have on internal compliance policies and procedures.

(b) Examinations of records
(1) In general
All records required to be maintained and preserved in accordance with subsection (a) shall be subject at any time and from time to time to such reasonable periodic, special, and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe.

(2) Availability
For purposes of examinations referred to in paragraph (1), any subject person shall make available to the Commission or its representatives any copies or extracts from such records as may be prepared without undue effort, expense, or delay as the Commission or its representatives may reasonably request.
(3) **COMMISSION ACTION**

The Commission shall exercise its authority under this subsection with due regard for the benefits of internal compliance policies and procedures and the effective implementation and operation thereof.

(4) **RECORDS OF PERSONS WITH CUSTODY OR USE**

(A) In general

Records of persons having custody or use of the securities, deposits, or credits of a registered investment company that relate to such custody or use, are subject at any time, or from time to time, to such reasonable periodic, special, or other examinations and other information and document requests by representatives of the Commission, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(B) Certain persons subject to other regulation

Any person that is subject to regulation and examination by a Federal financial institution regulatory agency (as such term is defined under section 212(c)(2) of title 18) may satisfy any examination request, information request, or document request described under subparagraph (A), by providing to the Commission a detailed listing, in writing, of the securities, deposits, or credits of the registered investment company within the custody or use of such person.

(c) **REGULATORY AUTHORITY**

The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this subchapter.

(d) **EXEMPTION AUTHORITY**

The Commission, upon application made by any registered investment company, may by order exempt a specific transaction or transactions from the provisions of any rule or regulation made pursuant to subsection (e), if the Commission finds that such rule or regulation should not reasonably be applied to such transaction.

(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.


15 U.S. Code § 80a–32. Filing of documents with Commission in civil actions
Every registered investment company which is a party and every affiliated person of such company 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.


15 U.S. Code § 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.)

15 U.S. Code § 80a–34. Unlawful representations and names

• U.S. Code

• Notes

(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 represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the United States or any agency or officer thereof.

(c) **Statement of registration under securities provisions**
No provision of subsection (a) or (b) shall be construed to prohibit a statement that a person or security is registered under this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], or the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) **Deceptive or misleading names**
It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commission finds are materially deceptive or misleading. The Commission is authorized, by rule, regulation, or order, to define such names or titles as are materially deceptive or misleading.


15 U.S. Code § 80a–35. Breach of fiduciary duty

- [U.S. Code](#)
- [Notes](#)
(a) **Civil actions by Commission; jurisdiction; allegations; injunctive or other relief**

The **Commission** is authorized to bring an action in the proper district court of the United States, or in the United States court of any territory or other place subject to the jurisdiction of the United States, alleging that a **person** who is, or at the time of the alleged misconduct was, serving or acting in one or more of the following capacities has engaged within five years of the commencement of the action or is about to engage in any act or practice constituting a breach of fiduciary duty involving personal misconduct in respect of any registered **investment company** for which such **person** so serves or acts, or at the time of the alleged misconduct, so served or acted—

1. as officer, **director**, member of any **advisory board**, **investment adviser**, or depositor; or
2. as principal underwriter, if such registered **company** is an **open-end company**, **unit investment trust**, or **face-amount certificate company**.

If such allegations are established, the court may enjoin such **persons** from acting in any or all such capacities either permanently or temporarily and award such injunctive or other relief against such **person** as may be reasonable and appropriate in the circumstances, having due regard to the protection of investors and to the effectuation of the policies declared in **section 80a–1(b) of this title**.

(b) **Compensation or payments as basis of fiduciary duty; civil actions by Commission or security holder; burden of proof; judicial consideration of director or shareholder approval; persons liable; extent of liability; exempted transactions; jurisdiction; finding restriction**

For the purposes of this subsection, the **investment adviser** of a registered **investment company** shall be deemed to have a fiduciary duty with respect to the receipt of compensation for services, or of payments of a material nature, paid by such registered **investment company** or by the security holders thereof, to such **investment adviser** or any **affiliated person** of such **investment adviser**. An action may be brought under this subsection by the **Commission**, or by a security holder of such registered **investment company** on behalf of such **company**, against such **investment adviser**, or any **affiliated person** of such **investment adviser**, or any other **person** enumerated in subsection (a) of this section who has a fiduciary duty concerning such compensation or payments, for breach of fiduciary duty in respect of such compensation or payments paid by such registered **investment company** or by the security holders thereof to such **investment adviser** or **person**. With respect to any such action the following provisions shall apply:

1. **
It shall not be necessary to allege or prove that any defendant engaged in personal misconduct, and the plaintiff shall have the burden of proving a breach of fiduciary duty.

(2) In any such action approval by the board of directors of such investment company of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, and ratification or approval of such compensation or payments, or of contracts or other arrangements providing for such compensation or payments, by the shareholders of such investment company, shall be given such consideration by the court as is deemed appropriate under all the circumstances.

(3) No such action shall be brought or maintained against any person other than the recipient of such compensation or payments, and no damages or other relief shall be granted against any person other than the recipient of such compensation or payments. No award of damages shall be recoverable for any period prior to one year before the action was instituted. Any award of damages against such recipient shall be limited to the actual damages resulting from the breach of fiduciary duty and shall in no event exceed the amount of compensation or payment received from such investment company, or the security holders thereof, by such recipient.

(4) This subsection shall not apply to compensation or payments made in connection with transactions subject to section 80a–17 of this title, or rules, regulations, or orders thereunder, or to sales loads for the acquisition of any security issued by a registered investment company.

(5) Any action pursuant to this subsection may be brought only in an appropriate district court of the United States.

(6) No finding by a court with respect to a breach of fiduciary duty under this subsection shall be made a basis (A) for a finding of a violation of this subchapter for the purposes of sections 80a–9 and 80a–48 of this title, section 78o of this title, or section 80b–3 of this title, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.

(c) Corporate or other trustees performing functions of investment advisers
For the purposes of subsections (a) and (b) of this section, the term “investment adviser” includes a corporate or other trustee performing the functions of an investment adviser.
15 U.S. Code § 80a–36. Larceny and embezzlement

Whoever steals, unlawfully abstracts, unlawfully and willfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section 80a–48 of this title. A judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution under this section for the same act or acts.

(Aug. 22, 1940, ch. 686, title I, § 37, 54 Stat. 841.)

15 U.S. Code § 80a–37. Rules, regulations, and orders

(a) Powers of Commission

The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this subchapter, including rules and regulations defining accounting, technical, and trade terms used in this subchapter, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify persons, securities, and other matters within its jurisdiction and
prescribe different requirements for different classes of persons, securities, or matters.

(b) Filing of information and documents

The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may authorize the filing of any information or documents required to be filed with the Commission under this subchapter, subchapter II of this chapter, the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], or the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], by incorporating by reference any information or documents theretofore or concurrently filed with the Commission under this subchapter or any of such Acts.

(c) Good faith conformance with rules, regulations, and orders

No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or order of the Commission, notwithstanding that such rule, regulation, or order may, after such act or omission, by amended or rescinded or be determined by judicial or other authority to be invalid for any reason.


- U.S. Code
- Notes

Subject to the provisions of chapter 15 of title 44 and regulations prescribed under the authority thereof, the rules and regulations of the Commission under this subchapter, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

(a) **NOTICE AND HEARING**
Orders of the Commission under this subchapter shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties to a proceeding before the Commission shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party’s last known business address. Notice to interested persons, if any, other than parties may be given in the same manner or by publication in the Federal Register.

(b) **APPLICATION VERIFIED UNDER OATH ADMISSIBLE AS EVIDENCE**
The Commission may provide, by appropriate rules or regulations, that an application verified under oath may be admissible in evidence in a proceeding before the Commission and that the record in such a proceeding may consist, in whole or in part, of such application.

(c) **PARTIES**
In any proceeding before the Commission, the Commission, in accordance with such rules and regulations as it may prescribe, shall admit as a party any interested State or State agency, and may admit as a party any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors.

Hearings may be public and may be held before the Commission, any member or members thereof, or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.


15 U.S. Code § 80a–41. Enforcement of subchapter

(a) Investigation
The Commission may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this subchapter or of any rule, regulation, or order hereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this subchapter against a particular person or persons, or with respect to a particular transaction or transactions. The Commission shall permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) Administration of Oaths and Affirmations, Subpena of Witnesses, etc.
For the purpose of any investigation or any other proceeding under this subchapter, any member of the Commission, or any officer thereof designated by it, is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in any State or in any Territory or other place subject to the jurisdiction of the United States at any designated place of hearing.

(c) Jurisdiction of Courts of United States
In case of contumacy by, or refusal to obey a subpena issued to, any person, the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may
issue an order requiring such person to appear before the Commission or member or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

(d) Action for injunction
Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this subchapter, or of any rule, regulation, or order hereunder, it may in its discretion bring an action in the proper district court of the United States, or the proper United States court of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this subchapter or any rule, regulation, or order hereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond. In any proceeding under this subsection to enforce compliance with section 80a–7 of this title, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this subchapter or of any rule, regulation, or order thereunder, to the Attorney General, who, in his discretion, may institute the appropriate criminal proceedings under this subchapter.

(e) Money penalties in civil actions
(1) Authority of Commission
Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 80a–9(f) of this title,
the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) AMOUNT OF PENALTY
(A) First tier
The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier
Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier
Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—
(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and
(II) such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) PROCEDURES FOR COLLECTION
(A) Payment of penalty to Treasury
A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(B) Collection of penalties
If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court’s order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive
The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue
For purposes of section 80a–43 of this title, actions under this paragraph shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order
In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 80a–9(f) of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with the order, each day of the failure to comply shall be deemed a separate offense.


15 U.S. Code § 80a–42. Court review of orders

- U.S. Code
- Notes

(a)
Any person or party aggrieved by an order issued by the Commission under this subchapter may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to any member of the Commission or any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record shall be exclusive, to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by
the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) The commencement of proceedings under subsection (a) to review an order of the Commission issued under section 80a–8(e) of this title shall operate as a stay of the Commission’s order unless the court otherwise orders. The commencement of proceedings under subsection (a) to review an order of the Commission issued under any provision of this subchapter other than section 80a–8(e) of this title shall not operate as a stay of the Commission’s order unless the court specifically so orders.


15 U.S. Code § 80a–43. Jurisdiction of offenses and suits

- [U.S. Code](#)
- [Notes](#)
jurisdiction of violations of this subchapter or the rules, regulations, or orders thereunder, and, concurrently with State and Territorial courts, of all suits in equity and actions at law brought to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or the rules, regulations, or orders thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. A criminal proceeding based upon a violation of section 80a–33 of this title, or upon a failure to file a report or other document required to be filed under this subchapter, may be brought in the district wherein the defendant is an inhabitant or maintains his principal office or place of business. Any suit or action to enforce any liability or duty created by, or to enjoin any violation of, this subchapter or rules, regulations, or orders thereunder, may be brought in any such district or in the district wherein the defendant is an inhabitant or transacts business, and process in such cases may be served in any district of which the defendant is an inhabitant or transacts business or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against the Commission in any court. The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any noncompliance with, section 80a–35(b) of this title at any stage of such action or suit prior to final judgment therein.


15 U.S. Code § 80a–44Disclosure of information filed with Commission; copies
• U.S. Code
The information contained in any registration statement, application, report, or other document filed with the Commission pursuant to any provision of this subchapter or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. Except as provided in section 78x(c) of this title, it shall be unlawful for any member, officer, or employee of the Commission to use for personal benefit, or to disclose to any person other than an official or employee of the United States or of a State, for official use, or for any such official or employee to use for personal benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

Photostatic or other copies of information contained in documents filed with the Commission under this subchapter and made available to the public shall be furnished any person at such reasonable charge and under such reasonable limitations as the Commission shall prescribe.


15 U.S. Code § 80a–45. Reports by Commission; hiring and leasing authority

(a) OMITTED

(b) HIRING AND LEASING AUTHORITY The provisions of section 78d(b) of this title shall be applicable with respect to the power of the Commission—

(1) to appoint and fix the compensation of such employees as may be necessary for carrying out its functions under this subchapter, and
to lease and allocate such real property as may be necessary for carrying out its functions under this subchapter.


15 U.S. Code § 80a–46. Validity of contracts

- **U.S. Code**

- **Notes**

(a) **WAIVER OF COMPLIANCE AS VOID**

Any condition, stipulation, or provision binding any person to waive compliance with any provision of this subchapter or with any rule, regulation, or order thereunder shall be void.

(b) **EQUITABLE RESULTS; RESCISSION; SEVERANCE**

(1) A contract that is made, or whose performance involves, a violation of this subchapter, or of any rule, regulation, or order thereunder, is unenforceable by either party (or by a nonparty to the contract who acquired a right under the contract with knowledge of the facts by reason of which the making or performance violated or would violate any provision of this subchapter or of any rule, regulation, or order thereunder) unless a court finds that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of this subchapter.

(2) To the extent that a contract described in paragraph (1) has been performed, a court may not deny rescission at the instance of any party unless such court finds that under the circumstances the denial of rescission would produce a more equitable result than its grant and would not be inconsistent with the purposes of this subchapter.

(3)
This subsection shall not apply (A) to the lawful portion of a contract to the extent that it may be severed from the unlawful portion of the contract, or (B) to preclude recovery against any person for unjust enrichment.


15 U.S. Code § 80a–47. Liability of controlling persons; preventing compliance with subchapter

- **U.S. Code**
- **Notes**

(a) *PROCUREMENT*  
It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.

(b) *SUBSTANTIALLY ASSISTING A VIOLATION*  
For purposes of any action brought by the Commission under subsection (d) or (e) of section 80a–41 of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

(c) *OBFUSSCING COMPLIANCE*  
It shall be unlawful for any person without just cause to hinder, delay, or obstruct the making, filing, or keeping of any information, document, report, record, or account required to be made, filed, or kept under any provision of this subchapter or any rule, regulation, or order thereunder.


Any person who willfully violates any provision of this subchapter or of any rule, regulation, or order hereunder, or any person who willfully 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 makes any untrue statement of a material fact or omits to state any material fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both; but no person shall be convicted under this section for the violation of any rule, regulation, or order if he proves that he had no actual knowledge of such rule, regulation, or order.


15 U.S. Code § 80a–49.Construction with other laws

Except where specific provision is made to the contrary, nothing in this subchapter shall affect (1) the jurisdiction of the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], the Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.], or subchapter II of this chapter, over any person, security, or transaction, or (2) the rights, obligations, duties, or liabilities of any person under such Acts; nor shall anything in this subchapter affect the jurisdiction of any other commission, board, agency, or officer of the United States or of any State or political subdivision of any State, over any person, security, or transaction, insofar as such jurisdiction does not conflict with any provision of this subchapter or of any rule, regulation, or order hereunder.

15 U.S. Code § 80a–50. Separability

If any provision of this subchapter or any provision incorporated in this subchapter by reference, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this subchapter and the application of any such provision to person or circumstances other than those as to which it is held invalid shall not be affected thereby.


15 U.S. Code § 80a–51. Short title

This subchapter may be cited as the “Investment Company Act of 1940”.


15 U.S. Code § 80a–52. Effective date

The effective date of the provisions of this subchapter, so far as the same relate to face-amount certificates or to face-amount certificate companies, is January 1, 1941. The effective date of provisions hereof, insofar as the same do not apply to face-amount certificates or face-amount certificate companies is November 1, 1940. Except as herein otherwise provided, every provision of this subchapter shall take effect on November 1, 1940.

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.

(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 person in transactions incident thereto, if such securities were—

(A) issued by an issuer that is, or was immediately prior to the purchase of its securities by the business development company, in bankruptcy proceedings, subject to reorganization under the supervision of a court of competent jurisdiction, or subject to a plan or arrangement resulting from such bankruptcy proceedings or reorganization;

(B) issued by an issuer pursuant to or in consummation of such a plan or arrangement; or

(C) issued by an issuer that, immediately prior to the purchase of such issuer’s securities by the business development company, was not in bankruptcy proceedings but was unable to meet its obligations as they came due without material assistance other than conventional lending or financing arrangements;

(4) securities of eligible portfolio companies purchased from any person in transactions not involving any public offering, if there is no ready market for
such securities and if immediately prior to such purchase the business
development company owns at least 60 per centum of the outstanding equity
securities of such issuer (giving effect to all securities presently convertible into
or exchangeable for equity securities of such issuer as if such securities were so
converted or exchanged);

(5) securities received in exchange for or distributed on or with respect to
securities described in paragraphs (1) through (4) of this subsection, or pursuant
to the exercise of options, warrants, or rights relating to securities described in
such paragraphs;

(6) cash, cash items, Government securities, or high quality debt securities
maturing in one year or less from the time of investment in such high quality
debt securities; and

(7) office furniture and equipment, interests in real estate and leasehold
improvements and facilities maintained to conduct the business operations of
the business development company, deferred organization and operating
expenses, and other noninvestment assets necessary and appropriate to its
operations as a business development company, including notes of indebtedness
of directors, officers, employees, and general partners held by a business
development company as payment for securities of such company issued in
connection with an executive compensation plan described in section 80a–56(j)
of this title.

(b) Valuation of Assets
For purposes of this section, the value of a business development company’s
assets shall be determined as of the date of the most recent financial
statements filed by such company with the Commission pursuant to section 78m
of this title, and shall be determined no less frequently than annually.

21, 1980, 94 Stat. 2278; amended Pub. L. 100–181, title VI, § 626, Dec. 4,
3446.)


• U.S. Code
• Notes
(a) **NON-INTERESTED PERSONS**
A majority of a *business development company’s directors* or general partners shall be *persons* who are not interested *persons* of such *company*.

(b) **VACANCIES; SUSPENSION OF PROVISIONS**
If, by reason of the death, disqualification, or bona fide resignation of any *director* or general partner, a *business development company* does not meet the requirements of subsection (a) of this section, or the requirements of *section 80a–15(f)(1) of this title* with respect to *directors*, the operation of such provisions shall be suspended for a period of 90 days or for such longer period as the _Commission_ may prescribe, upon its own motion or by order upon application, as not inconsistent with the protection of investors.


### 15 U.S. Code § 80a–56. Transactions with certain affiliates

- **U.S. Code**

- **Notes**

(a) **TRANSACTIONS INVOLVING CONTROLLING OR CLOSELY AFFILIATED PERSONS**
It shall be unlawful for any *person* who is related to a *business development company* in a manner described in subsection (b) of this section, acting as principal—

1. knowingly to **sell** any security or other property to such *business development company* or to any *company* controlled by such *business development company*, unless such **sale** involves solely (A) securities of which the buyer is the **issuer**, or (B) securities of which the seller is the **issuer** and which are part of a general offering to the holders of a class of its securities;

2. knowingly to **purchase** from such *business development company* or from any *company* controlled by such *business development company*, any security or other property (except securities of which the seller is the **issuer**);

3. knowingly to **borrow** money or other property from such *business development company* or from any *company* controlled by such *business development company*.
company (unless the borrower is controlled by the lender), except as permitted in section 80a–21(b) or section 80a–61 of this title; or

(4) knowingly to effect any transaction in which such business development company or a company controlled by such business development company is a joint or a joint and several participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such business development company or controlled company on a basis less advantageous than that of such person, except that nothing contained in this paragraph shall be deemed to preclude any person from acting as manager of any underwriting syndicate or other group in which such business development company or controlled company is a participant and receiving compensation therefor.

(b) Controlling or closely affiliated persons The provisions of subsection (a) of this section shall apply to the following persons:

(1) Any director, officer, employee, or member of an advisory board of a business development company or any person (other than the business development company itself) who is, within the meaning of section 80a–2(a)(3)(C) of this title, an affiliated person of any such person specified in this paragraph.

(2) Any investment adviser or promoter of, general partner in, principal underwriter for, or person directly or indirectly either controlling, controlled by, or under common control with, a business development company (except the business development company itself) and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company, or any person who is, within the meaning of section 80a–2(a)(3)(C) or (D) of this title, an affiliated person of any such person specified in this paragraph.

(c) Exemption orders Notwithstanding paragraphs (1), (2), and (3) of subsection (a), any person may file with the Commission an application for an order exempting a proposed transaction of the applicant from one or more provisions of such paragraphs. The Commission shall grant such application and issue such order of exemption if evidence establishes that—

(1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching of the business development company or its shareholders or partners on the part of any person concerned;
the proposed transaction is consistent with the policy of the business
development company as recited in the filings made by such company with
the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its
registration statement and reports filed under the Securities Exchange Act of
1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

the proposed transaction is consistent with the general purposes of this
subchapter.

transactions involving noncontrolling shareholders or affiliated persons It shall
be unlawful for any person who is related to a business development company in
the manner described in subsection (e) of this section and who is not subject to
the prohibitions of subsection (a) of this section, acting as principal—

(1) knowingly to sell any security or other property to such business development
company or to any company controlled by such business development company,
unless such sale involves solely (A) securities of which the buyer is the issuer, or
(B) securities of which the seller is the issuer and which are part of a general
offering to the holders of a class of its securities;

(2) knowingly to purchase from such business development company or from
any company controlled by such business development company, any security or
other property (except securities of which the seller is the issuer);

(3) knowingly to borrow money or other property from such business development
company or from any company controlled by such business development
company (unless the borrower is controlled by the lender), except as permitted
in section 80a–21(b) of this title; or

(4) knowingly to effect any transaction in which such business development
company or a company controlled by such business development company is a
joint or a joint and several participant with such affiliated person in
contravention of such rules and regulations as the Commission may prescribe for
the purpose of limiting or preventing participation by such business development
company or controlled company on a basis less advantageous than that of
such affiliated person, except that nothing contained in this paragraph shall be
deemed to preclude any person from acting as manager of any underwriting
syndicate or other group in which such business development company or
controlled company is a participant and receiving compensation therefor.
(e) Noncontrolling Shareholders or Affiliated Persons; Executive Officer

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

1. Any person (A) who is, within the meaning of section 80a–2(a)(3)(A) of this title, an affiliated person of a business development company, (B) who is an executive officer or a director of, or general partner in, any such affiliated person, or (C) who directly or indirectly either controls, is controlled by, or is under common control with, such affiliated person.

2. Any person who is an affiliated person of a director, officer, employee, investment adviser, member of an advisory board or promoter of, principal underwriter for, general partner in, or an affiliated person of any person directly or indirectly either controlling or under common control with a business development company (except the business development company itself and any person who, if it were not directly or indirectly controlled by the business development company, would not be directly or indirectly under the control of a person who controls the business development company).

For purposes of this subsection, the term “executive officer” means the president, secretary, treasurer, any vice president in charge of a principal business function, and any other person who performs similar policymaking functions.

(f) Approval of Proposed Transactions

Notwithstanding subsection (d) of this section, a person described in subsection (e) may engage in a proposed transaction described in subsection (d) if such proposed transaction is approved by the required majority (as defined in subsection (o)) of the directors of or general partners in the business development company on the basis that—

1. the terms thereof, including the consideration to be paid or received, are reasonable and fair to the shareholders or partners of the business development company and do not involve overreaching of such company or its shareholders or partners on the part of any person concerned;

2. the proposed transaction is consistent with the interests of the shareholders or partners of the business development company and is consistent with the policy of such company as recited in filings made by such company with the Commission under the Securities Act of 1933 [15 U.S.C. 77a et seq.], its registration statement and reports filed under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and its reports to shareholders or partners; and

3. 210
the directors or general partners record in their minutes and preserve in their records, for such periods as if such records were required to be maintained pursuant to section 80a–30(a) of this title, a description of such transaction, their findings, the information or materials upon which their findings were based, and the basis therefor.

(g) TRANSACTIONS IN THE ORDINARY COURSE OF BUSINESS

Notwithstanding subsection (a) or (d), a person may, in the ordinary course of business, sell to or purchase from any company merchandise or may enter into a lessor-lessee relationship with any person and furnish the services incident thereto.

(h) INQUIRY PROCEDURES

The directors of or general partners in any business development company shall adopt, and periodically review and update as appropriate, procedures reasonably designed to ensure that reasonable inquiry is made, prior to the consummation of any transaction in which such business development company or a company controlled by such business development company proposes to participate, with respect to the possible involvement in the transaction of persons described in subsections (b) and (e) of this section.

(i) RULES AND REGULATIONS OF COMMISSION

Until the adoption by the Commission of rules or regulations under subsections (a) and (d) of this section, the rules and regulations of the Commission under subsections (a) and (d) of section 80a–17 of this title applicable to registered closed-end investment companies shall be deemed to apply to transactions subject to subsections (a) and (d) of this section. Any rules or regulations adopted by the Commission to implement this section shall be no more restrictive than the rules or regulations adopted by the Commission under subsections (a) and (d) of section 80a–17 of this title that are applicable to all registered closed-end investment companies.

(j) WARRANTS, OPTIONS, AND RIGHTS TO PURCHASE VOTING SECURITIES; LOANS TO FACILITATE EXECUTIVE COMPENSATION PLANS

Notwithstanding subsections (a) and (d) of this section, any director, officer, or employee of, or general partner in, a business development company may—

(1) acquire warrants, options, and rights to purchase voting securities of such business development company, and securities issued upon the exercise or conversion thereof, pursuant to an executive compensation plan offered by such company which meets the requirements of section 80a–60(a)(4)(B) of this title; and
(2) **borrow** money from such **business development company** for the purpose of purchasing securities issued by such **company** pursuant to an executive compensation plan, if each such loan—

(A) has a term of not more than ten years;

(B) becomes due within a reasonable time, not to exceed sixty days, after the termination of such **person**’s employment or service;

(C) bears interest at no less than the prevailing rate applicable to 90-day United States Treasury bills at the time the loan is made;

(D) at all times is fully collateralized (such collateral may include any securities issued by such **business development company**); and

(E) (i) in the case of a loan to any officer or employee of such **business development company** (including any officer or employee who is also a **director** of such **company**), 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 the loan is in the best interests of such **company** and its shareholders or partners; or

(ii) in the case of a loan to any **director** of such **business development company** who is not also an officer or employee of such **company**, or to any general partner in such **company**, is approved by order of the **Commission**, upon application, on the basis that the terms of the loan are fair and reasonable and do not involve overreaching of such **company** or its shareholders or partners.

(k) **RESTRICTION ON BROKERAGE COMMISSIONS** It shall be unlawful for any **person** described in subsection (l)—

(1) acting as agent, to accept from any source any compensation (other than a regular salary or wages from the **business development company**) for the purchase or **sale** of any property to or for such **business development company** or any controlled **company** thereof, except in the course of such **person**’s business as an underwriter or **broker**; or

(2) acting as **broker**, in connection with the **sale** of securities to or by the **business development company** or any controlled **company** thereof, to receive from any source a **commission**, fee, or other remuneration for effecting such transaction which exceeds—

(A)
the usual and customary broker's commission if the sale is effected on a securities exchange;
(B) 2 per centum of the sales price if the sale is effected in connection with a secondary distribution of such securities; or
(C) 1 per centum of the purchase or sale price of such securities if the sale is otherwise effected,

unless the Commission, by rules and regulations or order in the public interest and consistent 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.
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.

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.
15 U.S. Code § 80a–59. Functions and activities of business development companies

- U.S. Code
- Notes

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.


15 U.S. Code § 80a–60. Capital structure

- U.S. Code
- Notes

(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) 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

(iii) 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 the date of issuance, or if no such market value exists, the current net asset value of such voting securities; and

(iv) the proposal to issue such securities is authorized by the shareholders or partners of such business development company, and such issuance is approved by the required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such company on the basis that such issuance is in the best interests of such company and its shareholders or partners;
(B) A **business development company** may issue, to its **directors**, officers, employees, and general partners, warrants, options, and rights to purchase voting securities of such **company** pursuant to an executive compensation plan, if—

(i) in the case of warrants, options, or rights issued to any officer or employee of such **business development company** (including any officer or employee who is also a **director** of such **company**), such securities satisfy the conditions in clauses (i), (iii), and (iv) of subparagraph (A); or (II) in the case of warrants, options, or rights issued to any **director** of such **business development company** who is not also an officer or employee of such **company**, or to any general partner in such **company**, the proposal to issue such securities satisfies the conditions in clauses (i) and (iii) of subparagraph (A), is authorized by the shareholders or partners of such **company**, and is approved by order of the **Commission**, upon application, on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of such **company** or its shareholders or partners;

(ii) such securities are not transferable except for disposition by gift, will, or intestacy;

(iii) no **investment adviser** of such **business development company** receives any compensation described in section 80b–5(a)(1) of this title, except to the extent permitted by paragraph (1) or (2) of section 80b–5(b) of this title; and

(iv) such **business development company** does not have a profit-sharing plan described in section 80a–56(n) of this title; and

(C) A **business development company** may issue warrants, options, or rights to subscribe to, convert to, or purchase voting securities not accompanied by securities, if—

(i) such warrants, options, or rights satisfy the conditions in clauses (i) and (iii) of subparagraph (A); and

(ii) the proposal to issue such warrants, options, or rights is authorized by the shareholders or partners of such **business development company**, and such issuance is approved by the **required majority** (as defined in section 80a–56(o) of this title) of the **directors** of or general partners in such **company** on the basis
that such issuance is in the best interests of the company and its shareholders or partners.

Notwithstanding this paragraph, the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25 per centum of the outstanding voting securities of the business development company, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, employees, and general partners pursuant to any executive compensation plan meeting the requirements of subparagraph (B) of this paragraph would exceed 15 per centum of the outstanding voting securities of such company, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

(5)
For purposes of measuring the asset coverage requirements of section 80a–18(a) of this title, a senior security created by the guarantee by a business development company of indebtedness issued by another company shall be the amount of the maximum potential liability less the fair market value of the net unencumbered assets (plus the indebtedness which has been guaranteed) available in the borrowing company whose debts have been guaranteed, except that a guarantee issued by a business development company of indebtedness issued by a company which is a wholly-owned subsidiary of the business development company and is licensed as a small business investment company under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall not be deemed to be a senior security of such business development company for purposes of section 80a–18(a) of this title if the amount of the indebtedness at the time of its issuance by the borrowing company is itself taken fully into account as a liability by such business development company, as if it were issued by such business development company, in determining whether such business development company, at that time, satisfies the asset coverage requirements of section 80a–18(a) of this title.

(b) Compliance
A business development company shall comply with the provisions of this section at the time it becomes subject to sections 80a–54 through 80a–64 of this title, as if it were issuing a security of each class which it has outstanding at such time.

15 U.S. Code § 80a–61. Loans

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–21 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 nothing in that section shall be deemed to prohibit—

(1) any loan to a director, officer, or employee of, or general partner in, a business development company for the purpose of purchasing securities of such company as part of an executive compensation plan, if such loan meets the requirements of section 80a–56(j) of this title; or

(2) any loan to a company controlled by a business development company, which companies could be deemed to be under common control solely because a third person controls such business development company.


15 U.S. Code § 80a–62. Distribution and repurchase of securities

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–23 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) The prohibitions of section 80a–23(a)(2) of this title shall not apply to any company which (A) is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company, and (B) immediately after the
issuance of any of its securities for property other than cash or securities, will not be an investment company within the meaning of section 80a–3(a) of this title.

(2) Notwithstanding the provisions of section 80a–23(b) of this title, a business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock, and may sell warrants, options, or rights to acquire any such common stock at a price below the current net asset value of such stock, if—

(A) the holders of a majority of such business development company’s outstanding voting securities, and the holders of a majority of such company’s outstanding voting securities that are not affiliated persons of such company, approved such company’s policy and practice of making such sales of securities at the last annual meeting of shareholders or partners within one year immediately prior to any such sale, except that the shareholder approval requirements of this subparagraph shall not apply to the initial public offering by a business development company of its securities;

(B) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company have determined that any such sale would be in the best interests of such company and its shareholders or partners; and

(C) a required majority (as defined in section 80a–56(o) of this title) of the directors of or general partners in such business development company, in consultation with the underwriter or underwriters of the offering if it is to be underwritten, have determined in good faith, and as of a time immediately prior to the first solicitation by or on behalf of such company of firm commitments to purchase such securities or immediately prior to the issuance of such securities, that the price at which such securities are to be sold is not less than a price which closely approximates the market value of those securities, less any distributing commission or discount.

(3) A business development company may sell any common stock of which it is the issuer at a price below the current net asset value of such stock upon the exercise of any warrant, option, or right issued in accordance with section 80a–60(a)(4) of this title.

(a) Exception for Business Development Company

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–30 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 reference to the financial statements required to be filed pursuant to section 80a–29 of this title shall be construed to refer to the financial statements required to be filed by such business development company pursuant to section 78m of this title.

(b) Risk Factors Statement; Availability

(1) In addition to the requirements of subsection (a), a business development company shall file with the Commission and supply annually to its shareholders a written statement, in such form and manner as the Commission may, by rule, prescribe, describing the risk factors involved in an investment in the securities of a business development company due to the nature of such company’s investment portfolio and capital structure, and shall supply copies of such statement to any registered broker or dealer upon request.

(2) If the Commission finds it is 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, the Commission may also require, by rule, any person who, acting as principal or agent, sells a security of a business development company to inform the purchaser of such securities, at or before the time of sale, of the existence of the risk statement prepared by such business development company pursuant to this subsection, and make such risk statement available on request. The Commission, in making such rules and regulations, shall consider, among other matters, whether any such rule or regulation would impose any unreasonable burdens on such brokers or dealers or unreasonably impair the maintenance of fair and orderly markets.

15 U.S. Code § 80a–64. Preventing compliance with subchapter; liability of controlling persons

Notwithstanding the exemption set forth in section 80a–6(f) of this title, section 80a–47 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 provisions of section 80a–47(a) of this title shall not be construed to require any company which is not an investment company within the meaning of section 80a–3(a) of this title to comply with the provisions of this subchapter which are applicable to a business development company solely because such company is a wholly-owned subsidiary of, or directly or indirectly controlled by, a business development company.


17 CFR Part 242 - REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

1. Regulation M (§§ 242.100 - 242.105)
   1. § 242.100 Preliminary note; definitions.
   2. § 242.101 Activities by distribution participants.
   3. § 242.102 Activities by issuers and selling security holders during a distribution.
   4. § 242.103 Nasdaq passive market making.
   5. § 242.104 Stabilizing and other activities in connection with an offering.
   6. § 242.105 Short selling in connection with a public offering.

2. Regulation SHO - Regulation of Short Sales (§§ 242.200 - 242.204)
   1. § 242.200 Definition of “short sale” and marking requirements.
§ 242.201 Circuit breaker.

§ 242.203 Borrowing and delivery requirements.

§ 242.204 Close-out requirement.

3. REGULATION ATS - ALTERNATIVE TRADING SYSTEMS (§ - )

Source: Sections 242.300 through 242.303 appear at 63 FR 70921, Dec. 22, 1998, unless otherwise noted.

4. § 242.300 Definitions.

5. § 242.301 Requirements for alternative trading systems.

6. § 242.302 Recordkeeping requirements for alternative trading systems.

7. § 242.303 Record preservation requirements for alternative trading systems.

8. § 242.304 NMS Stock ATSs.

9. CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES (§§ 242.400 - 242.406)

1. § 242.400 Customer margin requirements for security futures - authority, purpose, interpretation, and scope.

2. § 242.401 Definitions.

3. § 242.402 General provisions.

4. § 242.403 Required margin.

5. § 242.404 Type, form and use of margin.

6. § 242.405 Withdrawal of margin.

7. § 242.406 Undermargined accounts.

Source: 67 FR 53176, Aug. 14, 2002, unless otherwise noted.

10. REGULATION AC - ANALYST CERTIFICATION (§§ 242.500 - 242.505)

1. § 242.500 Definitions.

2. § 242.501 Certifications in connection with research reports.

3. § 242.502 Certifications in connection with public appearances.

4. § 242.503 Certain foreign research reports.

5. § 242.504 Notification to associated persons.

6. § 242.505 Exclusion for news media.

Source: 68 FR 9492, February 27, 2003, unless otherwise noted.

11. REGULATION NMS - REGULATION OF THE NATIONAL MARKET SYSTEM (§§ 242.600 - 242.613)

1. § 242.600 NMS security designation and definitions.
2. § 242.601 Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks.
3. § 242.602 Dissemination of quotations in NMS securities.
4. § 242.603 Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.
5. § 242.604 Display of customer limit orders.
8. § 242.607 Customer account statements.
9. § 242.608 Filing and amendment of national market system plans.
10. § 242.609 Registration of securities information processors: form of application and amendments.
11. § 242.610 Access to quotations.
12. § 242.610T Equity transaction fee pilot.
13. § 242.611 Order protection rule.
15. § 242.613 Consolidated audit trail.

Source: 70 FR 37620, June 29, 2005, unless otherwise noted.


1. § 242.900 Definitions.
2. § 242.901 Reporting obligations.
3. § 242.902 Public dissemination of transaction reports.
4. § 242.903 Coded information.
5. § 242.904 Operating hours of registered security-based swap data repositories.
6. § 242.905 Correction of errors in security-based swap information.
7. § 242.906 Other duties of participants.
8. § 242.907 Policies and procedures of registered security-based swap data repositories.
10. § 242.909 Registration of security-based swap data repository as a securities information processor.

Source: 80 FR 14728, Mar. 19, 2015, unless otherwise noted.
Regulation SCI - Systems Compliance and Integrity (§§ 242.1000 - 242.1007)

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k-1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd-1, 78mm, 80a-23, 80a-29, and 80a-37.

Source: 62 FR 544, Jan. 3, 1997, unless otherwise noted.

Preliminary Notes

1. An alternative trading system is required to comply with the requirements in this Regulation ATS, unless such alternative trading system:
   
   (a) Is registered as a national securities exchange;
   
   (b) Is exempt from registration as a national securities exchange based on the limited volume of transactions effected on the alternative trading system; or
   
   (c) Trades only government securities and certain other related instruments.

   All alternative trading systems must comply with the antifraud, antimanipulation, and other applicable provisions of the federal securities laws.

2. The requirements imposed upon an alternative trading system by Regulation ATS are in addition to any requirements applicable to broker-dealers registered under section 15 of the Act, (15 U.S.C. 78o).

3. An alternative trading system must comply with any applicable state law relating to the offer or sale of securities or the registration or regulation of persons or entities effecting transactions in securities.

4. The disclosures made pursuant to the provisions of this section are in addition to any other disclosure requirements under the federal securities laws.
§ 240.10b-10 Confirmation of transactions.

PRELIMINARY NOTE.
This section requires broker-dealers to disclose specified information in writing to customers at or before completion of a transaction. The requirements under this section that particular information be disclosed is not determinative of a broker-dealer's obligation under the general antifraud provisions of the federal securities laws to disclose additional information to a customer at the time of the customer's investment decision.

(a) Disclosure requirement. It shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing:

(1) The date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request to such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer; and

(2) Whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account; and if the broker or dealer is acting as principal, whether it is a market maker in the security (other than by reason of acting as a block positioner); and

(i) If the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person:

(A) The name of the person from whom the security was purchased, or to whom it was sold, for such customer or the fact that the information will be furnished upon written request of such customer; and

(B) The amount of any remuneration received or to be received by the broker from such customer in connection with the transaction unless
remuneration paid by such customer is determined pursuant to written agreement with such customer, otherwise than on a transaction basis; and

(C) For a transaction in any NMS stock as defined in § 242.600 of this chapter or a security authorized for quotation on an automated interdealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), a statement whether payment for order flow is received by the broker or dealer for transactions in such securities and the fact that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; provided, however, that brokers or dealers that do not receive payment for order flow in connection with any transaction have no disclosure obligations under this paragraph; and

(D) The source and amount of any other remuneration received or to be received by the broker in connection with the transaction: Provided, however, that if, in the case of a purchase, the broker was not participating in a distribution, or in the case of a sale, was not participating in a tender offer, the written notification may state whether any other remuneration has been or will be received and the fact that the source and amount of such other remuneration will be furnished upon written request of such customer; or

(ii) If the broker or dealer is acting as principal for its own account:

(A) In the case where such broker or dealer is not a market maker in an equity security and, if, after having received an order to buy from a customer, the broker or dealer purchased the equity security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the broker or dealer sold the security to another person to offset a contemporaneous purchase from such customer, the difference between the price to the customer and the dealer’s contemporaneous purchase (for customer purchases) or sale price (for customer sales); or

(B) In the case of any other transaction in an NMS stock as defined by § 242.600 of this chapter, or an equity security that is traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

(3) Whether any odd-lot differential or equivalent fee has been paid by such customer in connection with the execution of an order for an odd-lot number of shares or units (or principal amount) of a security and the fact that
the amount of any such differential or fee will be furnished upon oral or written request: Provided, however, that such disclosure need not be made if the differential or fee is included in the remuneration disclosure, or exempted from disclosure, pursuant to paragraph (a)(2)(i)(B) of this section; and

(4) In the case of any transaction in a debt security subject to redemption before maturity, a statement to the effect that such debt security may be redeemed in whole or in part before maturity, that such a redemption could affect the yield represented and the fact that additional information is available upon request; and

(5) In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:

(i) The dollar price at which the transaction was effected, and

(ii) The yield to maturity calculated from the dollar price: Provided, however, that this paragraph (a)(5)(ii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and

(6) In the case of a transaction in a debt security effected on the basis of yield:

(i) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date and call price; and

(ii) The dollar price calculated from the yield at which the transaction was effected; and

(iii) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; Provided, however, that this paragraph (a)(6)(iii) shall not apply to a transaction in a debt security that either:

(A) Has a maturity date that may be extended by the issuer thereof, with a variable interest rate rate payable thereon; or

(B) Is an asset-backed security, that represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; and
(7) In the case of a transaction in a **debt security** that is an **asset-backed security**, which represents an interest in or is secured by a **pool** of receivables or other financial assets that are subject continuously to prepayment, a statement indicating that the actual yield of such **asset-backed security** may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such **customer**; and

(8) That the broker or dealer is not a **member** of the Securities Investor Protection Corporation (SIPC), or that the broker or dealer clearing or carrying the **customer** account is not a **member** of SIPC, if such is the case: **Provided, however,** that this paragraph (a)(9) shall not apply in the case of a transaction in **shares** of a registered open-end **investment company** or unit investment trust if:

   (i) The **customer** sends funds or securities directly to, or receives funds or securities directly from, the registered open-end **investment company** or unit investment trust, its **transfer** agent, its custodian, or other designated agent, and such person is not an **associated** person of the broker or dealer required by paragraph (a) of this **section** to send written notification to the **customer**; and

   (ii) The written notification required by paragraph (a) of this **section** is sent on behalf of the broker or dealer to the **customer** by a person described in paragraph (a)(9)(i) of this **section**.

(b) **Alternative periodic reporting.** A broker or dealer may effect transactions for or with the account of a **customer** without giving or sending to such **customer** the written notification described in paragraph (a) of this **section** if:

(1) Such transactions are effected pursuant to a periodic **plan** or an **investment company plan**, or effected in **shares** of any open-end management **investment company** registered under the **Investment Company Act of 1940** that holds itself out as a money market fund and attempts to maintain a stable net asset value per share: **Provided, however,** that no sales load is deducted upon the purchase or redemption of **shares** in the money market fund; and

(2) Such broker or dealer gives or sends to such **customer** within five **business days** after the end of each **quarterly** period, for transactions involving **investment company** and periodic plans, and after the end of each **monthly** period, for other transactions described in paragraph (b)(1) of this **section**, a written statement disclosing each purchase or redemption,
effected for or with, and each dividend or distribution credited to or reinvested for, the account of such customer during the month; the date of such transaction; the identity, number, and price of any securities purchased or redeemed by such customer in each such transaction; the total number of shares of such securities in such customer's account; any remuneration received or to be received by the broker or dealer in connection therewith; and that any other information required by paragraph (a) of this section will be furnished upon written request: Provided, however, that the written statement may be delivered to some other person designated by the customer for distribution to the customer; and

(3) Such customer is provided with prior notification in writing disclosing the intention to send the written information referred to in paragraph (b)(1) of this section in lieu of an immediate confirmation.

(c) A broker or dealer shall give or send to a customer information requested pursuant to this rule within 5 business days of receipt of the request: Provided, however, That in the case of information pertaining to a transaction effected more than 30 days prior to receipt of the request, the information shall be given or sent to the customer within 15 business days.

(d) Definitions. For the purposes of this section:

(1) Customer shall not include a broker or dealer;

(2) Completion of the transaction shall have the meaning provided in rule 15c1-1 under the Act;

(3) Time of the transaction means the time of execution, to the extent feasible, of the customer's order;

(4) Debt security as used in paragraphs (a)(3), (4), and (5) only, means any security, such as a bond, debenture, note, or any other similar instrument which evidences a liability of the issuer (including any such security that is convertible into stock or a similar security) and fractional or participation interests in one or more of any of the foregoing: Provided, however, That securities issued by an investment company registered under the Investment Company Act of 1940 shall not be included in this definition;

(5) Periodic plan means any written authorization for a broker acting as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940), in specific amounts (calculated in security units or dollars), at specific time intervals and setting forth the commissions or charges to be paid by the customer in connection therewith (or the manner of calculating them); and
(6) *Investment company plan* means any plan under which securities issued by an open-end *investment company* or unit investment trust registered under the *Investment Company Act of 1940* are purchased by a *customer* (the payments being made directly to, or made payable to, the registered *investment company*, or the *principal underwriter*, custodian, trustee, or other designated agent of the registered investment company), or sold by a *customer* pursuant to:

(i) An individual retirement or individual pension *plan* qualified under the *Internal Revenue Code*;

(ii) A contractual or systematic agreement under which the *customer* purchases at the applicable public *offering price*, or redeems at the applicable redemption price, such securities in specified *amounts* (calculated in *security* units or dollars) at specified time intervals and setting forth the *commissions* or charges to be paid by such *customer* in connection therewith (or the manner of calculating them; or

(iii) Any other arrangement involving a group of two or more *customers* and contemplating periodic purchases of such securities by each *customer* through a person designated by the group: *Provided*, That such arrangement requires the registered *investment company* or its agent -

(A) To give or send to the designated person, at or before the *completion of the transaction* for the purchase of such securities, a written notification of the *receipt* of the total *amount* paid by the group;

(B) To send to anyone in the group who was a *customer* in the prior quarter and on whose behalf payment has not been received in the current quarter a quarterly written statement reflecting that a payment was not received on his behalf; and

(C) To advise each *customer* in the group if a payment is not received from the designated person on behalf of the group within 10 days of a date certain specified in the arrangement for delivery of that payment by the designated person and thereafter to send to each such *customer* the written notification described in paragraph (a) of this section for the next three succeeding payments.

(7) *NMS stock* shall have the meaning provided in §242.600 of this chapter.

(8) *Payment for order flow* shall mean any monetary payment, service, property, or other benefit that results in remuneration, compensation, or consideration to a broker or dealer from any broker or dealer, *national securities exchange*, registered securities association, or exchange *member* in
return for the routing of customer orders by such broker or dealer to any broker or dealer, national securities exchange, registered securities association, or exchange member for execution, including but not limited to: research, clearance, custody, products or services; reciprocal agreements for the provision of order flow; adjustment of a broker or dealer’s unfavorable trading errors; offers to participate as underwriter in public offerings; stock loans or shared interest accrued thereon; discounts, rebates, or any other reductions of or credits against any fee to, or expense or other financial obligation of, the broker or dealer routing a customer order that exceeds that fee, expense or financial obligation.

(9) Asset-backed security means a security that is primarily serviced by the cashflows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to the security holders.

(e) Security futures products. The provisions of paragraphs (a) and (b) of this section shall not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78 o(b)(11)(A)) to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in § 240.15c3-3(a)(15)) and a broker or dealer registered pursuant to section 15(b)(1) of the Act (15 U.S.C. 78 o(b)(1)) that is also a futures commission merchant registered pursuant to section 4f(a)(1) of the Commodity Exchange Act (7 U.S.C. 6f(a)(1)), to the extent that it effects transactions for customers in security futures products in a futures account (as that term is defined in § 240.15c3-3(a)(15)), Provided that:

(1) The broker or dealer that effects any transaction for a customer in security futures products in a futures account gives or sends to the customer no later than the next business day after execution of any futures securities product transaction, written notification disclosing:

(i) The date the transaction was executed, the identity of the single security or narrow-based security index underlying the contract for the security futures product, the number of contracts of such security futures product purchased or sold, the price, and the delivery month;

(ii) The source and amount of any remuneration received or to be received by the broker or dealer in connection with the transaction, including, but not limited to, markups, commissions, costs, fees, and other charges incurred in connection with the transaction, provided, however, that if no remuneration is to be paid for an initiating transaction until the occurrence of the corresponding liquidating transaction, that the broker or dealer may disclose
the amount of remuneration only on the confirmation for the liquidating transaction;

(iii) The fact that information about the time of the execution of the transaction, the identity of the other party to the contract, and whether the broker or dealer is acting as agent for such customer, as agent for some other person, as agent for both such customer and some other person, or as principal for its own account, and if the broker or dealer is acting as principal, whether it is engaging in a block transaction or an exchange of security futures products for physical securities, will be available upon written request of the customer; and

(iv) Whether payment for order flow is received by the broker or dealer for such transactions, the amount of this payment and the fact that the source and nature of the compensation received in connection with the particular transaction will be furnished upon written request of the customer; provided, however, that brokers or dealers that do not receive payment for order flow have no disclosure obligation under this paragraph.

(2) Transitional provision.

(i) Broker-dealers are not required to comply with paragraph (e)(1)(iii) of this section until June 1, 2003, Provided that, if, not withstanding the absence of the disclosure required in that paragraph, the broker-dealer receives a written request from a customer for the information described in paragraph (e)(1)(iii) of this section, the broker-dealer must make the information available to the customer; and

(ii) Broker-dealers are not required to comply with paragraph (e)(1)(iv) of this section until June 1, 2003.

(f) The Commission may exempt any broker or dealer from the requirements of paragraphs (a) and (b) of this section with regard to specific transactions of specific classes of transactions for which the broker or dealer will provide alternative procedures to effect the purposes of this section; any such exemption may be granted subject to compliance with such alternative procedures and upon such other stated terms and conditions as the Commission may impose.

§ 242.601 Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks.

(a) Filing and effectiveness of transaction reporting plans.

(1) Every national securities exchange shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities, and every national securities association shall file a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed by its members otherwise than on a national securities exchange.

(2) Any transaction reporting plan, or any amendment thereto, filed pursuant to this section shall be filed with the Commission, and considered for approval, in accordance with the procedures set forth in § 242.608(a) and (b). Any such plan, or amendment thereto, shall specify, at a minimum:

(i) The listed equity and Nasdaq securities or classes of such securities for which transaction reports shall be required by the plan;

(ii) Reporting requirements with respect to transactions in listed equity securities and Nasdaq securities, for any broker or dealer subject to the plan;

(iii) The manner of collecting, processing, sequencing, making available and disseminating transaction reports and last sale data reported pursuant to such plan;

(iv) The manner in which such transaction reports reported pursuant to such plan are to be consolidated with transaction reports from national securities exchanges and national securities associations reported pursuant to any other effective transaction reporting plan;
(v) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports;

(vi) Any rules or procedures which may be adopted to ensure that transaction reports or last sale data will not be disseminated in a fraudulent or manipulative manner;

(vii) Specific terms of access to transaction reports made available or disseminated pursuant to the plan; and

(viii) That transaction reports or last sale data made available to any vendor for display on an interrogation device identify the marketplace where each transaction was executed.

(3) No transaction reporting plan filed pursuant to this section, or any amendment to an effective transaction reporting plan, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608.

(b) *Prohibitions and reporting requirements.*

(1) No broker or dealer may execute any transaction in, or induce or attempt to induce the purchase or sale of, any NMS stock:

   (i) On or through the facilities of a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed on or through such exchange facilities; or

   (ii) Otherwise than on a national securities exchange unless there is an effective transaction reporting plan with respect to transactions in such security executed otherwise than on a national securities exchange by such broker or dealer.

(2) Every broker or dealer who is a member of a national securities exchange or national securities association shall promptly transmit to the exchange or association of which it is a member all information required by any effective transaction reporting plan filed by such exchange or association (either individually or jointly with other exchanges and/or associations).

(c) *Retransmission of transaction reports or last sale data.* Notwithstanding any provision of any effective transaction reporting plan, no national securities exchange or national securities association may, either individually or jointly, by rule, stated policy or practice, transaction reporting plan or otherwise, prohibit, condition or otherwise limit, directly or indirectly, the ability of any vendor to retransmit, for display in moving tickers, transaction reports or last sale data made available pursuant to any effective transaction reporting plan; provided,
however, that a national securities exchange or national securities association may, by means of an effective transaction reporting plan, condition such retransmission upon appropriate undertakings to ensure that any charges for the distribution of transaction reports or last sale data in moving tickers permitted by paragraph (d) of this section are collected.

(d) Charges. Nothing in this section shall preclude any national securities exchange or national securities association, separately or jointly, pursuant to the terms of an effective transaction reporting plan, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of transaction reports or last sale data.

(e) Appeals. The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective transaction reporting plan in accordance with the provisions of § 242.608(d).

(f) Exemptions. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any national securities exchange, national securities association, broker, dealer, or specified security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

17 CFR § 242.602 - Dissemination of quotations in NMS securities.

§ 242.602 Dissemination of quotations in NMS securities.

(a) Dissemination requirements for national securities exchanges and national securities associations.

(1) Every national securities exchange and national securities association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes, and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers, and sizes, and making such bids, offers, and sizes available to vendors, as follows:

   (i) Each national securities exchange shall at all times such exchange is open for trading, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security
listed or admitted to unlisted trading privileges which is communicated on any national securities exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.

(ii) Each national securities association shall, at all times that last sale information with respect to NMS securities is reported pursuant to an effective transaction reporting plan, collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended.

(2) Each national securities exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (b)(2) of this section, the identity of the responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)

(i) If, at any time a national securities exchange is open for trading, such exchange determines, pursuant to rules approved by the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to vendors the data for a subject security required to be made available pursuant to paragraph (a)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraphs (b)(2) and (c) (3) of this section and such exchange shall be relieved of its obligations
under paragraphs (a)(1) and (2) of this section for that security; provided, however, that such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to vendors data for that security in accordance with paragraph (a)(1) of this section.

(ii) During any period a national securities exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (a)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to vendors the data for that security required to be made available pursuant to paragraph (a)(1) of this section in a manner that accurately reflects the current state of the market on such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any national securities exchange or national securities association from making available to vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (a)(1) of this section.

(5)

(i) Any national securities exchange may make an election for purposes of the definition of subject security in § 242.600(b)(77) for any NMS security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any NMS security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of a national securities association acting in the capacity of an OTC market maker may make an election for purposes of the definition of subject security in § 242.600(b)(77) for any NMS security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other NMS security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association

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and all specified persons, and shall be effective at the opening of trading on
the business day following notification.

(iii) The election of a national securities exchange or member of a national
securities association for any NMS security pursuant to this paragraph (a)(5)
shall cease to be in effect if such exchange or member ceases to make
available or communicate bids, offers, and quotation sizes in such security.

(b) Obligations of responsible brokers and dealers.

(1) Each responsible broker or dealer shall promptly communicate to its
national securities exchange or national securities association, pursuant to
the procedures established by that exchange or association, its best bids, best
offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (b)(3) of this section, each
responsible broker or dealer shall be obligated to execute any order to buy or
sell a subject security, other than an odd-lot order, presented to it by another
broker or dealer, or any other person belonging to a category of persons with
whom such responsible broker or dealer customarily deals, at a price at least
as favorable to such buyer or seller as the responsible broker's or dealer's
published bid or published offer (exclusive of any commission, commission
equivalent or differential customarily charged by such responsible broker or
dealer in connection with execution of any such order) in any amount up to its
published quotation size.

(3)

(i) No responsible broker or dealer shall be obligated to execute a
transaction for any subject security as provided in paragraph (b)(2) of this
section to purchase or sell that subject security in an amount greater than
such revised quotation size if:

(A) Prior to the presentation of an order for the purchase or sale of a
subject security, a responsible broker or dealer has communicated to its
exchange or association, pursuant to paragraph (b)(1) of this section, a
revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is
presented, a responsible broker or dealer is in the process of effecting a
transaction in such subject security, and immediately after the completion
of such transaction, it communicates to its exchange or association a
revised quotation size, such responsible broker or dealer shall not be
obligated by paragraph (b)(2) of this section to purchase or sell that subject
security in an amount greater than such revised quotation size.
(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (b)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to its exchange or association pursuant to paragraph (b)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (b)(1) of this section, a revised bid or offer; provided, however, that such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (b)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (a)(4) of this section:

(i) No national securities exchange or OTC market maker may make available, disseminate or otherwise communicate to any vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any NMS security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any national securities exchange or OTC market maker for any NMS security which is not a subject security with respect to such exchange or OTC market maker.

(5)

(i) Entry of any priced order for an NMS security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to this paragraph (b) for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and
(B) A communication of a bid or offer to a vendor for display on a display device for purposes of paragraph (b)(4) of this section.

(ii) An exchange market maker or OTC market maker that has entered a priced order for an NMS security into an electronic communications network that widely disseminates such order shall be deemed to be in compliance with paragraph (b)(5)(i)(A) of this section if the electronic communications network:

(A)(1) Provides to a national securities exchange or national securities association (or an exclusive processor acting on behalf of one or more exchanges or associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the electronic communications network by exchange market makers and OTC market makers for the NMS security, and such prices and sizes are included in the quotation data made available by such exchange, association, or exclusive processor to vendors pursuant to this section; and

(2) Provides, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the electronic communications network entered therein by an exchange market maker or OTC market maker that is:

(i) Equivalent to the ability of any broker or dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the national securities exchange or national securities association to which the electronic communications network supplies such bids and offers; and

(ii) At the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by exchange market makers or OTC market makers at such price, or the size of the execution sought by the broker or dealer, for such security; or

(B) Is an alternative trading system that:

(1) Displays orders and provides the ability to effect transactions with such orders under § 242.301(b)(3); and

(2) Otherwise is in compliance with Regulation ATS (§ 242.300 through § 242.303).

(c) Transactions in listed options.

(1) A national securities exchange or national securities association:
(i) Shall not be required, under paragraph (a) of this section, to collect from responsible brokers or dealers who are members of such exchange or association, or to make available to vendors, the quotation sizes and aggregate quotation sizes for listed options, if such exchange or association establishes by rule and periodically publishes the quotation size for which such responsible brokers or dealers are obligated to execute an order to buy or sell an options series that is a subject security at its published bid or offer under paragraph (b)(2) of this section;

(ii) May establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (b)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer; and

(iii) May establish and maintain procedures and mechanisms for collecting from responsible brokers and dealers who are members of such exchange or association, and making available to vendors, the quotation sizes and aggregate quotation sizes in listed options for which such responsible broker or dealer will be obligated under paragraph (b)(2) of this section to execute an order from a customer to buy or sell a listed option and establish by rule and periodically publish the size, which shall not be less than one contract, for which such responsible brokers or dealers are obligated to execute an order for the account of a broker or dealer.

(2) If, pursuant to paragraph (c)(1) of this section, the rules of a national securities exchange or national securities association do not require its members to communicate to it their quotation sizes for listed options, a responsible broker or dealer that is a member of such exchange or association shall:

(i) Be relieved of its obligations under paragraph (b)(1) of this section to communicate to such exchange or association its quotation sizes for any listed option; and

(ii) Comply with its obligations under paragraph (b)(2) of this section by executing any order to buy or sell a listed option, in an amount up to the size established by such exchange’s or association’s rules under paragraph (c) (1) of this section.

(3) Thirty second response. Each responsible broker or dealer, within thirty seconds of receiving an order to buy or sell a listed option in an amount greater than the quotation size established by a national securities
exchange's or national securities association's rules pursuant to paragraph (c)(1) of this section, or its published quotation size must:

(i) Execute the entire order; or

(ii)

(A) Execute that portion of the order equal to at least:

(1) The quotation size established by a national securities exchange's or national securities association's rules, pursuant to paragraph (c)(1) of this section, to the extent that such exchange or association does not collect and make available to vendors quotation size and aggregate quotation size under paragraph (a) of this section; or

(2) Its published quotation size; and

(B) Revise its bid or offer.

(4) Notwithstanding paragraph (c)(3) of this section, no responsible broker or dealer shall be obligated to execute a transaction for any listed option as provided in paragraph (b)(2) of this section if:

(i) Any of the circumstances in paragraph (b)(3) of this section exist; or

(ii) The order for the purchase or sale of a listed option is presented during a trading rotation in that listed option.

(d) Exemptions. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, national securities exchange, or national securities association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

(a) Distribution of information.

(1) Any exclusive processor, or any broker or dealer with respect to information for which it is the exclusive source, that distributes information with respect to quotations for or transactions in an **NMS stock** to a securities information processor shall do so on terms that are fair and reasonable.

(2) Any national securities exchange, **national securities association**, broker, or dealer that distributes information with respect to quotations for or transactions in an **NMS stock** to a securities information processor, broker, dealer, or other persons shall do so on terms that are not unreasonably discriminatory.

(b) Consolidation of information. Every national securities exchange on which an **NMS stock** is traded and **national securities association** shall act jointly pursuant to one or more effective **national market system plans** to disseminate consolidated information, including a national best bid and national best offer, on quotations for and transactions in NMS stocks. Such **plan** or **plans** shall provide for the dissemination of all consolidated information for an individual **NMS stock** through a single **plan processor**.

(c) Display of information.

(1) No securities information processor, broker, or dealer shall provide, in a context in which a trading or **order**-routing decision can be implemented, a display of any information with respect to quotations for or transactions in an **NMS stock** without also providing, in an equivalent manner, a consolidated display for such stock.

(2) The provisions of paragraph (c)(1) of this section shall not apply to a display of information on the trading floor or through the facilities of a national securities exchange or to a display in connection with the operation of a market linkage system implemented in accordance with an effective **national market system plan**.

(d) Exemptions. The Commission, by **order**, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, or item of information, or any class or classes of persons, securities, or items of information, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

- **CFR**
§ 242.604 Display of customer limit orders.

(a) Specialists and OTC market makers. For all NMS stocks:

(1) Each member of a national securities exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

   (i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

   (ii) The full size of each customer limit order held by the specialist that:

         (A) Is priced equal to the bid or offer of such specialist for such security;

         (B) Is priced equal to the national best bid or national best offer; and

         (C) Represents more than a de minimis change in relation to the size associated with the specialist’s bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

   (i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

   (ii) The full size of each customer limit order held by the OTC market maker that:

         (A) Is priced equal to the bid or offer of such OTC market maker for such security;

         (B) Is priced equal to the national best bid or national best offer; and

         (C) Represents more than a de minimis change in relation to the size associated with the OTC market maker’s bid or offer.

(b) Exceptions. The requirements in paragraph (a) of this section shall not apply to any customer limit order:

   (1) That is executed upon receipt of the order.

   (2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer’s orders, that the order not be displayed.
(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to a national securities exchange or national securities association-sponsored system, or an electronic communications network that complies with the requirements of § 242.602(b)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an “all or none” order.

c) Exemptions. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, national securities exchange, or national securities association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.


• CFR

§ 242.605 Disclosure of order execution information.
This section requires market centers to make available standardized, monthly reports of statistical information concerning their order executions. This information is presented in accordance with uniform standards that are based on broad assumptions about order execution and routing practices. The information will provide a starting point to promote visibility and competition on the part of market centers and broker-dealers, particularly on the factors of execution price and speed. The disclosures required by this section do not encompass all of the factors that may be important to investors in evaluating the order routing services of a broker-dealer. In addition, any particular market center's statistics will encompass varying types of orders routed by different broker-dealers on behalf of customers with a wide range of objectives. Accordingly, the statistical information required by this section alone does not create a reliable basis to address whether any particular broker-dealer failed to obtain the most favorable terms reasonably available under the circumstances for customer orders.
(a) Monthly electronic reports by market centers.

(1) Every market center shall make available for each calendar month, in accordance with the procedures established pursuant to paragraph (a)(2) of this section, a report on the covered orders in NMS stocks that it received for execution from any person. Such report shall be in electronic form; shall be categorized by security, order type, and order size; and shall include the following columns of information:

(i) For market orders, marketable limit orders, inside-the-quote limit orders, at-the-quote limit orders, and near-the-quote limit orders:

(A) The number of covered orders;

(B) The cumulative number of shares of covered orders;

(C) The cumulative number of shares of covered orders cancelled prior to execution;

(D) The cumulative number of shares of covered orders executed at the receiving market center;

(E) The cumulative number of shares of covered orders executed at any other venue;

(F) The cumulative number of shares of covered orders executed from 0 to 9 seconds after the time of order receipt;

(G) The cumulative number of shares of covered orders executed from 10 to 29 seconds after the time of order receipt;

(H) The cumulative number of shares of covered orders executed from 30 seconds to 59 seconds after the time of order receipt;

(I) The cumulative number of shares of covered orders executed from 60 seconds to 299 seconds after the time of order receipt;

(J) The cumulative number of shares of covered orders executed from 5 minutes to 30 minutes after the time of order receipt; and

(K) The average realized spread for executions of covered orders; and

(ii) For market orders and marketable limit orders:

(A) The average effective spread for executions of covered orders;

(B) The cumulative number of shares of covered orders executed with price improvement;

(C) For shares executed with price improvement, the share-weighted average amount per share that prices were improved;
(D) For shares executed with price improvement, the share-weighted average period from the time of order receipt to the time of order execution;

(E) The cumulative number of shares of covered orders executed at the quote;

(F) For shares executed at the quote, the share-weighted average period from the time of order receipt to the time of order execution;

(G) The cumulative number of shares of covered orders executed outside the quote;

(H) For shares executed outside the quote, the share-weighted average amount per share that prices were outside the quote; and

(I) For shares executed outside the quote, the share-weighted average period from the time of order receipt to the time of order execution.

(2) Every national securities exchange on which NMS stocks are traded and each national securities association shall act jointly in establishing procedures for market centers to follow in making available to the public the reports required by paragraph (a)(1) of this section in a uniform, readily accessible, and usable electronic form. In the event there is no effective national market system plan establishing such procedures, market centers shall prepare their reports in a consistent, usable, and machine-readable electronic format, and make such reports available for downloading from an Internet Web site that is free and readily accessible to the public. Every market center shall keep such reports posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website.

(3) A market center shall make available the report required by paragraph (a)(1) of this section within one month after the end of the month addressed in the report.

(b) Exemptions. The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.


(a) Quarterly report on order routing.

(1) Every broker or dealer shall make publicly available for each calendar quarter a report on its routing of non-directed orders in NMS stocks that are submitted on a held basis and of non-directed orders that are customer orders in NMS securities that are option contracts during that quarter broken down by calendar month and keep such report posted on an internet website that is free and readily accessible to the public for a period of three years from the initial date of posting on the internet website. Such report shall include a section for NMS stocks - separated by securities that are included in the S&P 500 Index as of the first day of that quarter and other NMS stocks - and a separate section for NMS securities that are option contracts. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. Each section in a report shall include the following information:

(i) The percentage of total orders for the section that were non-directed orders, and the percentages of total non-directed orders for the section that were market orders, marketable limit orders, non-marketable limit orders, and other orders;

(ii) The identity of the ten venues to which the largest number of total non-directed orders for the section were routed for execution and of any venue to which five percent or more of non-directed orders were routed for execution, the percentage of total non-directed orders for the section routed to the venue, and the percentages of total non-directed market orders, total non-directed marketable limit orders, total non-directed non-marketable limit orders, and total non-directed other orders for the section that were routed to the venue;

(iii) For each venue identified pursuant to paragraph (a)(1)(ii) of this section, the net aggregate amount of any payment for order flow received, payment from any profit-sharing relationship received, transaction fees paid, and transaction rebates received, both as a total dollar amount and per share, for each of the following non-directed order types:

(A) Market orders;
(B) Marketable limit orders;
(C) Non-marketable limit orders; and
(D) Other orders.

(iv) A discussion of the material aspects of the broker's or dealer's relationship with each venue identified pursuant to paragraph (a)(1)(ii) of this section, including a description of any arrangement for payment for order flow and any profit-sharing relationship and a description of any terms of such arrangements, written or oral, that may influence a broker's or dealer's order routing decision including, among other things:

(A) Incentives for equaling or exceeding an agreed upon order flow volume threshold, such as additional payments or a higher rate of payment;
(B) Disincentives for failing to meet an agreed upon minimum order flow threshold, such as lower payments or the requirement to pay a fee;
(C) Volume-based tiered payment schedules; and
(D) Agreements regarding the minimum amount of order flow that the broker-dealer would send to a venue.

(2) A broker or dealer shall make the report required by paragraph (a)(1) of this section publicly available within one month after the end of the quarter addressed in the report.

(b) Customer requests for information on order routing.

(1) Every broker or dealer shall, on request of a customer, disclose to its customer, for:

(i) Orders in NMS stocks that are submitted on a held basis;
(ii) Orders in NMS stocks that are submitted on a not held basis and the broker or dealer is not required to provide the customer a report under paragraph (b)(3) of this section; and
(iii) Orders in NMS securities that are option contracts, the identity of the venue to which the customer's orders were routed for execution in the six months prior to the request, whether the orders were directed orders or non-directed orders, and the time of the transactions, if any, that resulted from such orders. Such disclosure shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section.
(2) A broker or dealer shall notify customers in writing at least annually of the availability on request of the information specified in paragraph (b)(1) of this section.

(3) Except as provided for in paragraphs (b)(4) and (5) of this section, every broker or dealer shall, on request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis with the broker or dealer, disclose to such customer within seven business days of receiving the request, a report on its handling of such orders for that customer for the prior six months by calendar month. Such report shall be made available using the most recent versions of the XML schema and the associated PDF renderer as published on the Commission's website for all reports required by this section. For purposes of such report, the handling of a NMS stock order submitted by a customer to a broker-dealer on a not held basis includes the handling of all child orders derived from that order. Such report shall be divided into two sections: One for directed orders and one for non-directed orders. Each section of such report shall include, with respect to such order flow sent by the customer to the broker or dealer, the total number of shares sent to the broker or dealer by the customer during the relevant period; the total number of shares executed by the broker or dealer as principal for its own account; the total number of orders exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker or dealer through an actionable indication of interest; and the venue or venues to which orders were exposed by the broker or dealer through an actionable indication of interest, provided that, where applicable, a broker or dealer must disclose that it exposed a customer's order through an actionable indication of interest to other customers but need not disclose the identity of such customers. Each section of such report also shall include the following columns of information for each venue to which the broker or dealer routed such orders for the customer, in the aggregate:

(i) Information on Order Routing. (A) Total shares routed;
    (B) Total shares routed marked immediate or cancel;
    (C) Total shares routed that were further routable; and
    (D) Average order size routed.

(ii) Information on Order Execution.
    (A) Total shares executed;
    (B) Fill rate (shares executed divided by the shares routed);
    (C) Average fill size;
(D) Average net execution fee or rebate (cents per 100 shares, specified to four decimal places);

(E) Total number of shares executed at the midpoint;

(F) Percentage of shares executed at the midpoint;

(G) Total number of shares executed that were priced on the side of the spread more favorable to the order;

(H) Percentage of total shares executed that were priced at the side of the spread more favorable to the order;

(I) Total number of shares executed that were priced on the side of the spread less favorable to the order; and

(J) Percentage of total shares executed that were priced on the side of the spread less favorable to the order.

(iii) Information on Orders that Provided Liquidity.

(A) Total number of shares executed of orders providing liquidity;

(B) Percentage of shares executed of orders providing liquidity;

(C) Average time between order entry and execution or cancellation, for orders providing liquidity (in milliseconds); and

(D) Average net execution rebate or fee for shares of orders providing liquidity (cents per 100 shares, specified to four decimal places).

(iv) Information on Orders that Removed Liquidity.

(A) Total number of shares executed of orders removing liquidity;

(B) Percentage of shares executed of orders removing liquidity; and

(C) Average net execution fee or rebate for shares of orders removing liquidity (cents per 100 shares, specified to four decimal places).

(4) Except as provided below, no broker or dealer shall be required to provide reports pursuant to paragraph (b)(3) of this section if the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers over the prior six calendar months was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers during that time (the “five percent threshold” for purposes of this paragraph). A broker or dealer that equals or exceeds this five percent threshold shall be required (subject to paragraph (b)(5) of this section) to provide reports pursuant to paragraph (b)(3) of this section for at least six calendar months (“Compliance Period”) regardless of the percentage.
of shares of not held orders in NMS stocks the broker or dealer receives from its customers during the Compliance Period. The Compliance Period shall begin the first calendar day of the next calendar month after the broker or dealer equaled or exceeded the five percent threshold, unless it is the first time the broker or dealer has equaled or exceeded the five percent threshold, in which case the Compliance Period shall begin the first calendar day four calendar months later. A broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section for orders that the broker or dealer did not receive during a Compliance Period. If, at any time after the end of a Compliance Period, the percentage of shares of not held orders in NMS stocks the broker or dealer received from its customers was less than five percent of the total shares in NMS stocks the broker or dealer received from its customers over the prior six calendar months, the broker or dealer shall not be required to provide reports pursuant to paragraph (b)(3) of this section, except for orders that the broker or dealer received during the portion of a Compliance Period that remains covered by paragraph (b)(3) of this section.

(5) No broker or dealer shall be subject to the requirements of paragraph (b)(3) of this section with respect to a customer that traded on average each month for the prior six months less than $1,000,000 of notional value of not held orders in NMS stocks through the broker or dealer.

(c) Exemptions. The Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this section, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.


17 CFR § 242.607 - Customer account statements.

- CFR

§ 242.607 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any NMS stock or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), unless such
broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow from any broker or dealer, national securities exchange, national securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid and national best offer.

(b) Exemptions. The Commission, upon request or upon its own motion, may exempt by rule or by order, any broker or dealer or any class of brokers or dealers, security or class of securities from the requirements of paragraph (a) of this section with respect to any transaction or class of transactions, either unconditionally or on specified terms and conditions, if the Commission determines that such exemption is consistent with the public interest and the protection of investors.

17 CFR § 242.608 - Filing and amendment of national market system plans.

Filing and amendment of national market system plans.

(a) Filing of national market system plans and amendments thereto.

(1) Any two or more self-regulatory organizations, acting jointly, may file a national market system plan or may propose an amendment to an effective national market system plan (“proposed amendment”) by submitting the text of the plan or amendment to the Secretary of the Commission, together with a statement of the purpose of such plan or amendment and, to the extent applicable, the documents and information required by paragraphs (a)(4) and (5) of this section.

(2) The Commission may propose amendments to any effective national market system plan by publishing the text thereof, together with a statement of the purpose of such amendment, in accordance with the provisions of paragraph (b) of this section.
(3) **Self-regulatory organizations** are authorized to act jointly in:

(i) Planning, developing, and operating any national market subsystem or facility contemplated by a [national market system plan](#);

(ii) Preparing and filing a [national market system plan](#) or any amendment thereto; or

(iii) Implementing or administering an effective [national market system plan](#).

(4) Every [national market system plan](#) filed pursuant to this section, or any amendment thereto, shall be accompanied by:

(i) Copies of all governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; and

(ii) To the extent applicable:

(A) A detailed description of the manner in which the plan or amendment, and any facility or procedure contemplated by the plan or amendment, will be implemented;

(B) A listing of all significant phases of development and implementation (including any pilot phase) contemplated by the plan or amendment, together with the projected date of completion of each phase;

(C) An analysis of the impact on competition of implementation of the plan or amendment or of any facility contemplated by the plan or amendment;

(D) A description of any written understandings or agreements between or among plan sponsors or participants relating to interpretations of the plan or conditions for becoming a sponsor or participant in the plan; and

(E) In the case of a proposed amendment, a statement that such amendment has been approved by the sponsors in accordance with the terms of the plan.

(5) Every [national market system plan](#), or any amendment thereto, filed pursuant to this section shall include a description of the manner in which any facility contemplated by the plan or amendment will be operated. Such description shall include, to the extent applicable:

(i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);
(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

(iv) The method by which disputes arising in connection with the operation of the plan will be resolved.

(6) In connection with the selection of any person to act as plan processor with respect to any facility contemplated by a national market system plan (including renewal of any contract for any person to so act), the sponsors shall file with the Commission a statement identifying the person selected, describing the material terms under which such person is to serve as plan processor, and indicating the solicitation efforts, if any, for alternative plan processors, the alternatives considered and the reasons for selection of such person.

(7) Any national market system plan (or any amendment thereto) which is intended by the sponsors to satisfy a plan filing requirement contained in any other section of this Regulation NMS and part 240, subpart A of this chapter shall, in addition to compliance with this section, also comply with the requirements of such other section.

(8)

(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan Web site or on a Web site designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such Web site is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (b) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own Web site to the Web site with the current version of the plan.
(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (a) of this section are posted on a plan Web site or a designated Web site no later than two business days after the filing of the proposed amendments with the Commission. The plan participants shall maintain any proposed amendment to the plan on a plan Web site or a designated Web site until the Commission approves the plan amendment and the plan participants update the Web site to reflect such amendment or the plan participants withdraw the proposed amendment. If the plan participants withdraw proposed amendments, the plan participants shall remove such amendments from the plan Web site or designated Web site within two business days of withdrawal. Each plan participant shall provide a link to the Web site with the current version of the plan.

(b) Effectiveness of national market system plans.

(1) The Commission shall publish notice of the filing of any national market system plan, or any proposed amendment to any effective national market system plan (including any amendment initiated by the Commission), together with the terms of substance of the filing or a description of the subjects and issues involved, and shall provide interested persons an opportunity to submit written comments. No national market system plan, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with paragraph (b)(3) of this section.

(2) Within 120 days of the date of publication of notice of filing of a national market system plan or an amendment to an effective national market system plan, or within such longer period as the Commission may designate up to 180 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the sponsors consent, the Commission shall approve such plan or amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. Approval of a national market system plan, or an amendment to an effective national market system plan (other than an amendment initiated by the Commission), shall be by order. Promulgation of an amendment to an effective national market system plan initiated by the Commission shall be by rule.

(3) A proposed amendment may be put into effect upon filing with the Commission if designated by the sponsors as:
(i) Establishing or changing a fee or other charge collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the sponsors and/or participants);

(ii) Concerned solely with the administration of the plan, or involving the governing or constituent documents relating to any person (other than a self-regulatory organization) authorized to implement or administer such plan on behalf of its sponsors; or

(iii) Involving solely technical or ministerial matters. At any time within 60 days of the filing of any such amendment, the Commission may summarily abrogate the amendment and require that such amendment be refiled in accordance with paragraph (a)(1) of this section and reviewed in accordance with paragraph (b)(2) of this section, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(4) Notwithstanding the provisions of paragraph (b)(1) of this section, a proposed amendment may be put into effect summarily upon publication of notice of such amendment, on a temporary basis not to exceed 120 days, if the Commission finds that such action is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act.

(5) Any plan (or amendment thereto) in connection with:

(i) The planning, development, operation, or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and/or their members of any section of this Regulation NMS (§§ 242.600 through 242.612) and part 240, subpart A of this chapter promulgated pursuant to section 11A of the Act (15 U.S.C. 78k-1), approved by the Commission pursuant to section 11A of the Act (or pursuant to any rule or regulation thereunder) prior to the effective date of this section (either temporarily or permanently) shall be deemed to have been filed and approved pursuant to this section and no additional filing need be made by the sponsors with respect to such plan or amendment; provided, however, that all terms and conditions associated with any such approval (including time limitations) shall continue to be
applicable; provided, further, that any amendment to such plan filed with or approved by the Commission on or after the effective date of this section shall be subject to the provisions of, and considered in accordance with the procedures specified in, this section.

(c) **Compliance with terms of national market system plans.** Each self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.

(d) **Appeals.** The Commission may, in its discretion, entertain appeals in connection with the implementation or operation of any effective national market system plan as follows:

(1) Any action taken or failure to act by any person in connection with an effective national market system plan (other than a prohibition or limitation of access reviewable by the Commission pursuant to section 11A(b)(5) or section 19(d) of the Act (15 U.S.C. 78k-1(b)(5) or 78s(d))) shall be subject to review by the Commission, on its own motion or upon application by any person aggrieved thereby (including, but not limited to, self-regulatory organizations, brokers, dealers, issuers, and vendors), filed not later than 30 days after notice of such action or failure to act or within such longer period as the Commission may determine.

(2) Application to the Commission for review, or the institution of review by the Commission on its own motion, shall not operate as a stay of any such action unless the Commission determines otherwise, after notice and opportunity for hearing on the question of a stay (which hearing may consist only of affidavits or oral arguments).

(3) In any proceedings for review, if the Commission, after appropriate notice and opportunity for hearing (which hearing may consist solely of consideration of the record of any proceedings conducted in connection with such action or failure to act and an opportunity for the presentation of reasons supporting or opposing such action or failure to act) and upon consideration of such other data, views, and arguments as it deems relevant, finds that the action or failure to act is in accordance with the applicable provisions of such plan and that the applicable provisions are, and were, applied in a manner consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of a national market system, the Commission, by order, shall dismiss the proceeding. If the Commission does not make any such finding, or
if it finds that such action or failure to act imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, the Commission, by order, shall set aside such action and/or require such action with respect to the matter reviewed as the Commission deems necessary or appropriate in the public interest, for the protection of investors, and the maintenance of fair and orderly markets, or to remove impediments to, and perfect the mechanisms of, a national market system.

(e) Exemptions. The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

[70 FR 37620, June 29, 2005; 71 FR 232, Jan. 4, 2006]

17 CFR § 242.609 - Registration of securities information processors: form of application and amendments.

• CFR

§ 242.609 Registration of securities information processors: form of application and amendments.

(a) An application for the registration of a securities information processor shall be filed on Form SIP (§ 249.1001 of this chapter) in accordance with the instructions contained therein.

(b) If any information reported in items 1-13 or item 21 of Form SIP or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the registration has been granted, the securities information processor shall promptly file an amendment on Form SIP correcting such information.

(c) The Commission, upon its own motion or upon application by any securities information processor, may conditionally or unconditionally exempt any securities information processor from any provision of the rules or regulations adopted under section 11A(b) of the Act (15 U.S.C. 78k-1(b)).
Every amendment filed pursuant to this section shall constitute a “report” within the meaning of sections 17(a), 18(a) and 32(a) of the Act (15 U.S.C. 78q(a), 78r(a), and 78ff(a)).


§ 242.610 Access to quotations.

(a) Quotations of SRO trading facility. A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS stock displayed through its SRO trading facility.

(b) Quotations of SRO display-only facility.

(1) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall provide a level and cost of access to such quotations that is substantially equivalent to the level and cost of access to quotations displayed by SRO trading facilities in that stock.

(2) Any trading center that displays quotations in an NMS stock through an SRO display-only facility shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to such quotations through a member, subscriber, or customer of the trading center.

(c) Fees for access to quotations. A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. in an NMS stock that exceed or accumulate to more than the following limits:

(1) If the price of a protected quotation or other quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share; or

(2) If the price of a protected quotation or other quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.3% of the quotation price per share.
(d) **Locking or crossing quotations.** Each national securities exchange and national securities association shall establish, maintain, and enforce written rules that:

1. Require its members reasonably to avoid:
   - (i) Displaying quotations that lock or cross any protected quotation in an NMS stock; and
   - (ii) Displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan;

2. Are reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock; and

3. Prohibit its members from engaging in a pattern or practice of displaying quotations that lock or cross any protected quotation in an NMS stock, or of displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan, other than displaying quotations that lock or cross any protected or other quotation as permitted by an exception contained in its rules established pursuant to paragraph (d)(1) of this section.

(e) **Exemptions.** The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotations, orders, or fees, or any class or classes of persons, securities, quotations, orders, or fees, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

17 CFR § 242.610T - Equity transaction fee pilot.

• CFR

§ 242.610T Equity transaction fee pilot.

(a) **Pilot pricing restrictions.** Notwithstanding § 242.610(c), on a pilot basis for the period specified in paragraph (c) of this section, in connection with a transaction in an NMS stock, a national securities exchange shall not:

1. For Test Group 1, impose, or permit to be imposed, any fee or fees for the display of, or execution against, the displayed best bid or best offer of such market that exceed or accumulate to more than $0.0010 per share;

2. For Test Group 2, provide to any person, or permit to be provided to any person, a rebate or other remuneration in connection with an execution, or
offer, or permit to be offered, any linked pricing that provides a discount or incentive on transaction fees applicable to removing (providing) liquidity that is linked to providing (removing) liquidity, except to the extent the exchange has a rule to provide non-rebate linked pricing to its registered market makers in consideration for meeting market quality metrics; and

(3) For the Control Group, impose, or permit to be imposed, any fee or fees in contravention of the limits specified in § 242.610(c).

(b) Pilot securities -

(1) Initial List of Pilot Securities.

(i) The Commission shall designate by notice the initial List of Pilot Securities, and shall assign each Pilot Security to one Test Group or the Control Group. Further, the Commission may designate by notice the assignment of NMS stocks that are interlisted on a Canadian securities exchange to Test Group 2 or the Control Group.

(ii) For purposes of this section, “Pilot Securities” means the NMS stocks designated by the Commission on the initial List of Pilot Securities pursuant to paragraph (b)(1)(i) of this section and any successors to such NMS stocks. At the time of selection by the Commission, an NMS stock must have a minimum share price of $2 to be included in the Pilot and must have an unlimited duration or a duration beyond the end of the post-Pilot Period. In addition, an NMS stock must have an average daily volume of 30,000 shares or more to be included in the Pilot. If the share price of a Pilot Security in one of the Test Groups or the Control Group closes below $1 at the end of a trading day, it shall be removed from the Pilot.

(iii) For purposes of this section, “primary listing exchange” means the national securities exchange on which the NMS stock is listed. If an NMS stock is listed on more than one national securities exchange, the national securities exchange upon which the NMS stock has been listed the longest shall be the primary listing exchange.

(2) Pilot Securities Exchange Lists.

(i) After the Commission selects the initial List of Pilot Securities and prior to the beginning of trading on the first day of the Pilot Period each primary listing exchange shall publicly post on its website downloadable files containing a list, in pipe-delimited ASCII format, of the Pilot Securities for which the exchange serves as the primary listing exchange. Each primary listing exchange shall maintain and update this list as necessary prior to the beginning of trading on each business day that the U.S. equities markets are open for trading through the end of the post-Pilot Period.
(ii) The Pilot Securities Exchange Lists shall contain the following fields:

(A) Ticker Symbol;
(B) Security Name;
(C) Primary Listing Exchange;
(D) Security Type:
   (1) Common Stock;
   (2) ETP;
   (3) Preferred Stock;
   (4) Warrant;
   (5) Closed-End Fund;
   (6) Structured Product;
   (7) ADR; and
   (8) Other;
(E) Pilot Group:
   (1) Control Group;
   (2) Test Group 1; and
   (3) Test Group 2;
(F) Stratum Code; and
(G) Date the Entry Was Last Updated.

(3) Pilot Securities Change Lists.

(i) Prior to the beginning of trading on each trading day the U.S. equities markets are open for trading throughout the end of the post-Pilot Period, each primary listing exchange shall publicly post on its website downloadable files containing a Pilot Securities Change List, in pipe-delimited ASCII format, that lists each separate change applicable to any Pilot Securities for which it serves or has served as the primary listing exchange. The Pilot Securities Change List will provide a cumulative list of all changes to the Pilot Securities that the primary listing exchange has made to the Pilot Securities Exchange List published pursuant to paragraph (b)(2) of this section.

(ii) In addition to the fields required for the Pilot Securities Exchange List, the Pilot Securities Change Lists shall contain the following fields:
(A) New Ticker Symbol (if applicable);
(B) New Security Name (if applicable);
(C) Deleted Date (if applicable);
(D) Date Security Closed Below $1 (if applicable);
(E) Effective Date of Change; and
(F) Reason for the Change.

(4) **Posting requirement.** All information publicly posted in downloadable files pursuant to paragraphs (b)(2) and (3) of this section shall be and remain freely and persistently available and easily accessible by the general public on the primary listing exchange’s website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution and reuse.

(c) **Pilot duration.**

(1) The Pilot shall include:

   (i) A six-month “pre-Pilot Period;”

   (ii) A two-year “Pilot Period” with an automatic sunset at the end of the first year unless, no later than thirty days prior to that time, the Commission publishes a notice that the Pilot shall continue for up to one additional year; and

   (iii) A six-month “post-Pilot Period.”

(2) The Commission shall designate by notice the commencement and termination dates of the pre-Pilot Period, Pilot Period, and post-Pilot Period, including any suspension of the one-year sunset of the Pilot Period.

(d) **Order routing datasets.** Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall prepare and transmit to the Commission a file, in pipe-delimited ASCII format, no later than the last day of each month, containing sets of order routing data, for the prior month, in accordance with the specifications in paragraphs (d)(1) and (2) of this section. For the pre-Pilot Period, order routing datasets shall include each NMS stock. For the Pilot Period and post-Pilot Period, order routing datasets shall include each Pilot Security. Each national securities exchange shall treat the order routing datasets as
regulatory information and shall not access or use that information for any commercial or non-regulatory purpose.

(1) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-providing orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.

(ii) Eight-digit code identifying the date of the calendar day of trading in the format “yyyymmdd.”

(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.

(iv) The broker-dealer’s CRD number and MPID.

(v) Order type code:
   (A) Inside-the-quote orders;
   (B) At-the-quote limit orders; and
   (C) Near-the-quote limit orders.

(vi) Order size codes:
   (A) <100 share bucket;
   (B) 100-499 share bucket;
   (C) 500-1,999 share bucket;
   (D) 2,000-4,999 share bucket;
   (E) 5,000-9,999 share bucket; and
   (F) ≥10,000 share bucket.

(vii) Number of orders received.

(viii) Cumulative number of shares of orders received.

(ix) Cumulative number of shares of orders cancelled prior to execution.

(x) Cumulative number of shares of orders executed at receiving market center.

(xi) Cumulative number of shares of orders routed to another execution venue.
(xii) Cumulative number of shares of orders executed within:

(A) 0 to < 100 microseconds of order receipt;
(B) 100 microseconds to < 100 milliseconds of order receipt;
(C) 100 milliseconds to < 1 second of order receipt;
(D) 1 second to < 30 seconds of order receipt;
(E) 30 seconds to < 60 seconds of order receipt;
(F) 60 seconds to < 5 minutes of order receipt;
(G) 5 minutes to < 30 minutes of order receipt; and
(H) ≥ 30 minutes of order receipt.

(2) Dataset of daily volume statistics, with field names as the first record and a consistent naming convention that indicates the exchange and date of the file, that include the following specifications of liquidity-taking orders by security and separating orders by order designation (exchanges may exclude auction orders) and order capacity:

(i) Code identifying the submitting exchange.
(ii) Eight-digit code identifying the date of the calendar day of trading in the format “yyyyMMdd.”
(iii) Symbol assigned to an NMS stock (including ETPs) under the national market system plan to which the consolidated best bid and offer for such a security are disseminated.
(iv) The broker-dealer's CRD number and MPID.
(v) Order type code:
   (A) Market orders; and
   (B) Marketable limit orders.
(vi) Order size codes:
   (A) <100 share bucket;
   (B) 100-499 share bucket;
   (C) 500-1,999 share bucket;
   (D) 2,000-4,999 share bucket;
   (E) 5,000-9,999 share bucket; and
   (F) ≥10,000 share bucket.
(vii) Number of orders received.

(viii) Cumulative number of shares of orders received.

(ix) Cumulative number of shares of orders cancelled prior to execution.

(x) Cumulative number of shares of orders executed at receiving market center.

(xi) Cumulative number of shares of orders routed to another execution venue.

(e) Exchange Transaction Fee Summary. Throughout the duration of the Pilot, including the pre-Pilot Period and post-Pilot Period, each national securities exchange that facilitates trading in NMS stocks shall publicly post on its website downloadable files containing information relating to transaction fees and rebates and changes thereto (applicable to securities having a price equal to or greater than $1). Each national securities exchange shall post its initial Exchange Transaction Fee Summary prior to the start of trading on the first day of the pre-Pilot Period and update its Exchange Transaction Fee Summary on a monthly basis within 10 business days of the first day of each calendar month, to reflect data collected for the prior month. The information prescribed by this section shall be made available using the most recent version of the XML schema published on the Commission's website. All information publicly posted pursuant to this paragraph (e) shall be and remain freely and persistently available and easily accessible on the national securities exchange's website for a period of not less than five years from the conclusion of the post-Pilot Period. In addition, the information shall be presented in a manner that facilitates access by machines without encumbrance, and shall not be subject to any restrictions, including restrictions on access, retrieval, distribution, and reuse. The Exchange Transaction Fee Summary shall contain the following fields:

(1) Exchange Name;

(2) Record Type Indicator:

   (i) Reported Fee is the Monthly Average;

   (ii) Reported Fee is the Median; and

   (iii) Reported Fee is the Spot Monthly;

(3) Participant Type:

   (i) Registered Market Maker; and

   (ii) All Others;

(4) Pilot Group:
(i) **Control** Group;

(ii) Test Group 1; and

(iii) Test Group 2;

(5) Applicability to Displayed and Non-Displayed Interest:

(i) Displayed only;

(ii) Non-displayed only; and

(iii) Both displayed and non-displayed;

(6) Applicability to Top and Depth of Book Interest:

(i) Top of book only;

(ii) Depth of book only; and

(iii) Both top and depth of book;

(7) Effective Date of Fee or Rebate;

(8) End Date of Currently Reported Fee or Rebate (if applicable);

(9) Month and Year of the monthly realized reported average and median per share fees and rebates;

(10) Pre/Post Fee Changes Indicator (if applicable) denoting implementation of a new fee or rebate on a day other than the first day of the month;

(11) Base and Top Tier Fee or Rebate:

(i) Take (to remove):

(A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and

(B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied; and

(ii) Make (to provide):

(A) Base Fee/Rebate reflecting the standard amount assessed or rebated before any applicable discounts, tiers, caps, or other incentives are applied; and

(B) Top Tier Fee/Rebate reflecting the amount assessed or rebated after any applicable discounts, tiers, caps, or other incentives are applied;
(12) Average Take Fee (Rebate)/Average Make Rebate (Fee), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book; and

(13) Median Take Fee (Rebate)/Median Make Fee (Rebate), by Participant Type, Test Group, Displayed/Non-Displayed, and Top/Depth of Book.

[84 FR 5298, Feb. 20, 2019]

Effective Date Note:
At 84 FR 5298, Feb. 20, 2019, § 242.610T was added, effective Apr. 22, 2019, through Dec. 29, 2023.

17 CFR § 242.611 - Order protection rule.

§ 242.611 Order protection rule.

(a) Reasonable policies and procedures.

(1) A trading center shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks that do not fall within an exception set forth in paragraph (b) of this section and, if relying on such an exception, that are reasonably designed to assure compliance with the terms of the exception.

(2) A trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

(b) Exceptions.

(1) The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.

(2) The transaction that constituted the trade-through was not a “regular way” contract.

(3) The transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center.

(4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock.
(5) The transaction that constituted the trade-through was the execution of an order identified as an intermarket sweep order.

(6) The transaction that constituted the trade-through was effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.

(7) The transaction that constituted the trade-through was the execution of an order at a price that was not based, directly or indirectly, on the quoted price of the NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.

(9) The transaction that constituted the trade-through was the execution by a trading center of an order for which, at the time of receipt of the order, the trading center had guaranteed an execution at no worse than a specified price (a “stopped order”), where:

(i) The stopped order was for the account of a customer;

(ii) The customer agreed to the specified price on an order-by-order basis; and

(iii) The price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution.

(c) Intermarket sweep orders. The trading center, broker, or dealer responsible for the routing of an intermarket sweep order shall take reasonable steps to establish that such order meets the requirements set forth in §242.600(b)(31).

(d) Exemptions. The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, transaction, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.612 Minimum pricing increment.

(a) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share.

(b) No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.0001 if that bid or offer, order, or indication of interest is priced less than $1.00 per share.

(c) The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

§ 242.613 Consolidated audit trail.

(a) Creation of a national market system plan governing a consolidated audit trail.

(1) Each national securities exchange and national securities association shall jointly file on or before 270 days from the date of publication of the Adopting Release in the Federal Register a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by this section. The national market system plan shall discuss the following considerations:

   (i) The method(s) by which data will be reported to the central repository including, but not limited to, the sources of such data and the manner in
which the central repository will receive, extract, transform, load, and retain such data; and the basis for selecting such method(s);

(ii) The time and method by which the data in the central repository will be made available to regulators, in accordance with paragraph (e)(1) of this section, to perform surveillance or analyses, or for other purposes as part of their regulatory and oversight responsibilities;

(iii) The reliability and accuracy of the data reported to and maintained by the central repository throughout its lifecycle, including transmission and receipt from market participants; data extraction, transformation and loading at the central repository; data maintenance and management at the central repository; and data access by regulators;

(iv) The security and confidentiality of the information reported to the central repository;

(v) The flexibility and scalability of the systems used by the central repository to collect, consolidate and store consolidated audit trail data, including the capacity of the consolidated audit trail to efficiently incorporate, in a cost-effective manner, improvements in technology, additional capacity, additional order data, information about additional securities or transactions, changes in regulatory requirements, and other developments;

(vi) The feasibility, benefits, and costs of broker-dealers reporting to the consolidated audit trail in a timely manner:

(A) The identity of all market participants (including broker-dealers and customers) that are allocated NMS securities, directly or indirectly, in a primary market transaction;

(B) The number of such securities each such market participant is allocated; and

(C) The identity of the broker-dealer making each such allocation;

(vii) The detailed estimated costs for creating, implementing, and maintaining the consolidated audit trail as contemplated by the national market system plan, which estimated costs should specify:

(A) An estimate of the costs to the plan sponsors for establishing and maintaining the central repository;

(B) An estimate of the costs to members of the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan;
(C) An estimate of the costs to the plan sponsors, initially and on an ongoing basis, for reporting the data required by the national market system plan; and

(D) How the plan sponsors propose to fund the creation, implementation, and maintenance of the consolidated audit trail, including the proposed allocation of such estimated costs among the plan sponsors, and between the plan sponsors and members of the plan sponsors;

(viii) An analysis of the impact on competition, efficiency and capital formation of creating, implementing, and maintaining of the national market system plan;

(ix) A plan to eliminate existing rules and systems (or components thereof) that will be rendered duplicative by the consolidated audit trail, including identification of such rules and systems (or components thereof); to the extent that any existing rules or systems related to monitoring quotes, orders, and executions provide information that is not rendered duplicative by the consolidated audit trail, an analysis of:

(A) Whether the collection of such information remains appropriate;

(B) If still appropriate, whether such information should continue to be separately collected or should instead be incorporated into the consolidated audit trail; and

(C) If no longer appropriate, how the collection of such information could be efficiently terminated; the steps the plan sponsors propose to take to seek Commission approval for the elimination of such rules and systems (or components thereof); and a timetable for such elimination, including a description of how the plan sponsors propose to phase in the consolidated audit trail and phase out such existing rules and systems (or components thereof);

(x) Objective milestones to assess progress toward the implementation of the national market system plan;

(xi) The process by which the plan sponsors solicited views of their members and other appropriate parties regarding the creation, implementation, and maintenance of the consolidated audit trail, a summary of the views of such members and other parties, and how the plan sponsors took such views into account in preparing the national market system plan; and

(xii) Any reasonable alternative approaches to creating, implementing, and maintaining a consolidated audit trail that the plan sponsors considered in developing the national market system plan including, but not limited to, a
description of any such alternative approach; the relative advantages and
disadvantages of each such alternative, including an assessment of the
alternative's costs and benefits; and the basis upon which
the plan sponsors selected the approach reflected in the national market
system plan.

(2) The national market system plan, or any amendment thereto, filed pursuant
to this section shall comply with the requirements in § 242.608(a), if
applicable, and be filed with the Commission pursuant to § 242.608.

(3) The national market system plan submitted pursuant to this section shall
require each national securities exchange and national securities
association to:

(i) Within two months after effectiveness of the national market system
plan jointly (or under the governance structure described in the plan) select a
person to be the plan processor;

(ii) Within four months after effectiveness of the national market system
plan synchronize their business clocks and require members of each such
exchange and association to synchronize their business clocks in
accordance with paragraph (d) of this section;

(iii) Within one year after effectiveness of the national market system
plan provide to the central repository the data specified in paragraph (c) of
this section;

(iv) Within fourteen months after effectiveness of the national market system
plan implement a new or enhanced surveillance system(s) as required
by paragraph (f) of this section;

(v) Within two years after effectiveness of the national market system
plan require members of each such exchange and association, except those
members that qualify as small broker-dealers as defined in § 240.0-10(c) of
this chapter, to provide to the central repository the data specified
in paragraph (c) of this section; and

(vi) Within three years after effectiveness of the national market system
plan require members of each such exchange and association that qualify as
small broker-dealers as defined in § 240.0-10(c) of this chapter to provide to
the central repository the data specified in paragraph (c) of this section.

(4) Each national securities exchange and national securities association shall
be a sponsor of the national market system plan submitted pursuant to this
section and approved by the Commission.
(5) No national market system plan filed pursuant to this section, or any amendment thereto, shall become effective unless approved by the Commission or otherwise permitted in accordance with the procedures set forth in § 242.608. In determining whether to approve the national market system plan, or any amendment thereto, and whether the national market system plan or any amendment thereto is in the public interest under § 242.608(b)(2), the Commission shall consider the impact of the national market system plan or amendment, as applicable, on efficiency, competition, and capital formation.

(b) Operation and administration of the national market system plan.

(1) The national market system plan submitted pursuant to this section shall include a governance structure to ensure fair representation of the plan sponsors, and administration of the central repository, including the selection of the plan processor.

(2) The national market system plan submitted pursuant to this section shall include a provision addressing the requirements for the admission of new sponsors of the plan and the withdrawal of existing sponsors from the plan.

(3) The national market system plan submitted pursuant to this section shall include a provision addressing the percentage of votes required by the plan sponsors to effectuate amendments to the plan.

(4) The national market system plan submitted pursuant to this section shall include a provision addressing the manner in which the costs of operating the central repository will be allocated among the national securities exchanges and national securities associations that are sponsors of the plan, including a provision addressing the manner in which costs will be allocated to new sponsors to the plan.

(5) The national market system plan submitted pursuant to this section shall require the appointment of a Chief Compliance Officer to regularly review the operation of the central repository to assure its continued effectiveness in light of market and technological developments, and make any appropriate recommendations for enhancements to the nature of the information collected and the manner in which it is processed.

(6) The national market system plan submitted pursuant to this section shall include a provision requiring the plan sponsors to provide to the Commission, at least every two years after effectiveness of the national market system plan, a written assessment of the operation of the consolidated audit trail. Such document shall include, at a minimum:
(i) An evaluation of the performance of the consolidated audit trail including, at a minimum, with respect to data accuracy (consistent with paragraph (e) (6) of this section), timeliness of reporting, comprehensiveness of data elements, efficiency of regulatory access, system speed, system downtime, system security (consistent with paragraph (e)(4) of this section), and other performance metrics to be determined by the Chief Compliance Officer, along with a description of such metrics;

(ii) A detailed plan, based on such evaluation, for any potential improvements to the performance of the consolidated audit trail with respect to any of the following: improving data accuracy; shortening reporting timeframes; expanding data elements; adding granularity and details regarding the scope and nature of Customer-IDs; expanding the scope of the national market system plan to include new instruments and new types of trading and order activities; improving the efficiency of regulatory access; increasing system speed; reducing system downtime; and improving performance under other metrics to be determined by the Chief Compliance Officer;

(iii) An estimate of the costs associated with any such potential improvements to the performance of the consolidated audit trail, including an assessment of the potential impact on competition, efficiency, and capital formation; and

(iv) An estimated implementation timeline for any such potential improvements, if applicable.

(7) The national market system plan submitted pursuant to this section shall include an Advisory Committee which shall function in accordance with the provisions set forth in this paragraph (b)(7). The purpose of the Advisory Committee shall be to advise the plan sponsors on the implementation, operation, and administration of the central repository.

(i) The national market system plan submitted pursuant to this section shall set forth the term and composition of the Advisory Committee, which composition shall include representatives of the member firms of the plan sponsors.

(ii) Members of the Advisory Committee shall have the right to attend any meetings of the plan sponsors, to receive information concerning the operation of the central repository, and to provide their views to the plan sponsors; provided, however, that the plan sponsors may meet without the Advisory Committee members in executive session if, by affirmative vote of a majority of the plan sponsors, the plan sponsors determine that such an executive session is required.
(c) Data recording and reporting.

(1) The national market system plan submitted pursuant to this section shall provide for an accurate, time-sequenced record of orders beginning with the receipt or origination of an order by a member of a national securities exchange or national securities association, and further documenting the life of the order through the process of routing, modification, cancellation, and execution (in whole or in part) of the order.

(2) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to report to the central repository the information required by paragraph (c)(7) of this section in a uniform electronic format, or in a manner that would allow the central repository to convert the data to a uniform electronic format, for consolidation and storage.

(3) The national market system plan submitted pursuant to this section shall require each national securities exchange, national securities association, and member to record the information required by paragraphs (c)(7)(i) through (v) of this section contemporaneously with the reportable event. The national market system plan shall require that information recorded pursuant to paragraphs (c)(7)(i) through (v) of this section must be reported to the central repository by 8:00 a.m. Eastern Time on the trading day following the day such information has been recorded by the national securities exchange, national securities association, or member. The national market system plan may accommodate voluntary reporting prior to 8:00 a.m. Eastern Time, but shall not impose an earlier reporting deadline on the reporting parties.

(4) The national market system plan submitted pursuant to this section shall require each member of a national securities exchange or national securities association to record and report to the central repository the information required by paragraphs (c)(7)(vi) through (viii) of this section by 8:00 a.m. Eastern Time on the trading day following the day the member receives such information. The national market system plan may accommodate voluntary reporting prior to 8:00 a.m. Eastern Time, but shall not impose an earlier reporting deadline on the reporting parties.

(5) The national market system plan submitted pursuant to this section shall require each national securities exchange and its members to record and report to the central repository the information required by paragraph (c)(7) of this section for each NMS security registered or listed for trading on such exchange or admitted to unlisted trading privileges on such exchange.

(6) The national market system plan submitted pursuant to this section shall require each national securities association and its members to record and
report to the central repository the information required by paragraph (c)(7) of
this section for each NMS security for which transaction reports are required
to be submitted to the association.

(7) The national market system plan submitted pursuant to this section shall
require each national securities exchange, national securities association, and
any member of such exchange or association to record and electronically
report to the central repository details for each order and each reportable
event, including, but not limited to, the following information:

(i) For original receipt or origination of an order:

(A) Customer-ID(s) for each customer;

(B) The CAT-Order-ID;

(C) The CAT-Reporter-ID of the broker-dealer receiving or originating the
order;

(D) Date of order receipt or origination;

(E) Time of order receipt or origination (using time stamps pursuant
to paragraph (d)(3) of this section); and

(F) Material terms of the order.

(ii) For the routing of an order, the following information:

(A) The CAT-Order-ID;

(B) Date on which the order is routed;

(C) Time at which the order is routed (using time stamps pursuant
to paragraph (d)(3) of this section);

(D) The CAT-Reporter-ID of the broker-dealer or national securities
exchange routing the order;

(E) The CAT-Reporter-ID of the broker-dealer, national securities exchange,
or national securities association to which the order is being routed;

(F) If routed internally at the broker-dealer, the identity and nature of the
department or desk to which an order is routed; and

(G) Material terms of the order.

(iii) For the receipt of an order that has been routed, the following
information:

(A) The CAT-Order-ID;

(B) Date on which the order is received;
(C) Time at which the order is received (using time stamps pursuant to paragraph (d)(3) of this section);

(D) The CAT-Reporter-ID of the broker-dealer, national securities exchange, or national securities association receiving the order;

(E) The CAT-Reporter-ID of the broker-dealer or national securities exchange routing the order; and

(F) Material terms of the order.

(iv) If the order is modified or cancelled, the following information:

(A) The CAT-Order-ID;

(B) Date the modification or cancellation is received or originated;

(C) Time the modification or cancellation is received or originated (using time stamps pursuant to paragraph (d)(3) of this section);

(D) Price and remaining size of the order, if modified;

(E) Other changes in material terms of the order, if modified; and

(F) The CAT-Reporter-ID of the broker-dealer or Customer-ID of the person giving the modification or cancellation instruction.

(v) If the order is executed, in whole or part, the following information:

(A) The CAT-Order-ID;

(B) Date of execution;

(C) Time of execution (using time stamps pursuant to paragraph (d)(3) of this section);

(D) Execution capacity (principal, agency, riskless principal);

(E) Execution price and size;

(F) The CAT-Reporter-ID of the national securities exchange or broker-dealer executing the order; and

(G) Whether the execution was reported pursuant to an effective transaction reporting plan or the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.

(vi) If the order is executed, in whole or part, the following information:

(A) The account number for any subaccounts to which the execution is allocated (in whole or part);
(B) The CAT-Reporter-ID of the clearing broker or prime broker, if applicable; and

(C) The CAT-Order-ID of any contra-side order(s).

(vii) If the trade is cancelled, a cancelled trade indicator.

(viii) For original receipt or origination of an order, the following information:

(A) Information of sufficient detail to identify the customer; and

(B) Customer account information.

(8) All plan sponsors and their members shall use the same Customer-ID and CAT-Reporter-ID for each customer and broker-dealer.

(d) Clock synchronization and time stamps. The national market system plan submitted pursuant to this section shall require:

(1) Each national securities exchange, national securities association, and member of such exchange or association to synchronize its business clocks that are used for the purposes of recording the date and time of any reportable event that must be reported pursuant to this section to the time maintained by the National Institute of Standards and Technology, consistent with industry standards;

(2) Each national securities exchange and national securities association to evaluate annually the clock synchronization standard to determine whether it should be shortened, consistent with changes in industry standards; and

(3) Each national securities exchange, national securities association, and member of such exchange or association to utilize the time stamps required by paragraph (c)(7) of this section, with at minimum the granularity set forth in the national market system plan submitted pursuant to this section, which shall reflect current industry standards and be at least to the millisecond. To the extent that the relevant order handling and execution systems of any national securities exchange, national securities association, or member of such exchange or association utilize time stamps in increments finer than the minimum required by the national market system plan, the plan shall require such national securities exchange, national securities association, or member to utilize time stamps in such finer increments when providing data to the central repository, so that all reportable events reported to the central repository by any national securities exchange, national securities association, or member can be accurately sequenced. The national market system plan shall require the sponsors of the national market system plan to annually evaluate whether industry standards have evolved such that the required time stamp standard should be in finer increments.
(e) Central repository.

(1) The **national market system plan** submitted pursuant to this section shall provide for the creation and maintenance of a central repository. Such central repository shall be responsible for the receipt, consolidation, and retention of all information reported pursuant to paragraph (c)(7) of this section. The central repository shall store and make available to regulators data in a uniform **electronic format**, and in a form in which all events pertaining to the same originating **order** are linked together in a manner that ensures timely and accurate retrieval of the information required by paragraph (c)(7) of this section for all reportable events for that **order**.

(2) Each national securities exchange, **national securities association**, and the Commission shall have access to the central repository, including all systems operated by the central repository, and access to and use of the data reported to and consolidated by the central repository under paragraph (c) of this section, for the purpose of performing its respective regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations. The **national market system plan** submitted pursuant to this section shall provide that such access to and use of such data by each national securities exchange, **national securities association**, and the Commission for the purpose of performing its regulatory and oversight responsibilities pursuant to the federal securities laws, rules, and regulations shall not be limited.

(3) The **national market system plan** submitted pursuant to this section shall include a provision requiring the creation and maintenance by the **plan processor** of a method of access to the consolidated data stored in the central repository that includes the ability to run searches and generate reports.

(4) The **national market system plan** submitted pursuant to this section shall include policies and procedures, including standards, to be used by the **plan processor** to:

   (i) Ensure the security and confidentiality of all information reported to the central repository by requiring that:

      (A) All **plan sponsors** and their **employees**, as well as all **employees** of the central repository, agree to use appropriate safeguards to ensure the confidentiality of such data and agree not to use such data for any purpose other than surveillance and regulatory purposes, provided that nothing in this paragraph (e)(4)(i)(A) shall be construed to prevent a **plan sponsor** from using the data that it reports to the central repository for regulatory, surveillance, commercial, or other purposes as otherwise permitted by applicable law, rule, or regulation;
(B) Each plan sponsor adopt and enforce rules that:

(1) Require information barriers between regulatory staff and non-regulatory staff with regard to access and use of data in the central repository; and

(2) Permit only persons designated by plan sponsors to have access to the data in the central repository;

(C) The plan processor:

(1) Develop and maintain a comprehensive information security program for the central repository, with dedicated staff, that is subject to regular reviews by the Chief Compliance Officer;

(2) Have a mechanism to confirm the identity of all persons permitted to access the data; and

(3) Maintain a record of all instances where such persons access the data; and

(D) The plan sponsors adopt penalties for non-compliance with any policies and procedures of the plan sponsors or central repository with respect to information security.

(ii) Ensure the timeliness, accuracy, integrity, and completeness of the data provided to the central repository pursuant to paragraph (c) of this section; and

(iii) Ensure the accuracy of the consolidation by the plan processor of the data provided to the central repository pursuant to paragraph (c) of this section.

(5) The national market system plan submitted pursuant to this section shall address whether there will be an annual independent evaluation of the security of the central repository and:

(i) If so, provide a description of the scope of such planned evaluation; and

(ii) If not, provide a detailed explanation of the alternative measures for evaluating the security of the central repository that are planned instead.

(6) The national market system plan submitted pursuant to this section shall:

(i) Specify a maximum error rate to be tolerated by the central repository for any data reported pursuant to paragraphs (c)(3) and (c)(4) of this section; describe the basis for selecting such maximum error rate; explain how the plan sponsors will seek to reduce such maximum error rate over time; describe how the plan will seek to ensure compliance with such maximum
error rate and, in the event of noncompliance, will promptly remedy the causes thereof;

(ii) Require the central repository to measure the error rate each [business day] and promptly take appropriate remedial action, at a minimum, if the error rate exceeds the maximum error rate specified in the plan;

(iii) Specify a process for identifying and correcting errors in the data reported to the central repository pursuant to paragraphs (c)(3) and (c)(4) of this section, including the process for notifying the national securities exchanges, [national securities association], and members who reported erroneous data to the central repository of such errors, to help ensure that such errors are promptly corrected by the reporting entity, and for disciplining those who repeatedly report erroneous data; and

(iv) Specify the time by which data that has been corrected will be made available to regulators.

(7) The [national market system plan] submitted pursuant to this section shall require the central repository to collect and retain on a current and continuing basis and in a format compatible with the information consolidated and stored pursuant to paragraph (c)(7) of this section:

(i) Information, including the size and quote condition, on the national best bid and national best offer for each NMS security;

(ii) Transaction reports reported pursuant to an effective transaction reporting plan filed with the Commission pursuant to, and meeting the requirements of, § 242.601; and

(iii) Last sale reports reported pursuant to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information filed with the Commission pursuant to, and meeting the requirements of, § 242.608.

(8) The [national market system plan] submitted pursuant to this section shall require the central repository to retain the information collected pursuant to paragraphs (c)(7) and (e)(7) of this section in a convenient and usable standard electronic data format that is directly available and searchable electronically without any manual intervention for a period of not less than five years.

(f) Surveillance. Every national securities exchange and [national securities association] subject to this section shall develop and implement a surveillance system, or enhance existing surveillance systems, reasonably designed to make use of the consolidated information contained in the consolidated audit trail.

(g) Compliance by members.
(1) Each national securities exchange and national securities association shall file with the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) and § 240.19b-4 of this chapter on or before 60 days from approval of the national market system plan a proposed rule change to require its members to comply with the requirements of this section and the national market system plan approved by the Commission.

(2) Each member of a national securities exchange or national securities association shall comply with all the provisions of any approved national market system plan applicable to members.

(3) The national market system plan submitted pursuant to this section shall include a provision requiring each national securities exchange and national securities association to agree to enforce compliance by its members with the provisions of any approved plan.

(4) The national market system plan submitted pursuant to this section shall include a mechanism to ensure compliance with the requirements of any approved plan by the members of a national securities exchange or national securities association.

(h) Compliance by national securities exchanges and national securities associations.

(1) Each national securities exchange and national securities association shall comply with the provisions of the national market system plan approved by the Commission.

(2) Any failure by a national securities exchange or national securities association to comply with the provisions of the national market system plan approved by the Commission shall be considered a violation of this section.

(3) The national market system plan submitted pursuant to this section shall include a mechanism to ensure compliance by the sponsors of the plan with the requirements of any approved plan. Such enforcement mechanism may include penalties where appropriate.

(i) Other securities and other types of transactions. The national market system plan submitted pursuant to this section shall include a provision requiring each national securities exchange and national securities association to jointly provide to the Commission within six months after effectiveness of the national market system plan a document outlining how such exchanges and associations could incorporate into the consolidated audit trail information with respect to equity securities that are not NMS securities, debt securities, primary market transactions in equity securities that are not NMS securities, and primary market transactions in equity securities that are not NMS securities, and primary market...
transactions in debt securities, including details for each order and reportable event that may be required to be provided, which market participants may be required to provide the data, an implementation timeline, and a cost estimate.

(j) Definitions. As used in this section:

(1) The term CAT-Order-ID shall mean a unique order identifier or series of unique order identifiers that allows the central repository to efficiently and accurately link all reportable events for an order, and all orders that result from the aggregation or disaggregation of such order.

(2) The term CAT-Reporter-ID shall mean, with respect to each national securities exchange, national securities association, and member of a national securities exchange or national securities association, a code that uniquely and consistently identifies such person for purposes of providing data to the central repository.

(3) The term customer shall mean:

(i) The account holder(s) of the account at a registered broker-dealer originating the order; and

(ii) Any person from whom the broker-dealer is authorized to accept trading instructions for such account, if different from the account holder(s).

(4) The term customer account information shall include, but not be limited to, account number, account type, customer type, date account opened, and large trader identifier (if applicable).

(5) The term Customer-ID shall mean, with respect to a customer, a code that uniquely and consistently identifies such customer for purposes of providing data to the central repository.

(6) The term error rate shall mean the percentage of reportable events collected by the central repository in which the data reported does not fully and accurately reflect the order event that occurred in the market.

(7) The term material terms of the order shall include, but not be limited to, the NMS security symbol; security type; price (if applicable); size (displayed and non-displayed); side (buy/sell); order type; if a sell order, whether the order is long, short, short exempt; open/close indicator; time in force (if applicable); if the order is for a listed option, option type (put/call), option symbol or root symbol, underlying symbol, strike price, expiration date, and open/close; and any special handling instructions.

(8) The term order shall include:
Any order received by a member of a national securities exchange or national securities association from any person;

(ii) Any order originated by a member of a national securities exchange or national securities association; or

(iii) Any bid or offer.

The term reportable event shall include, but not be limited to, the original receipt or origination, modification, cancellation, routing, and execution (in whole or in part) of an order, and receipt of a routed order.

[77 FR 45808, Aug. 1, 2012]

REGULATION SBSR - REGULATORY REPORTING AND PUBLIC DISSEMINATION OF SECURITY-BASED SWAP INFORMATION (§§ 242.900 - 242.909)


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§ 242.900 Definitions.

Terms used in §§ 242.900 through 242.909 that appear in Section 3 of the Exchange Act (15 U.S.C. 78c) have the same meaning as in Section 3 of the Exchange Act and the rules or regulations thereunder. In addition, for purposes of Regulation SBSR (§§ 242.900 through 242.909), the following definitions shall apply:

(a) Affiliate means any person that, directly or indirectly, controls, is controlled by, or is under common control with, a person.

(b) Asset class means those security-based swaps in a particular broad category, including, but not limited to, credit derivatives and equity derivatives.

(c) [Reserved].

(d) Branch ID means the UIC assigned to a branch or other unincorporated office of a participant.

(e) Broker ID means the UIC assigned to a person acting as a broker for a participant.
(f) *Business day* means a day, based on U.S. Eastern Time, other than a Saturday, Sunday, or a U.S. federal holiday.

(g) *Clearing transaction* means a security-based swap that has a [registered clearing agency](#) as a **direct counterparty**.

(h) *Control* means, for purposes of §§ 242.900 through 242.909, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. A person is presumed to **control** another person if the person:

1. Is a director, general partner or officer exercising executive responsibility (or having similar status or functions);
2. Directly or indirectly has the right to vote 25 percent or more of a class of voting securities or has the power to sell or direct the sale of 25 percent or more of a class of voting securities; or
3. In the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital.

(i) *Counterparty* means a person that is a **direct counterparty** or **indirect counterparty** of a security-based swap.

(j) *Counterparty ID* means the UIC assigned to a **counterparty** to a security-based swap.

(k) *Direct counterparty* means a person that is a primary obligor on a security-based swap.

(l) **Direct electronic access** has the same meaning as in § 240.13n-4(a) (5) of this chapter.


(n) *Execution agent ID* means the UIC assigned to any person other than a broker or trader that facilitates the execution of a security-based swap on behalf of a **direct counterparty**.

(o) *Foreign branch* has the same meaning as in § 240.3a71-3(a)(1) of this chapter.

(p) *Indirect counterparty* means a guarantor of a **direct counterparty**'s performance of any obligation under a security-based swap such that the **direct counterparty** on the other side can exercise rights of recourse against the **indirect counterparty** in connection with the security-based swap; for these purposes a **direct counterparty** has rights of recourse against a guarantor on the
other side if the direct counterparty has a conditional or unconditional legally enforceable right, in whole or in part, to receive payments from, or otherwise collect from, the guarantor in connection with the security-based swap.

(q) Life cycle event means, with respect to a security-based swap, any event that would result in a change in the information reported to a registered security-based swap data repository under § 242.901(c), (d), or (i), including: An assignment or novation of the security-based swap; a partial or full termination of the security-based swap; a change in the cash flows originally reported; for a security-based swap that is not a clearing transaction, any change to the title or date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract; or a corporate action affecting a security or securities on which the security-based swap is based (e.g., a merger, dividend, stock split, or bankruptcy). Notwithstanding the above, a life cycle event shall not include the scheduled expiration of the security-based swap, a previously described and anticipated interest rate adjustment (such as a quarterly interest rate adjustment), or other event that does not result in any change to the contractual terms of the security-based swap.

(r) Non-mandatory report means any information provided to a registered security-based swap data repository by or on behalf of a counterparty other than as required by §§ 242.900 through 242.909.

(s) Non-U.S. person means a person that is not a U.S. person.

(t) Parent means a legal person that controls a participant.

(u) Participant, with respect to a registered security-based swap data repository, means:

(1) A counterparty, that meets the criteria of § 242.908(b), of a security-based swap that is reported to that registered security-based swap data repository to satisfy an obligation under § 242.901(a);

(2) A platform that reports a security-based swap to that registered security-based swap data repository to satisfy an obligation under § 242.901(a);

(3) A registered clearing agency that is required to report to that registered security-based swap data repository whether or not it has accepted a security-based swap for clearing pursuant to § 242.901(e)(1)(ii); or

(4) A registered broker-dealer (including a registered security-based swap execution facility) that is required to report a security-based swap to that registered security-based swap data repository by § 242.901(a).
(v) **Platform** means a national securities exchange or security-based swap execution facility that is registered or exempt from registration.

(w) **Platform ID** means the UIC assigned to a platform on which a security-based swap is executed.

(x) **Post-trade processor** means any person that provides affirmation, confirmation, matching, reporting, or clearing services for a security-based swap transaction.

(y) **Pre-enactment security-based swap** means any security-based swap executed before July 21, 2010 (the date of enactment of the Dodd-Frank Act (Pub. L. 111-203, H.R. 4173)), the terms of which had not expired as of that date.

(z) **Price** means the price of a security-based swap transaction, expressed in terms of the commercial conventions used in that asset class.

(aa) **Product** means a group of security-based swap contracts each having the same material economic terms except those relating to price and size.

(bb) **Product ID** means the UIC assigned to a product.

(cc) **Publicly disseminate** means to make available through the Internet or other electronic data feed that is widely accessible and in machine-readable electronic format.

(dd) [Reserved].

(ee) **Registered clearing agency** means a person that is registered with the Commission as a clearing agency pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1) and any rules or regulations thereunder.

(ff) **Registered security-based swap data repository** means a person that is registered with the Commission as a security-based swap data repository pursuant to section 13(n) of the Exchange Act (15 U.S.C. 78m(n)) and any rules or regulations thereunder.

(gg) **Reporting side** means the side of a security-based swap identified by § 242.901(a)(2).

(hh) **Side** means a direct counterparty and any guarantor of that direct counterparty’s performance who meets the definition of indirect counterparty in connection with the security-based swap.

(iii) **Time of execution** means the point at which the counterparties to a security-based swap become irrevocably bound under applicable law.

(jj) **Trader ID** means the UIC assigned to a natural person who executes one or more security-based swaps on behalf of a direct counterparty.
(kk) Trading desk means, with respect to a counterparty, the smallest discrete unit of organization of the participant that purchases or sells security-based swaps for the account of the participant or an affiliate thereof.

(ii) Trading desk ID means the UIC assigned to the trading desk of a participant.

(mm) Transaction ID means the UIC assigned to a specific security-based swap transaction.

(nn) Transitional security-based swap means a security-based swap executed on or after July 21, 2010, and before the first date on which trade-by-trade reporting of security-based swaps in that asset class to a registered security-based swap data repository is required pursuant to §§ 242.900 through 242.909.

(oo) Ultimate parent means a legal person that controls a participant and that itself has no parent.

(pp) Ultimate parent ID means the UIC assigned to an ultimate parent of a participant.

(qq) Unique Identification Code or UIC means a unique identification code assigned to a person, unit of a person, product, or transaction.

(rr) United States has the same meaning as in § 240.3a71-3(a)(5) of this chapter.

(ss) U.S. person has the same meaning as in § 240.3a71-3(a)(4) of this chapter.

(tt) Widely accessible, as used in paragraph (cc) of this section, means widely available to users of the information on a non-fee basis.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53653, Aug. 12, 2016]

17 CFR § 242.901 - Reporting obligations.

• CFR

§ 242.901 Reporting obligations.

(a) Assigning reporting duties. A security-based swap, including a security-based swap that results from the allocation, termination, novation, or assignment of another security-based swap, shall be reported as follows:

(1) Platform-executed security-based swaps that will be submitted to clearing. If a security-based swap is executed on a platform and will be
submitted to clearing, the platform on which the transaction was executed shall report to a registered security-based swap data repository the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the platform need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(2) All other security-based swaps. For all security-based swaps other than platform-executed security-based swaps that will be submitted to clearing, the reporting side shall provide the information required by §§ 242.900 through 242.909 to a registered security-based swap data repository. The reporting side shall be determined as follows:

(i) Clearing transactions. For a clearing transaction, the reporting side is the registered clearing agency that is a counterparty to the transaction.

(ii) Security-based swaps other than clearing transactions.

(A) If both sides of the security-based swap include a registered security-based swap dealer, the sides shall select the reporting side.

(B) If only one side of the security-based swap includes a registered security-based swap dealer, that side shall be the reporting side.

(C) If both sides of the security-based swap include a registered major security-based swap participant, the sides shall select the reporting side.

(D) If one side of the security-based swap includes a registered major security-based swap participant and the other side includes neither a registered security-based swap dealer nor a registered major security-based swap participant, the side including the registered major security-based swap participant shall be the reporting side.

(E) If neither side of the security-based swap includes a registered security-based swap dealer or registered major security-based swap participant:

(1) If both sides include a U.S. person, the sides shall select the reporting side.

(2) If one side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person and the other side includes a non-U.S. person that falls within § 242.908(b)(5), the sides shall select the reporting side.

(3) If one side includes only non-U.S. persons that do not fall within § 242.908(b)(5) and the other side includes a non-U.S. person that falls within § 242.908(b)(5) or a U.S. person, the side including a non-U.S. person shall be the reporting side.
person that falls within § 242.908(b)(5) or a U.S. person shall be the reporting side.

(4) If neither side includes a U.S. person and neither side includes a non-U.S. person that falls within § 242.908(b)(5) but the security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility), the registered broker-dealer (including a registered security-based swap execution facility) shall report the counterparty ID or the execution agent ID of each direct counterparty, as applicable, and the information set forth in paragraph (c) of this section (except that, with respect to paragraph (c)(5) of this section, the registered broker-dealer (including a registered security-based swap execution facility) need indicate only if both direct counterparties are registered security-based swap dealers) and paragraphs (d)(9) and (10) of this section.

(3) Notification to registered clearing agency. A person who, under paragraph (a)(1) or (a)(2)(ii) of this section, has a duty to report a security-based swap that has been submitted to clearing at a registered clearing agency shall promptly provide that registered clearing agency with the transaction ID of the submitted security-based swap and the identity of the registered security-based swap data repository to which the transaction will be reported or has been reported.

(b) Alternate recipient of security-based swap information. If there is no registered security-based swap data repository that will accept the report required by § 242.901(a), the person required to make such report shall instead provide the required information to the Commission.

(c) Primary trade information. The reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The product ID, if available. If the security-based swap has no product ID, or if the product ID does not include the following information, the reporting side shall report:

(i) Information that identifies the security-based swap, including the asset class of the security-based swap and the specific underlying reference asset(s), reference issuer(s), or reference index;

(ii) The effective date;

(iii) The scheduled termination date;

(iv) The terms of any standardized fixed or floating rate payments, and the frequency of any such payments; and
(v) If the security-based swap is customized to the extent that the information provided in paragraphs (c)(1)(i) through (iv) of this section does not provide all of the material information necessary to identify such customized security-based swap or does not contain the data elements necessary to calculate the price, a flag to that effect;

(2) The date and time, to the second, of execution, expressed using Coordinated Universal Time (UTC);

(3) The price, including the currency in which the price is expressed and the amount(s) and currency(ies) of any up-front payments;

(4) The notional amount(s) and the currency(ies) in which the notional amount(s) is expressed;

(5) If both sides of the security-based swap include a registered security-based swap dealer, an indication to that effect;

(6) Whether the direct counterparties intend that the security-based swap will be submitted to clearing; and

(7) If applicable, any flags pertaining to the transaction that are specified in the policies and procedures of the registered security-based swap data repository to which the transaction will be reported.

d) Secondary trade information. In addition to the information required under paragraph (c) of this section, for each security-based swap for which it is the reporting side, the reporting side shall report the following information within the timeframe specified in paragraph (j) of this section:

(1) The counterparty ID or the execution agent ID of each counterparty, as applicable;

(2) As applicable, the branch ID, broker ID, execution agent ID, trader ID, and trading desk ID of the direct counterparty on the reporting side;

(3) To the extent not provided pursuant to paragraph (c)(1) of this section, the terms of any fixed or floating rate payments, or otherwise customized or non-standard payment streams, including the frequency and contingencies of any such payments;

(4) For a security-based swap that is not a clearing transaction and that will not be allocated after execution, the title and date of any master agreement, collateral agreement, margin agreement, or any other agreement incorporated by reference into the security-based swap contract;

(5) To the extent not provided pursuant to paragraph (c) of this section or other provisions of this paragraph (d), any additional data elements included in the
agreement between the counterparties that are necessary for a person to
determine the market value of the transaction;

(6) If applicable, and to the extent not provided pursuant to paragraph (c) of
this section, the name of the clearing agency to which the security-based swap
will be submitted for clearing;

(7) If the direct counterparties do not intend to submit the security-based swap
to clearing, whether they have invoked the exception in Section 3C(g) of the
Exchange Act (15 U.S.C. 78c-3(g));

(8) To the extent not provided pursuant to the other provisions of this
paragraph (d), if the direct counterparties do not submit the security-based
swap to clearing, a description of the settlement terms, including whether the
security-based swap is cash-settled or physically settled, and the method for
determining the settlement value;

(9) The platform ID, if applicable, or if a registered broker-dealer (including a
registered security-based swap execution facility) is required to report the
security-based swap by § 242.901(a)(2)(ii)(E)(4), the broker ID of that registered
broker-dealer (including a registered security-based swap execution facility);

and

(10) If the security-based swap arises from the allocation, termination,
novation, or assignment of one or more existing security-based swaps,
the transaction ID of the allocated, terminated, assigned, or novated security-
based swap(s), except in the case of a clearing transaction that results from
the netting or compression of other clearing transactions.

(e) Reporting of life cycle events. (1)(i) Generally. A life cycle event, and any
adjustment due to a life cycle event, that results in a change to information
previously reported pursuant to paragraph (c), (d), or (i) of this section shall be
reported by the reporting side, except that the reporting side shall not report
whether or not a security-based swap has been accepted for clearing.

(ii) Acceptance for clearing. A registered clearing agency shall report whether or
not it has accepted a security-based swap for clearing.

(2) All reports of life cycle events and adjustments due to life cycle
events shall, within the timeframe specified in paragraph (j) of this section, be
reported to the entity to which the original security-based swap transaction
will be reported or has been reported and shall include the transaction ID of
the original transaction.
(f) **Time stamping incoming information.** A [registered security-based swap data repository](#) shall time stamp, to the second, its receipt of any information submitted to it pursuant to paragraph (c), (d), (e), or (i) of this section.

(g) **Assigning transaction ID.** A [registered security-based swap data repository](#) shall assign a [transaction ID](#) to each security-based swap, or establish or endorse a methodology for [transaction IDs](#) to be assigned by third parties.

(h) **Format of reported information.** A person having a duty to report shall electronically transmit the information required under this section in a format required by the [registered security-based swap data repository](#) to which it reports.

(i) **Reporting of pre-enactment and transitional security-based swaps.** With respect to any [pre-enactment security-based swap](#) or [transitional security-based swap](#) in a particular [asset class](#), and to the extent that information about such transaction is available, the [reporting side](#) shall report all of the information required by paragraphs (c) and (d) of this section to a [registered security-based swap data repository](#) that accepts security-based swaps in that [asset class](#) and indicate whether the security-based swap was open as of the date of such report.

(j) **Interim timeframe for reporting.** The reporting timeframe for paragraphs (c) and (d) of this section shall be 24 hours after the [time of execution](#) (or acceptance for clearing in the case of a security-based swap that is subject to regulatory reporting and public dissemination solely by operation of § 242.908(a) (1)(ii)), or, if 24 hours after the [time of execution](#) or acceptance, as applicable, would fall on a day that is not a [business day](#), by the same time on the next day that is a [business day](#). The reporting timeframe for paragraph (e) of this section shall be 24 hours after the occurrence of the [life cycle event](#) or the adjustment due to the [life cycle event](#).

**APPENDIX TO 17 CFR 242.901 REPORTS REGARDING THE ESTABLISHMENT OF BLOCK THRESHOLDS AND REPORTING DELAYS FOR REGULATORY REPORTING OF SECURITY-BASED SWAP TRANSACTION DATA**

This appendix sets forth guidelines applicable to reports that the Commission has directed its staff to make in connection with the [determination](#) of block thresholds and reporting delays for security-based swap transaction data. The Commission intends to use these reports to inform its specification of the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public in order to implement regulatory requirements under Section 13 of the Act (15 U.S.C. 78m). In producing these reports, the staff shall consider security-based swap data collected...
by the Commission pursuant to other Title VII rules, as well as any other applicable information as the staff may determine to be appropriate for its analysis.

(a) **Report topics.** As appropriate, based on the availability of data and information, the reports should address the following topics for each asset class:

1. **Price impact.** In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the effect of notional amount and observed reporting delay on price impact of trades in the security-based swap market.

2. **Hedging.** In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should consider potential relationships between observed reporting delays and the incidence and cost of hedging large trades in the security-based swap market, and whether these relationships differ for interdealer trades and dealer to customer trades.

3. **Price efficiency.** In connection with the Commission's obligation to specify criteria for determining what constitutes a block trade and the appropriate reporting delay for block trades, the report generally should assess the relationship between reporting delays and the speed with which transaction information is impounded into market prices, estimating this relationship for trades of different notional amounts.

4. **Other topics.** Any other analysis of security-based swap data and information, such as security-based swap market liquidity and price volatility, that the Commission or the staff deem relevant to the specification of:

   i. The criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts; and

   ii. The appropriate time delay for reporting large notional security-based swap transactions (block trades).

(b) **Timing of reports.** Each report shall be complete no later than two years following the initiation of public dissemination of security-based swap transaction data by the first registered SDR in that asset class.

(c) **Public comment on the report.** Following completion of the report, the report shall be published in the Federal Register for public comment.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53653, Aug. 12, 2016]
 § 242.902 Public dissemination of transaction reports.

(a) General. Except as provided in paragraph (c) of this section, a registered security-based swap data repository shall publicly disseminate a transaction report of a security-based swap, or a life cycle event or adjustment due to a life cycle event, immediately upon receipt of information about the security-based swap, or upon re-opening following a period when the registered security-based swap data repository was closed. The transaction report shall consist of all the information reported pursuant to § 242.901(c), plus any condition flags contemplated by the registered security-based swap data repository’s policies and procedures that are required by § 242.907.

(b) [Reserved].

(c) Non-disseminated information. A registered security-based swap data repository shall not disseminate:

(1) The identity of any counterparty to a security-based swap;

(2) With respect to a security-based swap that is not cleared at a registered clearing agency and that is reported to the registered security-based swap data repository, any information disclosing the business transactions and market positions of any person;

(3) Any information regarding a security-based swap reported pursuant to § 242.901(i);

(4) Any non-mandatory report;

(5) Any information regarding a security-based swap that is required to be reported pursuant to §§ 242.901 and 242.908(a)(1) but is not required to be publicly disseminated pursuant to § 242.908(a)(2);

(6) Any information regarding a clearing transaction that arises from the acceptance of a security-based swap for clearing by a registered clearing agency or that results from netting other clearing transactions;
(7) Any information regarding the allocation of a security-based swap; or

(8) Any information regarding a security-based swap that has been rejected from clearing or rejected by a prime broker if the original transaction report has not yet been publicly disseminated.

(d) Temporary restriction on other market data sources. No person shall make available to one or more persons (other than a counterparty or a post-trade processor) transaction information relating to a security-based swap before the primary trade information about the security-based swap is sent to a registered security-based swap data repository.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53654, Aug. 12, 2016]

17 CFR § 242.903 - Coded information.

§ 242.903 Coded information.

(a) If an internationally recognized standards-setting system that imposes fees and usage restrictions on persons that obtain UICs for their own usage that are fair and reasonable and not unreasonably discriminatory and that meets the criteria of paragraph (b) of this section is recognized by the Commission and has assigned a UIC to a person, unit of a person, or product (or has endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall employ that UIC (or methodology for assigning transaction IDs). If no such system has been recognized by the Commission, or a recognized system has not assigned a UIC to a particular person, unit of a person, or product (or has not endorsed a methodology for assigning transaction IDs), the registered security-based swap data repository shall assign a UIC to that person, unit of person, or product using its own methodology (or endorse a methodology for assigning transaction IDs). If the Commission has recognized such a system that assigns UICs to persons, each participant of a registered security-based swap data repository shall obtain a UIC from or through that system for identifying itself, and each participant that acts as a guarantor of a direct counterparty’s performance of any obligation under a security-based swap that is subject to § 242.908(a) shall, if the direct counterparty has not already done so, obtain a UIC for identifying the direct counterparty from or
through that system, if that system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.

(b) A registered security-based swap data repository may permit information to be reported pursuant to § 242.901, and may publicly disseminate that information pursuant to § 242.902, using codes in place of certain data elements, provided that the information necessary to interpret such codes is widely available to users of the information on a non-fee basis.

17 CFR § 242.904 - Operating hours of registered security-based swap data repositories.

§ 242.904 Operating hours of registered security-based swap data repositories.
A registered security-based swap data repository shall have systems in place to continuously receive and disseminate information regarding security-based swaps pursuant to §§ 242.900 through 242.909, subject to the following exceptions:

(a) A registered security-based swap data repository may establish normal closing hours during periods when, in its estimation, the U.S. market and major foreign markets are inactive. A registered security-based swap data repository shall provide reasonable advance notice to participants and to the public of its normal closing hours.

(b) A registered security-based swap data repository may declare, on an ad hoc basis, special closing hours to perform system maintenance that cannot wait until normal closing hours. A registered security-based swap data repository shall, to the extent reasonably possible under the circumstances, avoid scheduling special closing hours during periods when, in its estimation, the U.S. market and major foreign markets are most active; and provide reasonable advance notice of its special closing hours to participants and to the public.

(c) During normal closing hours, and to the extent reasonably practicable during special closing hours, a registered security-based swap data repository shall
have the capability to receive and hold in queue information regarding security-based swaps that has been reported pursuant to §§ 242.900 through 242.909.

(d) When a registered security-based swap data repository re-opens following normal closing hours or special closing hours, it shall disseminate transaction reports of security-based swaps held in queue, in accordance with the requirements of § 242.902.

(e) If a registered security-based swap data repository could not receive and hold in queue transaction information that was required to be reported pursuant to §§ 242.900 through 242.909, it must immediately upon re-opening send a message to all participants that it has resumed normal operations. Thereafter, any participant that had an obligation to report information to the registered security-based swap data repository pursuant to §§ 242.900 through 242.909, but could not do so because of the registered security-based swap data repository’s inability to receive and hold in queue data, must promptly report the information to the registered security-based swap data repository.

17 CFR § 242.905 - Correction of errors in security-based swap information.

§ 242.905 Correction of errors in security-based swap information.

(a) Duty to correct. Any counterparty or other person having a duty to report a security-based swap that discovers an error in information previously reported pursuant to §§ 242.900 through 242.909 shall correct such error in accordance with the following procedures:

(1) If a person that was not the reporting side for a security-based swap transaction discovers an error in the information reported with respect to such security-based swap, that person shall promptly notify the person having the duty to report the security-based swap of the error; and

(2) If the person having the duty to report a security-based swap transaction discovers an error in the information reported with respect to a security-based swap, or receives notification from a counterparty of an error, such person shall promptly submit to the entity to which the security-based swap was originally reported an amended report pertaining to the original transaction.
report. If the person having the duty to report reported the initial transaction to a registered security-based swap data repository, such person shall submit an amended report to the registered security-based swap data repository in a manner consistent with the policies and procedures contemplated by § 242.907(a)(3).

(b) Duty of security-based swap data repository to correct. A registered security-based swap data repository shall:

(1) Upon discovery of an error or receipt of a notice of an error, verify the accuracy of the terms of the security-based swap and, following such verification, promptly correct the erroneous information regarding such security-based swap contained in its system; and

(2) If such erroneous information relates to a security-based swap that the registered security-based swap data repository previously disseminated and falls into any of the categories of information enumerated in § 242.901(c), publicly disseminate a corrected transaction report of the security-based swap promptly following verification of the trade by the counterparties to the security-based swap, with an indication that the report relates to a previously disseminated transaction.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53654, Aug. 12, 2016]

17 CFR § 242.906 - Other duties of participants.

• CFR

§ 242.906 Other duties of participants.

(a) Identifying missing UIC information. A registered security-based swap data repository shall identify any security-based swap reported to it for which the registered security-based swap data repository does not have the counterparty ID and (if applicable) the broker ID, branch ID, execution agent ID, trading desk ID, and trader ID of each direct counterparty. Once a day, the registered security-based swap data repository shall send a report to each participant of the registered security-based swap data repository or, if applicable, an execution agent, identifying, for each security-based swap to which that participant is a counterparty, the security-based swap(s) for which the registered security-based swap data repository lacks counterparty ID and (if applicable) broker ID, branch ID, execution agent ID, trading desk ID, and trader ID.
ID. A participant of a registered security-based swap data repository that receives such a report shall provide the missing information with respect to its side of each security-based swap referenced in the report to the registered security-based swap data repository within 24 hours.

(b) Duty to provide ultimate parent and affiliate information. Each participant of a registered security-based swap data repository that is not a platform, a registered clearing agency, an externally managed investment vehicle, or a registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under §242.901(a)(2)(ii)(E)(4) shall provide to the registered security-based swap data repository information sufficient to identify its ultimate parent(s) and any affiliate(s) of the participant that also are participants of the registered security-based swap data repository, using ultimate parent IDs and counterparty IDs. Any such participant shall promptly notify the registered security-based swap data repository of any changes to that information.

(c) Policies and procedures to support reporting compliance. Each participant of a registered security-based swap data repository that is a registered security-based swap dealer, registered major security-based swap participant, registered clearing agency, platform, or registered broker-dealer (including a registered security-based swap execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under §242.901(a)(2)(ii)(E)(4) shall establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that it complies with any obligations to report information to a registered security-based swap data repository in a manner consistent with §§242.900 through 242.909. Each such participant shall review and update its policies and procedures at least annually.

[81 FR 53654, Aug. 12, 2016]
General policies and procedures. With respect to the receipt, reporting, and dissemination of data pursuant to §§ 242.900 through 242.909, a registered security-based swap data repository shall establish and maintain written policies and procedures:

1. That enumerate the specific data elements of a security-based swap that must be reported, which shall include, at a minimum, the data elements specified in § 242.901(c) and (d);

2. That specify one or more acceptable data formats (each of which must be an open-source structured data format that is widely used by participants), connectivity requirements, and other protocols for submitting information;

3. For specifying procedures for reporting life cycle events and corrections to previously submitted information, making corresponding updates or corrections to transaction records, and applying an appropriate flag to the transaction report to indicate that the report is an error correction required to be disseminated by § 242.905(b)(2), or is a life cycle event, or any adjustment due to a life cycle event, required to be disseminated by § 242.902(a);

4. For:
   
   i. Identifying characteristic(s) of a security-based swap, or circumstances associated with the execution or reporting of the security-based swap, that could, in the fair and reasonable estimation of the registered security-based swap data repository, cause a person without knowledge of these characteristic(s) or circumstance(s), to receive a distorted view of the market;
   
   ii. Establishing flags to denote such characteristic(s) or circumstance(s);
   
   iii. Directing participants that report security-based swaps to apply such flags, as appropriate, in their reports to the registered security-based swap data repository; and
   
   iv. Applying such flags:
      
      A. To disseminated reports to help to prevent a distorted view of the market; or
      
      B. In the case of a transaction referenced in § 242.902(c), to suppress the report from public dissemination entirely, as appropriate;

5. For assigning UICs in a manner consistent with § 242.903; and

6. For periodically obtaining from each participant other than a platform, registered clearing agency, externally managed investment vehicle, or registered broker-dealer (including a registered security-based swap
execution facility) that becomes a participant solely as a result of making a report to satisfy an obligation under § 242.901(a)(2)(ii)(E)(4) information that identifies the participant's ultimate parent(s) and any participant(s) with which the participant is affiliated, using ultimate parent IDs and counterparty IDs.

(b) [Reserved].

c (c) Public availability of policies and procedures. A registered security-based swap data repository shall make the policies and procedures required by §§ 242.900 through 242.909 publicly available on its Web site.

d (d) Updating of policies and procedures. A registered security-based swap data repository shall review, and update as necessary, the policies and procedures required by §§ 242.900 through 242.909 at least annually. Such policies and procedures shall indicate the date on which they were last reviewed.

e (e) A registered security-based swap data repository shall provide to the Commission, upon request, information or reports related to the timeliness, accuracy, and completeness of data reported to it pursuant to §§ 242.900 through 242.909 and the registered security-based swap data repository's policies and procedures thereunder.

[80 FR 14728, Mar. 19, 2015, as amended at 81 FR 53655, Aug. 12, 2016]


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§ 242.908 Cross-border matters.

(a) Application of Regulation SBSR to cross-border transactions.

(1) A security-based swap shall be subject to regulatory reporting and public dissemination if:

(i) There is a direct or indirect counterparty that is a U.S. person on either or both sides of the transaction;

(ii) The security-based swap is accepted for clearing by a clearing agency having its principal place of business in the United States;

(iii) The security-based swap is executed on a platform having its principal place of business in the United States;
(iv) The security-based swap is effected by or through a registered broker-dealer (including a registered security-based swap execution facility); or

(v) The transaction is connected with a non-U.S. person’s security-based swap dealing activity and is arranged, negotiated, or executed by personnel of such non-U.S. person located in a U.S. branch or office, or by personnel of an agent of such non-U.S. person located in a U.S. branch or office.

(2) A security-based swap that is not included within paragraph (a)(1) of this section shall be subject to regulatory reporting but not public dissemination if there is a direct or indirect counterparty on either or both sides of the transaction that is a registered security-based swap dealer or a registered major security-based swap participant.

(b) Limitation on obligations. Notwithstanding any other provision of §§ 242.900 through 242.909, a person shall not incur any obligation under §§ 242.900 through 242.909 unless it is:

   (1) A U.S. person;

   (2) A registered security-based swap dealer or registered major security-based swap participant;

   (3) A platform;

   (4) A registered clearing agency; or

   (5) A non-U.S. person that, in connection with such person's security-based swap dealing activity, arranged, negotiated, or executed the security-based swap using its personnel located in a U.S. branch or office, or using personnel of an agent located in a U.S. branch or office.

(c) Substituted compliance -

(1) General. Compliance with the regulatory reporting and public dissemination requirements in sections 13(m) and 13A of the Act (15 U.S.C. 78m(m) and 78m-1), and the rules and regulations thereunder, may be satisfied by compliance with the rules of a foreign jurisdiction that is the subject of a Commission order described in paragraph (c)(2) of this section, provided that at least one of the direct counterparties to the security-based swap is either a non-U.S. person or a foreign branch.

(2) Procedure.

   (i) The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting and public dissemination of security-based swaps with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting and
public dissemination of security-based swaps are comparable to otherwise applicable requirements. The Commission may, conditionally or unconditionally, by order, make a substituted compliance determination regarding regulatory reporting of security-based swaps that are subject to § 242.908(a)(2) with respect to a foreign jurisdiction if that jurisdiction's requirements for the regulatory reporting of security-based swaps are comparable to otherwise applicable requirements.

(ii) A party that potentially would comply with requirements under §§ 242.900 through 242.909 pursuant to a substituted compliance order or any foreign financial regulatory authority or authorities supervising such a person's security-based swap activities may file an application, pursuant to the procedures set forth in § 240.0-13 of this chapter, requesting that the Commission make a substituted compliance determination regarding regulatory reporting and public dissemination with respect to a foreign jurisdiction the rules of which also would require reporting and public dissemination of those security-based swaps.

(iii) In making such a substituted compliance determination, the Commission shall take into account such factors as the Commission determines are appropriate, such as the scope and objectives of the relevant foreign regulatory requirements, as well as the effectiveness of the supervisory compliance program administered, and the enforcement authority exercised, by the foreign financial regulatory authority to support oversight of its regulatory reporting and public dissemination system for security-based swaps. The Commission shall not make such a substituted compliance determination unless it finds that:

(A) The data elements that are required to be reported pursuant to the rules of the foreign jurisdiction are comparable to those required to be reported pursuant to § 242.901;

(B) The rules of the foreign jurisdiction require the security-based swap to be reported and publicly disseminated in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909 (or, in the case of transactions that are subject to § 242.908(a)(2) but not to § 242.908(a)(1), the rules of the foreign jurisdiction require the security-based swap to be reported in a manner and a timeframe comparable to those required by §§ 242.900 through 242.909);

(C) The Commission has direct electronic access to the security-based swap data held by a trade repository or foreign regulatory authority to which security-based swaps are reported pursuant to the rules of that foreign jurisdiction; and
Any trade repository or foreign regulatory authority in the foreign jurisdiction that receives and maintains required transaction reports of security-based swaps pursuant to the laws of that foreign jurisdiction is subject to requirements regarding data collection and maintenance; systems capacity, integrity, resiliency, availability, and security; and recordkeeping that are comparable to the requirements imposed on security-based swap data repositories by the Commission's rules and regulations.

Before issuing a substituted compliance order pursuant to this section, the Commission shall have entered into memoranda of understanding and/or other arrangements with the relevant foreign financial regulatory authority or authorities under such foreign financial regulatory system addressing supervisory and enforcement cooperation and other matters arising under the substituted compliance determination.

The Commission may, on its own initiative, modify or withdraw such order at any time, after appropriate notice and opportunity for comment.

17 CFR § 242.909 - Registration of security-based swap data repository as a securities information processor.

§ 242.909 Registration of security-based swap data repository as a securities information processor. A registered security-based swap data repository shall also register with the Commission as a securities information processor on Form SDR (§ 249.1500 of this chapter).

17 CFR Subpart 0 - Systems Compliance and Integrity

1. § 242.1000 Definitions.
2. § 242.1001 Obligations related to policies and procedures of SCI entities.
3. § 242.1002 Obligations related to SCI events.
4. § 242.1003 Obligations related to systems changes; SCI review.
5. § 242.1004 SCI entity business continuity and disaster recovery plans testing requirements for members or participants.
6. § 242.1005 Recordkeeping requirements related to compliance with Regulation SCI.
7. § 242.1006 Electronic filing and submission.
8. § 242.1007 Requirements for service bureaus.

SOURCE: 79 FR 72436, Dec. 5, 2014, unless otherwise noted.

17 CFR § 242.1000 - Definitions.

§ 242.1000 Definitions.
For purposes of Regulation SCI (§§ 242.1000 through 242.1007), the following definitions shall apply:

Critical SCI systems means any SCI systems of, or operated by or on behalf of, an SCI entity that:

(1) Directly support functionality relating to:
   (i) Clearance and settlement systems of clearing agencies;
   (ii) Openings, reopenings, and closings on the primary listing market;
   (iii) Trading halts;
   (iv) Initial public offerings;
   (v) The provision of consolidated market data; or
   (vi) Exclusively-listed securities; or

(2) Provide functionality to the securities markets for which the availability of alternatives is significantly limited or nonexistent and without which there would be a material impact on fair and orderly markets.

Electronic signature has the meaning set forth in § 240.19b-4(j) of this chapter.

Exempt clearing agency subject to ARP means an entity that has received from the Commission an exemption from registration as a clearing agency under Section 17A of the Act, and whose exemption contains conditions that relate to
the Commission's Automation Review Policies (ARP), or any Commission regulation that supersedes or replaces such policies.

**Indirect SCI systems** means any systems of, or operated by or on behalf of, an **SCI entity** that, if breached, would be reasonably likely to pose a security threat to **SCI systems**.

**Major SCI event** means an **SCI event** that has had, or the **SCI entity** reasonably estimates would have:

1. Any impact on a critical SCI system; or
2. A significant impact on the **SCI entity**'s operations or on market **participants**.

**Plan processor** has the meaning set forth in § 242.600(b)(59).

**Responsible SCI personnel** means, for a particular SCI system or indirect SCI system impacted by an **SCI event**, such senior manager(s) of the **SCI entity** having responsibility for such system, and their designee(s).

**SCI alternative trading system** or **SCI ATS** means an **alternative trading system**, as defined in § 242.300(a), which during at least four of the preceding six calendar months:

1. Had with respect to NMS stocks:
   
   i. Five percent (5%) or more in any single **NMS stock**, and one-quarter percent (0.25%) or more in all NMS stocks, of the average daily dollar volume reported by applicable transaction reporting plans; or
   
   ii. One percent (1%) or more in all NMS stocks of the average daily dollar volume reported by applicable transaction reporting plans; or

2. Had with respect to equity securities that are not NMS stocks and for which transactions are reported to a **self-regulatory organization**, five percent (5%) or more of the average daily dollar volume as calculated by the **self-regulatory organization** to which such transactions are reported;

3. **Provided, however**, that such SCI ATS shall not be required to comply with the requirements of Regulation SCI until six months after satisfying any of paragraphs (1) or (2) of this definition, as applicable, for the first time.

**SCI entity** means an SCI **self-regulatory organization**, SCI alternative trading system, **plan processor**, or exempt clearing agency subject to ARP.

**SCI event** means an event at an **SCI entity** that constitutes:

1. A **systems disruption**;
(2) A systems compliance issue; or

(3) A systems intrusion.

SCI review means a review, following established procedures and standards, that is performed by objective personnel having appropriate experience to conduct reviews of SCI systems and indirect SCI systems, and which review contains:

(1) A risk assessment with respect to such systems of an SCI entity; and

(2) An assessment of internal control design and effectiveness of its SCI systems and indirect SCI systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.

SCI self-regulatory organization or SCI SRO means any national securities exchange, registered securities association, or registered clearing agency, or the Municipal Securities Rulemaking Board; provided however, that for purposes of this section, the term SCI self-regulatory organization shall not include an exchange that is notice registered with the Commission pursuant to 15 U.S.C. 78f(g) or a limited purpose national securities association registered with the Commission pursuant to 15 U.S.C. 78o-3(k).

SCI systems means all computer, network, electronic, technical, automated, or similar systems of, or operated by or on behalf of, an SCI entity that, with respect to securities, directly support trading, clearance and settlement, order routing, market data, market regulation, or market surveillance.

Senior management means, for purposes of Rule 1003(b), an SCI entity’s Chief Executive Officer, Chief Technology Officer, Chief Information Officer, General Counsel, and Chief Compliance Officer, or the equivalent of such employees or officers of an SCI entity.

Systems compliance issue means an event at an SCI entity that has caused any SCI system of such entity to operate in a manner that does not comply with the Act and the rules and regulations thereunder or the entity’s rules or governing documents, as applicable.

Systems disruption means an event in an SCI entity’s SCI systems that disrupts, or significantly degrades, the normal operation of an SCI system.

Systems intrusion means any unauthorized entry into the SCI systems or indirect SCI systems of an SCI entity.
17 CFR § 242.1001 - Obligations related to policies and procedures of SCI entities.

(a) Capacity, integrity, resiliency, availability, and security.

(1) Each SCI entity shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems and, for purposes of security standards, indirect SCI systems, have levels of capacity, integrity, resiliency, availability, and security, adequate to maintain the SCI entity’s operational capability and promote the maintenance of fair and orderly markets.

(2) Policies and procedures required by paragraph (a)(1) of this section shall include, at a minimum:

(i) The establishment of reasonable current and future technological infrastructure capacity planning estimates;

(ii) Periodic capacity stress tests of such systems to determine their ability to process transactions in an accurate, timely, and efficient manner;

(iii) A program to review and keep current systems development and testing methodology for such systems;

(iv) Regular reviews and testing, as applicable, of such systems, including backup systems, to identify vulnerabilities pertaining to internal and external threats, physical hazards, and natural or manmade disasters;

(v) Business continuity and disaster recovery plans that include maintaining backup and recovery capabilities sufficiently resilient and geographically diverse and that are reasonably designed to achieve next business day resumption of trading and two-hour resumption of critical SCI systems following a wide-scale disruption;
(vi) Standards that result in such systems being designed, developed, tested, maintained, operated, and surveilled in a manner that facilitates the successful collection, processing, and dissemination of market data; and

(vii) Monitoring of such systems to identify potential SCI events.

(3) Each SCI entity shall periodically review the effectiveness of the policies and procedures required by this paragraph (a), and take prompt action to remedy deficiencies in such policies and procedures.

(4) For purposes of this paragraph (a), such policies and procedures shall be deemed to be reasonably designed if they are consistent with current SCI industry standards, which shall be comprised of information technology practices that are widely available to information technology professionals in the financial sector and issued by an authoritative body that is a U.S. governmental entity or agency, association of U.S. governmental entities or agencies, or widely recognized organization. Compliance with such current SCI industry standards, however, shall not be the exclusive means to comply with the requirements of this paragraph (a).

(b) **Systems compliance.**

(1) Each SCI entity shall establish, maintain, and enforce written policies and procedures reasonably designed to ensure that its SCI systems operate in a manner that complies with the Act and the rules and regulations thereunder and the entity’s rules and governing documents, as applicable.

(2) Policies and procedures required by paragraph (b)(1) of this section shall include, at a minimum:

   (i) Testing of all SCI systems and any changes to SCI systems prior to implementation;

   (ii) A system of internal controls over changes to SCI systems;

   (iii) A plan for assessments of the functionality of SCI systems designed to detect systems compliance issues, including by responsible SCI personnel and by personnel familiar with applicable provisions of the Act and the rules and regulations thereunder and the SCI entity’s rules and governing documents; and

   (iv) A plan of coordination and communication between regulatory and other personnel of the SCI entity, including by responsible SCI personnel, regarding SCI systems design, changes, testing, and controls designed to detect and prevent systems compliance issues.
(3) Each **SCI entity** shall periodically review the effectiveness of the policies and procedures required by this paragraph (b), and take prompt action to remedy deficiencies in such policies and procedures.

(4) Safe harbor from liability for individuals. Personnel of an **SCI entity** shall be deemed not to have aided, abetted, counseled, commanded, caused, induced, or procured the violation by an **SCI entity** of this paragraph (b) if the person:

   (i) Has reasonably discharged the duties and obligations incumbent upon such person by the **SCI entity**'s policies and procedures; and

   (ii) Was without reasonable cause to believe that the policies and procedures relating to an SCI system for which such person was responsible, or had supervisory responsibility, were not established, maintained, or enforced in accordance with this paragraph (b) in any **material** respect.

(c) **Responsible SCI personnel.**

(1) Each **SCI entity** shall establish, maintain, and enforce reasonably designed written policies and procedures that include the criteria for identifying **responsible SCI personnel**, the designation and documentation of **responsible SCI personnel**, and escalation procedures to quickly inform **responsible SCI personnel** of potential SCI events.

(2) Each **SCI entity** shall periodically review the effectiveness of the policies and procedures required by paragraph (c)(1) of this section, and take prompt action to remedy deficiencies in such policies and procedures.

17 CFR § 242.1002 - Obligations related to SCI events.

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§ 242.1002 Obligations related to SCI events.

(a) **Corrective action.** Upon any **responsible SCI personnel** having a reasonable basis to conclude that an **SCI event** has occurred, each **SCI entity** shall begin to take appropriate corrective action which shall include, at a minimum, mitigating potential harm to investors and market integrity resulting from the **SCI event** and devoting adequate resources to remedy the **SCI event** as soon as reasonably practicable.

(b) **Commission notification and recordkeeping of SCI events.** Each **SCI entity** shall:
(1) Upon any responsible SCI personnel having a reasonable basis to conclude that an SCI event has occurred, notify the Commission of such SCI event immediately;

(2) Within 24 hours of any responsible SCI personnel having a reasonable basis to conclude that the SCI event has occurred, submit a written notification pertaining to such SCI event to the Commission, which shall be made on a good faith, best efforts basis and include:

   (i) A description of the SCI event, including the system(s) affected; and
   
   (ii) To the extent available as of the time of the notification: The SCI entity’s current assessment of the types and number of market participants potentially affected by the SCI event; the potential impact of the SCI event on the market; a description of the steps the SCI entity has taken, is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved or timeframe within which the SCI event is expected to be resolved; and any other pertinent information known by the SCI entity about the SCI event;

(3) Until such time as the SCI event is resolved and the SCI entity’s investigation of the SCI event is closed, provide updates pertaining to such SCI event to the Commission on a regular basis, or at such frequency as reasonably requested by a representative of the Commission, to correct any materially incorrect information previously provided, or when new material information is discovered, including but not limited to, any of the information listed in paragraph (b)(2)(ii) of this section;

(4)  

   (i)  
   
      (A) If an SCI event is resolved and the SCI entity’s investigation of the SCI event is closed within 30 calendar days of the occurrence of the SCI event, then within five business days after the resolution of the SCI event and closure of the investigation regarding the SCI event, submit a final written notification pertaining to such SCI event to the Commission containing the information required in paragraph (b)(4)(ii) of this section.
   
      (B)(1) If an SCI event is not resolved or the SCI entity’s investigation of the SCI event is not closed within 30 calendar days of the occurrence of the SCI event, then submit an interim written notification pertaining to such SCI event to the Commission within 30 calendar days after the occurrence of the SCI event containing the information required in paragraph (b)(4)(ii) of this section, to the extent known at the time.
Within five business days after the resolution of such SCI event and closure of the investigation regarding such SCI event, submit a final written notification pertaining to such SCI event to the Commission containing the information required in paragraph (b)(4)(ii) of this section.

(ii) Written notifications required by paragraph (b)(4)(i) of this section shall include:

(A) A detailed description of: The SCI entity’s assessment of the types and number of market participants affected by the SCI event; the SCI entity’s assessment of the impact of the SCI event on the market; the steps the SCI entity has taken, is taking, or plans to take, with respect to the SCI event; the time the SCI event was resolved; the SCI entity’s rule(s) and/or governing document(s), as applicable, that relate to the SCI event; and any other pertinent information known by the SCI entity about the SCI event;

(B) A copy of any information disseminated pursuant to paragraph (c) of this section by the SCI entity to date regarding the SCI event to any of its members or participants; and

(C) An analysis of parties that may have experienced a loss, whether monetary or otherwise, due to the SCI event, the number of such parties, and an estimate of the aggregate amount of such loss.

(5) The requirements of paragraphs (b)(1) through (4) of this section shall not apply to any SCI event that has had, or the SCI entity reasonably estimates would have, no or a de minimis impact on the SCI entity’s operations or on market participants. For such events, each SCI entity shall:

(i) Make, keep, and preserve records relating to all such SCI events; and

(ii) Submit to the Commission a report, within 30 calendar days after the end of each calendar quarter, containing a summary description of such systems disruptions and systems intrusions, including the SCI systems and, for systems intrusions, indirect SCI systems, affected by such systems disruptions and systems intrusions during the applicable calendar quarter.

(c) Dissemination of SCI events.

(1) Each SCI entity shall:

(i) Promptly after any responsible SCI personnel has a reasonable basis to conclude that an SCI event that is a systems disruption or systems compliance issue has occurred, disseminate the following information about such SCI event:

(A) The system(s) affected by the SCI event; and
(B) A summary description of the **SCI event**; and

(ii) When known, promptly further disseminate the following information about such SCI event:

(A) A detailed description of the **SCI event**;

(B) The **SCI entity**’s current assessment of the types and number of market participants potentially affected by the **SCI event**; and

(C) A description of the progress of its corrective action for the **SCI event** and when the **SCI event** has been or is expected to be resolved; and

(iii) Until resolved, provide regular updates of any information required to be disseminated under paragraphs (c)(1)(i) and (ii) of this section.

(2) Each **SCI entity** shall, promptly after any responsible SCI personnel has a reasonable basis to conclude that a **SCI event** that is a systems intrusion has occurred, disseminate a summary description of the systems intrusion, including a description of the corrective action taken by the **SCI entity** and when the systems intrusion has been or is expected to be resolved, unless the **SCI entity** determines that dissemination of such information would likely compromise the security of the **SCI entity**’s SCI systems or indirect SCI systems, or an investigation of the systems intrusion, and documents the reasons for such determination.

(3) The information required to be disseminated under paragraphs (c)(1) and (2) of this section promptly after any responsible SCI personnel has a reasonable basis to conclude that an **SCI event** has occurred, shall be promptly disseminated by the **SCI entity** to those members or participants of the **SCI entity** that any responsible SCI personnel has reasonably estimated may have been affected by the **SCI event**, and promptly disseminated to any additional members or participants that any responsible SCI personnel subsequently reasonably estimates may have been affected by the **SCI event**; provided, however, that for major SCI events, the information required to be disseminated under paragraphs (c)(1) and (2) of this section shall be promptly disseminated by the **SCI entity** to all of its members or participants.

(4) The requirements of paragraphs (c)(1) through (3) of this section shall not apply to:

(i) **SCI events** to the extent they relate to market regulation or market surveillance systems; or

(ii) Any **SCI event** that has had, or the **SCI entity** reasonably estimates would have, no or a de minimis impact on the **SCI entity**’s operations or on market participants.
§ 242.1003 Obligations related to systems changes; SCI review.

(a) Systems changes. Each SCI entity shall:

(1) Within 30 calendar days after the end of each calendar quarter, submit to the Commission a report describing completed, ongoing, and planned material changes to its SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters, including the dates or expected dates of commencement and completion. An SCI entity shall establish reasonable written criteria for identifying a change to its SCI systems and the security of indirect SCI systems as material and report such changes in accordance with such criteria.

(2) Promptly submit a supplemental report notifying the Commission of a material error in or material omission from a report previously submitted under this paragraph (a).

(b) SCI review. Each SCI entity shall:

(1) Conduct an SCI review of the SCI entity’s compliance with Regulation SCI not less than once each calendar year; provided, however, that:

   (i) Penetration test reviews of the network, firewalls, and production systems shall be conducted at a frequency of not less than once every three years; and

   (ii) Assessments of SCI systems directly supporting market regulation or market surveillance shall be conducted at a frequency based upon the risk assessment conducted as part of the SCI review, but in no case less than once every three years; and

(2) Submit a report of the SCI review required by paragraph (b)(1) of this section to senior management of the SCI entity for review no more than 30 calendar days after completion of such SCI review; and

(3) Submit to the Commission, and to the board of directors of the SCI entity or the equivalent of such board, a report of the SCI review required by paragraph
(b)(1) of this section, together with any response by senior management, within 60 calendar days after its submission to senior management of the SCI entity.

17 CFR § 242.1004 - SCI entity business continuity and disaster recovery plans testing requirements for members or participants.

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§ 242.1004 SCI entity business continuity and disaster recovery plans testing requirements for members or participants. With respect to an SCI entity’s business continuity and disaster recovery plans, including its backup systems, each SCI entity shall:

(a) Establish standards for the designation of those members or participants that the SCI entity reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of such plans;

(b) Designate members or participants pursuant to the standards established in paragraph (a) of this section and require participation by such designated members or participants in scheduled functional and performance testing of the operation of such plans, in the manner and frequency specified by the SCI entity, provided that such frequency shall not be less than once every 12 months; and

(c) Coordinate the testing of such plans on an industry- or sector-wide basis with other SCI entities.

17 CFR § 242.1005 - Recordkeeping requirements related to compliance with Regulation SCI.
§ 242.1005 Recordkeeping requirements related to compliance with Regulation SCI.

(a) An SCI SRO shall make, keep, and preserve all documents relating to its compliance with Regulation SCI as prescribed in § 240.17a-1 of this chapter.

(b) An SCI entity that is not an SCI SRO shall:

   (1) Make, keep, and preserve at least one copy of all documents, including correspondence, memoranda, papers, books, notices, accounts, and other such records, relating to its compliance with Regulation SCI, including, but not limited to, records relating to any changes to its SCI systems and indirect SCI systems;

   (2) Keep all such documents for a period of not less than five years, the first two years in a place that is readily accessible to the Commission or its representatives for inspection and examination; and

   (3) Upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (b)(1) and (2) of this section.

(c) Upon or immediately prior to ceasing to do business or ceasing to be registered under the Securities Exchange Act of 1934, an SCI entity shall take all necessary action to ensure that the records required to be made, kept, and preserved by this section shall be accessible to the Commission and its representatives in the manner required by this section and for the remainder of the period required by this section.

17 CFR § 242.1006 - Electronic filing and submission.

§ 242.1006 Electronic filing and submission.

(a) Except with respect to notifications to the Commission made pursuant to § 242.1002(b)(1) or updates to the Commission made pursuant to paragraph § 242.1002(b)(3), any notification, review, description, analysis, or report to the
Commission required to be submitted under Regulation SCI shall be filed electronically on Form SCI (§ 249.1900 of this chapter), include all information as prescribed in Form SCI and the instructions thereto, and contain an electronic signature; and

(b) The signatory to an electronically filed Form SCI shall manually sign a signature page or document, in the manner prescribed by Form SCI, authenticating, acknowledging, or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time Form SCI is electronically filed and shall be retained by the SCI entity in accordance with § 242.1005.

17 CFR § 242.1007 - Requirements for service bureaus.

§ 242.1007 Requirements for service bureaus.
If records required to be filed or kept by an SCI entity under Regulation SCI are prepared or maintained by a service bureau or other recordkeeping service on behalf of the SCI entity, the SCI entity shall ensure that the records are available for review by the Commission and its representatives by submitting a written undertaking, in a form acceptable to the Commission, by such service bureau or other recordkeeping service, signed by a duly authorized person at such service bureau or other recordkeeping service. Such a written undertaking shall include an agreement by the service bureau to permit the Commission and its representatives to examine such records at any time or from time to time during business hours, and to promptly furnish to the Commission and its representatives true, correct, and current electronic files in a form acceptable to the Commission or its representatives or hard copies of any or all or any part of such records, upon request, periodically, or continuously and, in any case, within the same time periods as would apply to the SCI entity for such records. The preparation or maintenance of records by a service bureau or other recordkeeping service shall not relieve an SCI entity from its obligation to prepare, maintain, and provide the Commission and its representatives access to such records.
15 U.S. Code § 77g. Information required in registration statement

(a) INFORMATION REQUIRED IN REGISTRATION STATEMENT

(1) IN GENERAL

The registration statement, when relating to a security other than a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule A of section 77aa of this title; and when relating to a security issued by a foreign government, or political subdivision thereof, shall contain the information, and be accompanied by the documents, specified in Schedule B of section 77aa of this title; except that the Commission may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Commission dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information, and be accompanied by such other documents, as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(2) TREATMENT OF EMERGING GROWTH COMPANIES

An emerging growth company—

(A) need not present more than 2 years of audited financial statements in order for the registration statement of such emerging growth company with respect to an initial public offering of its common equity securities to be effective, and in any other registration statement to be filed with the Commission, an emerging growth company need not present selected financial data in accordance with section 229.301 of title 17, Code of Federal Regulations, for any period prior to the earliest audited period presented in connection with its initial public offering; and

(B) may not be required to comply with any new or revised financial accounting standard until such date that a company that is not an issuer (as defined under section 7201 of this title) is required to comply with such new or revised accounting standard, if such standard applies to companies that are not issuers.

(b) REGISTRATION STATEMENT FOR BLANK CHECK COMPANIES

(1) The Commission shall prescribe special rules with respect to registration statements filed by any issuer that is a blank check company. Such rules may, as the Commission determines necessary or appropriate in the public interest or for the protection of investors—

(A) require such issuers to provide timely disclosure, prior to or after such statement becomes effective under section 77h of this title, of (i) information regarding the company to be acquired and the specific...
application of the proceeds of the offering, or (ii) additional information necessary to prevent such statement from being misleading;

(B) place limitations on the use of such proceeds and the distribution of securities by such issuer until the disclosures required under subparagraph (A) have been made; and

(C) provide a right of rescission to shareholders of such securities.

(2) The Commission may, as it determines consistent with the public interest and the protection of investors, by rule or order exempt any issuer or class of issuers from the rules prescribed under paragraph (1).

(3) For purposes of paragraph (1) of this subsection, the term “blank check company” means any development stage company that is issuing a penny stock (within the meaning of section 78c(a)(51) of this title) and that—

(A) has no specific business plan or purpose; or

(B) has indicated that its business plan is to merge with an unidentified company or companies.

(c) Disclosure requirements

(1) In general

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

(2) Content of regulations

In adopting regulations under this subsection, the Commission shall—

(A) set standards for the format of the data provided by issuers of an asset-backed security, which shall, to the extent feasible, facilitate comparison of such data across securities in similar types of asset classes; and

(B) require issuers of asset-backed securities, at a minimum, to disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including—

(i) data having unique identifiers relating to loan brokers or originators;

(ii) the nature and extent of the compensation of the broker or originator of the assets backing the security; and

(iii) the amount of risk retention by the originator and the securitizer of such assets.

(d) Registration statement for asset-backed securities

Not later than 180 days after July 21, 2010, the Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security (as that term is defined in section 78c(a)(77) of this title) that require any issuer of an asset-backed security—

(1) to perform a review of the assets underlying the asset-backed security; and

(2) to disclose the nature of the review under paragraph (1).


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15 U.S. Code § 77h. Taking effect of registration statements and amendments thereto

- **U.S. Code**

- **Notes**

(a) **Effective date of registration statement**
Except as hereinafter provided, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Commission may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except that an amendment filed with the consent of the Commission, prior to the effective date of the registration statement, or filed pursuant to an order of the Commission, shall be treated as a part of the registration statement.

(b) **Incomplete or inaccurate registration statement**
If it appears to the Commission that a registration statement is on its face incomplete or inaccurate in any material respect, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Commission) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order.
When such statement has been amended in accordance with such order the Commission shall so declare and the registration shall become effective at the time provided in subsection (a) or upon the date of such declaration, whichever date is the later.

(c) EFFECTIVE DATE OF AMENDMENT TO REGISTRATION STATEMENT
An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Commission not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Commission may determine, having due regard to the public interest and the protection of investors.

(d) UNTRUE STATEMENTS OR OMISSIONS IN REGISTRATION STATEMENT
If it appears to the Commission at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Commission) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Commission shall so declare and thereupon the stop order shall cease to be effective.

(e) EXAMINATION FOR ISSUANCE OF STOP ORDER
The Commission is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d). In making such examination the Commission or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Commission. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) NOTICE REQUIREMENTS
Any notice required under this section shall be sent to or served on the issuer, or, in case of a foreign government or political subdivision thereof, to or on the underwriter, or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration.
statement, properly directed in each case of telegraphic notice to the address given in such statement.


15 U.S. Code § 77h-1.Cease-and-desist proceedings

- U.S. Code
- Notes

(a) AUTHORITY OF COMMISSION
If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subchapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

(b) HEARING
The notice instituting proceedings pursuant to subsection (a) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

(c) TEMPORARY ORDER
(1) IN GENERAL
Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a), or the continuation thereof, is likely to result in significant dissipation or
conversion of assets, significant harm to investors, or substantial harm to the
public interest, including, but not limited to, losses to the Securities Investor
Protection Corporation, prior to the completion of the proceedings,
the Commission may enter a temporary order requiring the respondent to cease
and desist from the violation or threatened violation and to take such action to
prevent the violation or threatened violation and to prevent dissipation or
conversion of assets, significant harm to investors, or substantial harm to the
public interest as the Commission deems appropriate pending completion of
such proceeding. Such an order shall be entered only after notice and
opportunity for a hearing, unless the Commission determines that notice and
hearing prior to entry would be impracticable or contrary to the public interest. A
temporary order shall become effective upon service upon the respondent and,
unless set aside, limited, or suspended by the Commission or a court of
competent jurisdiction, shall remain effective and enforceable pending the
completion of the proceedings.

(2) Applicability
This subsection shall apply only to a respondent that acts, or, at the time of the
alleged misconduct acted, as a broker, dealer, investment adviser, investment
company, municipal securities dealer, government securities broker, government
securities dealer, or transfer agent, or is, or was at the time of the alleged
misconduct, an associated person of, or a person seeking to become associated
with, any of the foregoing.

(d) Review of temporary orders
(1) Commission review
At any time after the respondent has been served with a temporary cease-and-
desist order pursuant to subsection (c), the respondent may apply to
the Commission to have the order set aside, limited, or suspended. If the
respondent has been served with a temporary cease-and-desist order entered
without a prior Commission hearing, the respondent may, within 10 days after
the date on which the order was served, request a hearing on such application
and the Commission shall hold a hearing and render a decision on such
application at the earliest possible time.

(2) Judicial review
Within—
(A) 10 days after the date the respondent was served with a temporary cease-and-
desist order entered with a prior Commission hearing, or
(B) 10 days after the Commission renders a decision on an application and hearing
under paragraph (1), with respect to any temporary cease-and-desist order
entered without a prior Commission hearing,
the respondent may apply to the United States district court for the district in
which the respondent resides or has its principal place of business, or for the
District of Columbia, for an order setting aside, limiting, or suspending the
effectiveness or enforcement of the order, and the court shall have jurisdiction
to enter such an order. A respondent served with a temporary cease-and-desist
order entered without a prior Commission hearing may not apply to the court
except after hearing and decision by the Commission on the respondent’s
application under paragraph (1) of this subsection.

(3) No automatic stay of temporary order
The commencement of proceedings under paragraph (2) of this subsection shall
not, unless specifically ordered by the court, operate as a stay of
the Commission’s order.

(4) Exclusive review
Section 77i(a) of this title shall not apply to a temporary order entered pursuant
to this section.

(e) Authority to enter order requiring accounting and disgorgement
In any cease-and-desist proceeding under subsection (a), the Commission may
enter an order requiring accounting and disgorgement, including reasonable
interest. The Commission is authorized to adopt rules, regulations, and orders
concerning payments to investors, rates of interest, periods of accrual, and such
other matters as it deems appropriate to implement this subsection.

(f) Authority of the Commission to prohibit persons from serving as officers or
directors
In any cease-and-desist proceeding under subsection (a), the Commission may
issue an order to prohibit, conditionally or unconditionally, and permanently or
for such period of time as it shall determine, any person who has violated section 77q(a)(1) of this title or the rules or regulations thereunder, from
acting as an officer or director of any issuer that has a class of securities
registered pursuant to section 78l of this title, or that is required to file reports
pursuant to section 78o(d) of this title, if the conduct of that person
demonstrates unfitness to serve as an officer or director of any such issuer.

(g) Authority to impose money penalties
(1) Grounds In any cease-and-desist proceeding under subsection (a),
the Commission may impose a civil penalty on a person if the Commission finds,
on the record, after notice and opportunity for hearing, that—
(A) such person—
(i) is violating or has violated any provision of this subchapter, or any rule or
regulation issued under this subchapter; or
is or was a cause of the violation of any provision of this subchapter, or any rule or regulation thereunder; and

(B) such penalty is in the public interest.

(2) Maximum amount of penalty

(A) First tier
The maximum amount of a penalty for each act or omission described in paragraph (1) shall be $7,500 for a natural person or $75,000 for any other person.

(B) Second tier
Notwithstanding subparagraph (A), the maximum amount of penalty for each such act or omission shall be $75,000 for a natural person or $375,000 for any other person, if the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier Notwithstanding subparagraphs (A) and (B), the maximum amount of penalty for each such act or omission shall be $150,000 for a natural person or $725,000 for any other person, if—

(i) the act or omission described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(ii) such act or omission directly or indirectly resulted in—

(I) substantial losses or created a significant risk of substantial losses to other persons; or

(II) substantial pecuniary gain to the person who committed the act or omission.

(3) Evidence concerning ability to pay
In any proceeding in which the Commission may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission may, in its discretion, consider such evidence in determining whether such penalty is in the public interest. Such evidence may relate to the extent of the ability of the respondent to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of the respondent and the amount of the assets of the respondent.
15 U.S. Code § 77i. Court review of orders

(a) Any person aggrieved by an order of the Commission may obtain a review of such order in the court of appeals of the United States, within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such Court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or be set aside in whole or in part. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Commission, and thereupon the Commission shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission. The finding of the Commission as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The jurisdiction of the court shall be exclusive and its judgment and decree, affirming, modifying, or setting aside, in whole or in part, any order of the Commission, shall be final, subject to review by the Supreme Court of the United States.
United States upon certiorari or certification as provided in section 1254 of title 28.


15 U.S. Code § 77j. Information required in prospectus

- U.S. Code
- Notes

(a) INFORMATION IN REGISTRATION STATEMENT; DOCUMENTS NOT REQUIRED Except to the extent otherwise permitted or required pursuant to this subsection or subsections (c), (d), or (e)—

(1) a prospectus relating to a security other than a security issued by a foreign government or political subdivision thereof, shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (28) to (32), inclusive, of schedule A of section 77aa of this title;

(2) a prospectus relating to a security issued by a foreign government or political subdivision thereof shall contain the information contained in the registration statement, but it need not include the documents referred to in paragraphs (13) and (14) of schedule B of section 77aa of this title;

(3) notwithstanding the provisions of paragraphs (1) and (2) of this subsection when a prospectus is used more than nine months after the effective date of the registration statement, the information contained therein shall be as of a date not more than sixteen months prior to such use, so far as such information is known to the user of such prospectus or can be furnished by such user without unreasonable effort or expense;

(4) there may be omitted from any prospectus any of the information required under this subsection which the Commission may by rules or regulations designate as
not being necessary or appropriate in the public interest or for the protection of investors.

(b) **Summarizations and omissions allowed by rules and regulations**
In addition to the prospectus permitted or required in subsection (a), the Commission shall by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors permit the use of a prospectus for the purposes of subsection (b)(1) of section 77e of this title which omits in part or summarizes information in the prospectus specified in subsection (a). A prospectus permitted under this subsection shall, except to the extent the Commission by rules or regulations deemed necessary or appropriate in the public interest or for the protection of investors otherwise provides, be filed as part of the registration statement but shall not be deemed a part of such registration statement for the purposes of section 77k of this title. The Commission may at any time issue an order preventing or suspending the use of a prospectus permitted under this subsection, if it has reason to believe that such prospectus has not been filed (if required to be filed as part of the registration statement) or includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which such prospectus is or is to be used, not misleading. Upon issuance of an order under this subsection, the Commission shall give notice of the issuance of such order and opportunity for hearing by personal service or the sending of confirmed telegraphic notice. The Commission shall vacate or modify the order at any time for good cause or if such prospectus has been filed or amended in accordance with such order.

(c) **Additional information required by rules and regulations**
Any prospectus shall contain such other information as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

(d) **Classification of prospectuses**
In the exercise of its powers under subsections (a), (b), or (c), the Commission shall have authority to classify prospectuses according to the nature and circumstances of their use or the nature of the security, issue, issuer, or otherwise, and, by rules and regulations and subject to such terms and conditions as it shall specify therein, to prescribe as to each class the form and contents which it may find appropriate and consistent with the public interest and the protection of investors.

(e) **Information in conspicuous part of prospectus**
The statements or information required to be included in a prospectus by or under authority of subsections (a), (b), (c), or (d), when written, shall be placed in
a conspicuous part of the prospectus and, except as otherwise permitted by rules or regulations, in type as large as that used generally in the body of the prospectus.

(f) PROSPECTUS CONSISTING OF RADIO OR TELEVISION BROADCAST
In any case where a prospectus consists of a radio or television broadcast, copies thereof shall be filed with the Commission under such rules and regulations as it shall prescribe. The Commission may by rules and regulations require the filing with it of forms and prospectuses used in connection with the offer or sale of securities registered under this subchapter.


15 U.S. Code § 77k. Civil liabilities on account of false registration statement

• U.S. Code
• Notes

(a) PERSONS POSSESSING CAUSE OF ACTION; PERSONS LIABLE
In case any part of the registration statement, when such part became effective, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security (unless it is proved that at the time of such acquisition he knew of such untruth or omission) may, either at law or in equity, in any court of competent jurisdiction, sue—

(1) every person who signed the registration statement;

(2) every person who was a director of (or person performing similar functions) or partner in the issuer at the time of the filing of the part of the registration statement with respect to which his liability is asserted;

(3)
every person who, with his consent, is named in the registration statement as being or about to become a director, person performing similar functions, or partner;

(4) every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him;

(5) every underwriter with respect to such security.

If such person acquired the security after the issuer has made generally available to its security holders an earning statement covering a period of at least twelve months beginning after the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such omission, but such reliance may be established without proof of the reading of the registration statement by such person.

(b) Persons exempt from liability upon proof of issues

Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein who shall sustain the burden of proof—

(1) that before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement; or

(2) that if such part of the registration statement became effective without his knowledge, upon becoming aware of such fact he forthwith acted and advised the Commission, in accordance with paragraph (1) of this subsection, and, in addition, gave reasonable public notice that such part of the registration statement had become effective without his knowledge; or

(3)
that (A) as regards any part of the registration statement not purporting to be made on the authority of an expert, and not purporting to be a copy of or extract from a report or valuation of an expert, and not purporting to be made on the authority of a public official document or statement, he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and (B) as regards any part of the registration statement purporting to be made upon his authority as an expert or purporting to be a copy of or extract from a report or valuation of himself as an expert, (i) he had, after reasonable investigation, reasonable ground to believe and did believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or (ii) such part of the registration statement did not fairly represent his statement as an expert or was not a fair copy of or extract from his report or valuation as an expert; and (C) as regards any part of the registration statement purporting to be made on the authority of an expert (other than himself) or purporting to be a copy of or extract from a report or valuation of an expert (other than himself), he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement of the expert or was not a fair copy of or extract from the report or valuation of the expert; and (D) as regards any part of the registration statement purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, he had no reasonable ground to believe and did not believe, at the time such part of the registration statement became effective, that the statements therein were untrue, or that there was an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the registration statement did not fairly represent the statement made by the official person or was not a fair copy of or extract from the public official document.

(c) STANDARD OF REASONABLENESS
In determining, for the purpose of paragraph (3) of subsection (b) of this section, what constitutes reasonable investigation and reasonable ground for belief, the standard of reasonableness shall be that required of a prudent man in the management of his own property.
(d) Effective Date of Registration Statement with Regard to Underwriters

If any person becomes an underwriter with respect to the security after the part of the registration statement with respect to which his liability is asserted has become effective, then for the purposes of paragraph (3) of subsection (b) of this section such part of the registration statement shall be considered as having become effective with respect to such person as of the time when he became an underwriter.

(e) Measure of Damages; Undertaking for Payment of Costs

The suit authorized under subsection (a) may be to recover such damages as shall represent the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and (1) the value thereof as of the time such suit was brought, or (2) the price at which such security shall have been disposed of in the market before suit, or (3) the price at which such security shall have been disposed of after suit but before judgment if such damages shall be less than the damages representing the difference between the amount paid for the security (not exceeding the price at which the security was offered to the public) and the value thereof as of the time such suit was brought: Provided, That if the defendant proves that any portion or all of such damages represents other than the depreciation in value of such security resulting from such part of the registration statement, with respect to which his liability is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statements therein not misleading, such portion of or all such damages shall not be recoverable. In no event shall any underwriter (unless such underwriter shall have knowingly received from the issuer for acting as an underwriter some benefit, directly or indirectly, in which all other underwriters similarly situated did not share in proportion to their respective interests in the underwriting) be liable in any suit or as a consequence of suits authorized under subsection (a) for damages in excess of the total price at which the securities underwritten by him and distributed to the public were offered to the public. In any suit under this or any other section of this subchapter the court may, in its discretion, require an undertaking for the payment of the costs of such suit, including reasonable attorney’s fees, and if judgment shall be rendered against a party litigant, upon the motion of the other party litigant, such costs may be assessed in favor of such party litigant (whether or not such undertaking has been required) if the court believes the suit or the defense to have been without merit, in an amount sufficient to reimburse him for the reasonable expenses incurred by him, in connection with such suit, such costs to be taxed in the manner usually provided for taxing of costs in the court in which the suit was heard.

(f) Joint and Several Liability; Liability of Outside Director
(1) Except as provided in paragraph (2), all or any one or more of the persons specified in subsection (a) shall be jointly and severally liable, and every person who becomes liable to make any payment under this section may recover contribution as in cases of contract from any person who, if sued separately, would have been liable to make the same payment, unless the person who has become liable was, and the other was not, guilty of fraudulent misrepresentation.

(2) 
(A) The liability of an **outside director** under subsection (e) shall be determined in accordance with section 78u–4(f) of this title.

(B) For purposes of this paragraph, the term “**outside director**” shall have the meaning given such term by rule or regulation of the Commission.

(g) **Offering price to public as maximum amount recoverable**

In no case shall the amount recoverable under this section exceed the price at which the **security** was offered to the public.


15 U.S. Code § 77l. Civil liabilities arising in connection with prospectuses and communications

- **U.S. Code**
- **Notes**

(a) **In general** Any person who—

(1) offers or sells a **security** in violation of section 77e of this title, or

(2) offers or sells a **security** (whether or not exempted by the provisions of section 77c of this title, other than paragraphs (2) and (14) of subsection (a) of said section), by the use of any means or instruments of transportation or communication in **interstate commerce** or of the mails, by means of
a **prospectus** or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable, subject to subsection (b), to the person purchasing such **security** from him, who may sue either at law or in equity in any court of competent jurisdiction, to recover the consideration paid for such **security** with interest thereon, less the amount of any income received thereon, upon the tender of such **security**, or for damages if he no longer owns the **security**.

(b) **Loss causation**

In an action described in subsection (a)(2), if the person who offered or sold such **security** proves that any portion or all of the amount recoverable under subsection (a)(2) represents other than the depreciation in value of the subject **security** resulting from such part of the **prospectus** or oral communication, with respect to which the liability of that person is asserted, not being true or omitting to state a material fact required to be stated therein or necessary to make the statement not misleading, then such portion or amount, as the case may be, shall not be recoverable.


**15 U.S. Code § 77m. Limitation of actions**

- **U.S. Code**
- **Notes**

No action shall be maintained to enforce any liability created under section 77k or 77l(a)(2) of this title unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence, or, if the action is to enforce a liability created under section 77l(a)(1) of this title, unless brought within one year after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under
section 77k or 77l(a)(1) of this title more than three years after the security was bona fide offered to the public, or under section 77l(a)(2) of this title more than three years after the sale.


15 U.S. Code § 77n.Contrary stipulations void

- U.S. Code
- Notes

Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this subchapter or of the rules and regulations of the Commission shall be void.

(May 27, 1933, ch. 38, title I, § 14, 48 Stat. 84.)

15 U.S. Code § 77o.Liability of controlling persons

- U.S. Code
- Notes

(a) CONTROLLING PERSONS
Every person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with one or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under sections 77k or 77l of this title, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to whom such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

(b) PROSECUTION OF PERSONS WHO AID AND ABET VIOLATIONS
For purposes of any action brought by the Commission under subparagraph (b) or (d) of section 77t of this title, any person that knowingly or recklessly provides substantial assistance to another person in violation of a provision of this subchapter, or of any rule or regulation issued under this subchapter, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.


15 U.S. Code § 77p. Additional remedies; limitation on remedies

- U.S. Code

Notes

(a) Remedies additional

Except as provided in subsection (b), the rights and remedies provided by this subchapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

(b) Class action limitations

No covered class action based upon the statutory or common law of any State or subdivision thereof may be maintained in any State or Federal court by any private party alleging—

(1) an untrue statement or omission of a material fact in connection with the purchase or sale of a covered security; or

(2) that the defendant used or employed any manipulative or deceptive device or contrivance in connection with the purchase or sale of a covered security.

(c) Removal of covered class actions

Any covered class action brought in any State court involving a covered security, as set forth in subsection (b), shall be removable to the Federal district court for the district in which the action is pending, and shall be subject to subsection (b).

(d) Preservation of certain actions

(1) Actions under State law of State of incorporation

(A) Actions preserved
Notwithstanding subsection (b) or (c), a **covered class action** described in subparagraph (B) of this paragraph that is based upon the statutory or common law of the State in which the **issuer** is incorporated (in the case of a corporation) or organized (in the case of any other entity) may be maintained in a State or Federal court by a private party.

(B)Permissible actions A **covered class action** is described in this subparagraph if it involves—

(i) the purchase or sale of securities by the **issuer** or an **affiliate of the issuer** exclusively from or to holders of equity securities of the **issuer**; or

(ii) any recommendation, position, or other communication with respect to the sale of securities of the **issuer** that—

(I) is made by or on behalf of the **issuer** or an **affiliate of the issuer** to holders of equity securities of the **issuer**; and

(II) concerns decisions of those equity holders with respect to voting their securities, acting in response to a tender or exchange offer, or exercising dissenters’ or appraisal rights.

(2) **State actions**

(A)In general Notwithstanding any other provision of this section, nothing in this section may be construed to preclude a State or political subdivision thereof or a **State pension plan** from bringing an action involving a **covered security** on its own behalf, or as a member of a class comprised solely of other States, political subdivisions, or **State pension plans** that are named plaintiffs, and that have authorized participation, in such action.

(B)“State pension plan” defined For purposes of this paragraph, the term “**State pension plan**” means a pension plan established and maintained for its employees by the government of the State or political subdivision thereof, or by any agency or instrumentality thereof.

(3) **Actions under contractual agreements between issuers and indenture trustees** Notwithstanding subsection (b) or (c), a **covered class action** that seeks to enforce a contractual agreement between an **issuer** and an indenture trustee may be maintained in a State or Federal court by a party to the agreement or a successor to such party.

(4) **Remand of removed actions**
In an action that has been removed from a State court pursuant to subsection (c), if the Federal court determines that the action may be maintained in State court pursuant to this subsection, the Federal court shall remand such action to such State court.

(e) **Preservation of State Jurisdiction**

The securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions.

(f) **Definitions**

For purposes of this section, the following definitions shall apply:

1. **Affiliate of the Issuer**

The term “affiliate of the issuer” means a person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with, the issuer.

2. **Covered Class Action**

(A) In general

The term “covered class action” means—

(i) any single lawsuit in which—

(I) damages are sought on behalf of more than 50 persons or prospective class members, and questions of law or fact common to those persons or members of the prospective class, without reference to issues of individualized reliance on an alleged misstatement or omission, predominate over any questions affecting only individual persons or members; or

(II) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated, and questions of law or fact common to those persons or members of the prospective class predominate over any questions affecting only individual persons or members; or

(ii) any group of lawsuits filed in or pending in the same court and involving common questions of law or fact, in which—

(I) damages are sought on behalf of more than 50 persons; and

(II) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(B) Exception for derivative actions

Notwithstanding subparagraph (A), the term “covered class action” does not include an exclusively derivative action brought by one or more shareholders on behalf of a corporation.
(C) Counting of certain class members
For purposes of this paragraph, a corporation, investment company, pension plan, partnership, or other entity, shall be treated as one person or prospective class member, but only if the entity is not established for the purpose of participating in the action.

(D) Rule of construction
Nothing in this paragraph shall be construed to affect the discretion of a State court in determining whether actions filed in such court should be joined, consolidated, or otherwise allowed to proceed as a single action.

(3) Covered security
The term “covered security” means a security that satisfies the standards for a covered security specified in paragraph (1) or (2) of section 77r(b) of this title at the time during which it is alleged that the misrepresentation, omission, or manipulative or deceptive conduct occurred, except that such term shall not include any debt security that is exempt from registration under this subchapter pursuant to rules issued by the Commission under section 77d(2) [1] of this title.


15 U.S. Code § 77q. Fraudulent interstate transactions

- U.S. Code

- Notes

(a) Use of interstate commerce for purpose of fraud or deceit
It shall be unlawful for any person in the offer or sale of any securities (including security-based swaps) or any security-based swap agreement (as defined in section 78c(a)(78) [1] of this title) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

(1) to employ any device, scheme, or artifice to defraud, or

(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

(b) Use of interstate commerce for purpose of offering for sale

It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

(c) Exemptions of section 77c not applicable to this section

The exemptions provided in section 77c of this title shall not apply to the provisions of this section.

(d) Authority with respect to security-based swap agreements

The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 78c(a)(78) of this title) shall be subject to the restrictions and limitations of section 77b–1(b) of this title.


15 U.S. Code § 77r. Exemption from State regulation of securities offerings

- U.S. Code
- Notes

(a) Scope of exemption

Except as otherwise provided in this section, no law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof—
(1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that—
(A) is a covered security; or
(B) will be a covered security upon completion of the transaction;
(2) shall directly or indirectly prohibit, limit, or impose any conditions upon the use of—
(A) with respect to a covered security described in subsection (b), any offering document that is prepared by or on behalf of the issuer; or
(B) any proxy statement, report to shareholders, or other disclosure document relating to a covered security or the issuer thereof that is required to be and is filed with the Commission or any national securities organization registered under section 78o–3 of this title, except that this subparagraph does not apply to the laws, rules, regulations, or orders, or other administrative actions of the State of incorporation of the issuer; or
(3) shall directly or indirectly prohibit, limit, or impose conditions, based on the merits of such offering or issuer, upon the offer or sale of any security described in paragraph (1).

(b) Covered securities
For purposes of this section, the following are covered securities:

(1) Exclusive Federal registration of nationally traded securities
A security is a covered security if such security is—
(A) a security designated as qualified for trading in the national market system pursuant to section 78k–1(a)(2) of this title that is listed, or authorized for listing, on a national securities exchange (or tier or segment thereof); or
(B) a security of the same issuer that is equal in seniority or that is a senior security to a security described in subparagraph (A).

(2) Exclusive Federal registration of investment companies
A security is a covered security if such security is a security issued by an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.].

(3) Sales to qualified purchasers
A security is a covered security with respect to the offer or sale of the security to qualified purchasers, as defined by the Commission by rule. In prescribing such rule, the Commission may define the term “qualified purchaser” differently with respect to different categories of securities, consistent with the public interest and the protection of investors.

(4) Exemption in connection with certain exempt offerings
A security is a covered security with respect to a transaction that is exempt from registration under this subchapter pursuant to—

(A) paragraph (1) or (3) of section 77d [1] of this title, and the issuer of such security files reports with the Commission pursuant to section 78m or 78o(d) of this title;

(B) section 77d(4) [1] of this title;

(C) section 77d(6) [1] of this title;

(D) a rule or regulation adopted pursuant to section 77c(b)(2) of this title and such security is—

(i) offered or sold on a national securities exchange; or

(ii) offered or sold to a qualified purchaser, as defined by the Commission pursuant to paragraph (3) with respect to that purchase or sale;

(E) section 77c(a) of this title, other than the offer or sale of a security that is exempt from such registration pursuant to paragraph (4), (10), or (11) of such section, except that a municipal security that is exempt from such registration pursuant to paragraph (2) of such section is not a covered security with respect to the offer or sale of such security in the State in which the issuer of such security is located;

(F) Commission rules or regulations issued under section 77d(2) [1] of this title, except that this subparagraph does not prohibit a State from imposing notice filing requirements that are substantially similar to those required by rule or regulation under section 77d(2) [1] of this title that are in effect on September 1, 1996; or

(G) section 77d(a)(7) of this title.

(c) Preservation of authority
Consistent with this section, the securities commission (or any agency or office performing like functions) of any State shall retain jurisdiction under the laws of such State to investigate and bring enforcement actions, in connection with securities or securities transactions [2]

(A) with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, or funding portal; and

(B) in connection to [3] a transaction described under section 77d(6) of this title, with respect to—

(i) fraud or deceit; or

(ii) unlawful conduct by a broker, dealer, funding portal, or issuer.

Preservation of filing requirements

Nothing in this section prohibits the securities commission (or any agency or office performing like functions) of any State from requiring the filing of any document filed with the Commission pursuant to this subchapter, together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.

(B) Preservation of fees

(i) In general

Until otherwise provided by law, rule, regulation, or order, or other administrative action of any State or any political subdivision thereof, adopted after October 11, 1996, filing or registration fees with respect to securities or securities transactions shall continue to be collected in amounts determined pursuant to State law as in effect on the day before October 11, 1996.

(ii) Schedule

The fees required by this subparagraph shall be paid, and all necessary supporting data on sales or offers for sales required under subparagraph (A), shall be reported on the same schedule as would have been applicable had the issuer not relied on the exemption provided in subsection (a).

(C) Availability of preemption contingent on payment of fees

(i) In general
During the period beginning on October 11, 1996, and ending 3 years after October 11, 1996, the securities **commission** (or any agency or office performing like functions) of any **State** may require the registration of securities issued by any **issuer** who refuses to pay the fees required by subparagraph (B).

(ii) Delays
For purposes of this subparagraph, delays in payment of fees or underpayments of fees that are promptly remedied shall not constitute a refusal to pay fees.

(D) Fees not permitted on listed securities
Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any **security** that is a covered **security** pursuant to subsection (b) (1), or will be such a covered **security** upon completion of the transaction, or is a **security** of the same **issuer** that is equal in seniority or that is a **senior security** to a **security** that is a covered **security** pursuant to subsection (b)(1).

(F) **Fees not permitted on crowdfunded securities**
Notwithstanding subparagraphs (A), (B), and (C), no filing or fee may be required with respect to any **security** that is a covered **security** pursuant to subsection (b) (4)(B), or will be such a covered **security** upon completion of the transaction, except for the securities **commission** (or any agency or office performing like functions) of the **State** of the principal place of business of the **issuer**, or any **State** in which purchasers of 50 percent or greater of the aggregate amount of the issue are residents, provided that for purposes of this subparagraph, the term “**State**” includes the District of Columbia and the territories of the United **States**.

(3) Enforcement of requirements
Nothing in this section shall prohibit the securities **commission** (or any agency or office performing like functions) of any **State** from suspending the offer or sale of securities within such **State** as a result of the failure to submit any filing or fee required under law and permitted under this section.

(d) Definitions
For purposes of this section, the following definitions shall apply:

(1) Offering document The term “**offering document**”—
(A) has the meaning given the term “**prospectus**” in section 77b(a)(10) of this title, but without regard to the provisions of subparagraphs (a) and (b) of that section; and
(B) includes a communication that is not deemed to offer a **security** pursuant to a rule of the **Commission**.

(2) Prepared by or on behalf of the **issuer**
Not later than 6 months after October 11, 1996, the Commission shall, by rule, define the term “prepared by or on behalf of the issuer” for purposes of this section.

(3) **State**
The term “State” has the same meaning as in section 78c of this title.

(4) **Senior security**
The term “senior security” means any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.


15 U.S. Code § 77r–1. Preemption of State law

- **U.S. Code**
- **Notes**

(a) **Authority to purchase, hold, and invest in securities; securities considered as obligations of United States**

(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

(A) offered and sold pursuant to section 77d(5) of this title,

(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),

(C)
small business related securities (as defined in section 78c(a)(53) of this title), or
(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(2) Where State law limits the purchase, holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—
(A) offered and sold pursuant to section 77d(5) of this title,
(B) mortgage related securities (as that term is defined in section 78c(a)(41) of this title),
(C) small business related securities (as defined in section 78c(a)(53) of this title), or
(D) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,
shall be considered to be obligations issued by the United States for purposes of the limitation.

(b) Exception; validity of contracts under prior law
The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after October 3, 1984, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.
(c) **Registration and Qualification Requirements; Exemption; Subsequent Enactment by State**

Any securities that are offered and sold pursuant to section 77d(5) of this title, that are mortgage related securities (as that term is defined in section 78c(a) (41) of this title), or that are small business related securities (as defined in section 78c(a)(53) of this title) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. Any State may, prior to the expiration of seven years after October 3, 1984, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.

(d) **Implementation**

(1) **Limitation**

The provisions of subsections (a) and (b) concerning small business related securities shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of 7 years after September 23, 1994, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such small business related securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in this section. The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior to such enactment, and shall not require the sale or other disposition of any small business related securities acquired prior to the date of such enactment.

(2) **State Registration or Qualification Requirements**

Any State may, not later than 7 years after September 23, 1994, enact a statute that specifically refers to this section and requires registration or qualification of any small business related securities on terms that differ from those applicable to any obligation issued by the United States.


15 U.S. Code § 77s. Special powers of Commission
(a) Rules and Regulations
The Commission shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this subchapter, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical, and trade terms used in this subchapter. Among other things, the Commission shall have authority, for the purposes of this subchapter, to prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and earning statement, and the methods to be followed in the preparation of accounts, in the appraisal or valuation of assets and liabilities, in the determination of depreciation and depletion, in the differentiation of recurring and nonrecurring income, in the differentiation of investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. The rules and regulations of the Commission shall be effective upon publication in the manner which the Commission shall prescribe. No provision of this subchapter imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the Commission, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(b) Recognition of Accounting Standards
(1) In general In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], the Commission may recognize, as “generally accepted” for purposes of the securities laws, any accounting principles established by a standard setting body—
(A) that—
(i) is organized as a private entity;
(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year
period preceding such service, associated persons of any registered public accounting firm;

(iii) is funded as provided in section 7219 of this title;

(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(b)], because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

(2) Annual report
A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body.

(c) Production of evidence
For the purpose of all investigations which, in the opinion of the Commission, are necessary and proper for the enforcement of this subchapter, any member of the Commission or any officer or officers designated by it are empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Commission deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States or any Territory at any designated place of hearing.

(d) Federal and State cooperation
(1) The Commission is authorized to cooperate with any association composed of duly constituted representatives of State governments whose primary assignment is the regulation of the securities business within those States, and which, in the judgment of the Commission, could assist in effectuating greater
uniformity in Federal-State securities matters. The Commission shall, at its discretion, cooperate, coordinate, and share information with such an association for the purposes of carrying out the policies and projects set forth in paragraphs (2) and (3).

(2) It is the declared policy of this subsection that there should be greater Federal and State cooperation in securities matters, including—

(A) maximum effectiveness of regulation,

(B) maximum uniformity in Federal and State regulatory standards,

(C) minimum interference with the business of capital formation, and

(D) a substantial reduction in costs and paperwork to diminish the burdens of raising investment capital (particularly by small business) and to diminish the costs of the administration of the Government programs involved.

(3) The purpose of this subsection is to engender cooperation between the Commission, any such association of State securities officials, and other duly constituted securities associations in the following areas:

(A) the sharing of information regarding the registration or exemption of securities issues applied for in the various States;

(B) the development and maintenance of uniform securities forms and procedures; and

(C) the development of a uniform exemption from registration for small issuers which can be agreed upon among several States or between the States and the Federal Government. The Commission shall have the authority to adopt such an exemption as agreed upon for Federal purposes. Nothing in this chapter shall be construed as authorizing preemption of State law.

(4) In order to carry out these policies and purposes, the Commission shall conduct an annual conference as well as such other meetings as are deemed necessary, to which representatives from such securities associations, securities self-regulatory organizations, agencies, and private organizations involved in capital formation shall be invited to participate.

(5) For fiscal year 1982, and for each of the three succeeding fiscal years, there are authorized to be appropriated such amounts as may be necessary and
appropriate to carry out the policies, provisions, and purposes of this subsection. Any sums so appropriated shall remain available until expended.

(6) Notwithstanding any other provision of law, neither the Commission nor any other person shall be required to establish any procedures not specifically required by the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)], or by chapter 5 of title 5, in connection with cooperation, coordination, or consultation with—

(A) any association referred to in paragraph (1) or (3) or any conference or meeting referred to in paragraph (4), while such association, conference, or meeting is carrying out activities in furtherance of the provisions of this subsection; or

(B) any forum, agency, or organization, or group referred to in section 80c–1 of this title, while such forum, agency, organization, or group is carrying out activities in furtherance of the provisions of such section 80c–1.

As used in this paragraph, the terms “association”, “conference”, “meeting”, “forum”, “agency”, “organization”, and “group” include any committee, subgroup, or representative of such entities.

(e) Evaluation of Rules or Programs
For the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), and the purposes of considering, proposing, adopting, or engaging in any such rule or program or developing new rules or programs, the Commission may—

(1) gather information from and communicate with investors or other members of the public;

(2) engage in such temporary investor testing programs as the Commission determines are in the public interest or would protect investors; and

(3) consult with academics and consultants, as necessary to carry out this subsection.

(f) Rule of Construction
For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), any action taken under subsection (e) shall not be construed to be a collection of information.

(g) Funding for the GASB

(A) a reasonable annual accounting support fee to adequately fund the annual budget of the Governmental Accounting Standards Board (referred to in this subsection as the “GASB”); and

(B) rules and procedures, in consultation with the principal organizations representing State governors, legislators, local elected officials, and State and local finance officers, to provide for the equitable allocation, assessment, and collection of the accounting support fee established under subparagraph (A) from the members of the association, and the remittance of all such accounting support fees to the Financial Accounting Foundation.

(2) Annual budget
For purposes of this subsection, the annual budget of the GASB is the annual budget reviewed and approved according to the internal procedures of the Financial Accounting Foundation.

(3) Use of funds
Any fees or funds collected under this subsection shall be used to support the efforts of the GASB to establish standards of financial accounting and reporting recognized as generally accepted accounting principles applicable to State and local governments of the United States.

(4) Limitation on fee
The annual accounting support fees collected under this subsection for a fiscal year shall not exceed the recoverable annual budgeted expenses of the GASB (which may include operating expenses, capital, and accrued items).

(5) Rules of construction
(A) Fees not public monies
Accounting support fees collected under this subsection and other receipts of the GASB shall not be considered public monies of the United States.

(B) Limitation on authority of the Commission
Nothing in this subsection shall be construed to—

(i) provide the Commission or any national securities association direct or indirect oversight of the budget or technical agenda of the GASB; or

(ii) affect the setting of generally accepted accounting principles by the GASB.
(C) Noninterference with States
Nothing in this subsection shall be construed to impair or limit the authority of a State or local government to establish accounting and financial reporting standards.


15 U.S. Code § 77t. Injunctions and prosecution of offenses

- U.S. Code
- Notes

(a) Investigation of violations
Whenever it shall appear to the Commission, either upon complaint or otherwise, that the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, have been or are about to be violated, it may, in its discretion, either require or permit such person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate, and may investigate such facts.

(b) Action for injunction or criminal prosecution in district court
Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this subchapter, or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices to the Attorney General who may, in his discretion, institute the necessary criminal proceedings under this subchapter. Any such criminal proceeding may be brought either in the district wherein the transmittal
of the prospectus or security complained of begins, or in the district wherein such prospectus or security is received.

(c) Writ of mandamus
Upon application of the Commission, the district courts of the United States and the United States courts of any Territory shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this subchapter or any order of the Commission made in pursuance thereof.

(d) Money penalties in civil actions
(1) Authority of Commission
Whenever it shall appear to the Commission that any person has violated any provision of this subchapter, the rules or regulations thereunder, or a cease-and-desist order entered by the Commission pursuant to section 77h–1 of this title, other than by committing a violation subject to a penalty pursuant to section 78u–1 of this title, the Commission may bring an action in a United States district court to seek, and the court shall have jurisdiction to impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation.

(2) Amount of penalty
(A) First tier
The amount of the penalty shall be determined by the court in light of the facts and circumstances. For each violation, the amount of the penalty shall not exceed the greater of (i) $5,000 for a natural person or $50,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation.

(B) Second tier
Notwithstanding subparagraph (A), the amount of penalty for each such violation shall not exceed the greater of (i) $50,000 for a natural person or $250,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement.

(C) Third tier
Notwithstanding subparagraphs (A) and (B), the amount of penalty for each such violation shall not exceed the greater of (i) $100,000 for a natural person or $500,000 for any other person, or (ii) the gross amount of pecuniary gain to such defendant as a result of the violation, if—

(I) the violation described in paragraph (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and

(II)
such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons.

(3) Procedures for collection
(A) Payment of penalty to Treasury
A penalty imposed under this section shall be payable into the Treasury of the United States, except as otherwise provided in section 7246 of this title and section 78u–6 of this title.

(B) Collection of penalties
If a person upon whom such a penalty is imposed shall fail to pay such penalty within the time prescribed in the court’s order, the Commission may refer the matter to the Attorney General who shall recover such penalty by action in the appropriate United States district court.

(C) Remedy not exclusive
The actions authorized by this subsection may be brought in addition to any other action that the Commission or the Attorney General is entitled to bring.

(D) Jurisdiction and venue
For purposes of section 77v of this title, actions under this section shall be actions to enforce a liability or a duty created by this subchapter.

(4) Special provisions relating to a violation of a cease-and-desist order
In an action to enforce a cease-and-desist order entered by the Commission pursuant to section 77h–1 of this title, each separate violation of such order shall be a separate offense, except that in the case of a violation through a continuing failure to comply with such an order, each day of the failure to comply with the order shall be deemed a separate offense.

(e) Authority of court to prohibit persons from serving as officers and directors
In any proceeding under subsection (b), the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who violated section 77q(a)(1) of this title from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 78l of this title or that is required to file reports pursuant to section 78o(d) of this title if the person’s conduct demonstrates unfitness to serve as an officer or director of any such issuer.

(f) Prohibition of attorneys’ fees paid from Commission disgorgement funds
Except as otherwise ordered by the court upon motion by the Commission, or, in the case of an administrative action, as otherwise ordered by the Commission, funds disgorged as the result of an action brought by the Commission in Federal court, or as a result of any Commission administrative action, shall not be
distributed as payment for attorneys’ fees or expenses incurred by private parties seeking distribution of the disgorged funds.

(g) Authority of a Court to Prohibit Persons from Participating in an Offering of Penny Stock

(1) In General
In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

(2) Definition
For purposes of this subsection, the term “person participating in an offering of penny stock” includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term.


15 U.S. Code § 77u. Hearings by Commission

- U.S. Code
- Notes

All hearings shall be public and may be held before the Commission or an officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

(May 27, 1933, ch. 38, title I, § 21, 48 Stat. 86.)
The district courts of the United States and the United States courts of any Territory shall have jurisdiction of offenses and violations under this subchapter and under the rules and regulations promulgated by the Commission in respect thereto, and, concurrent with State and Territorial courts, except as provided in section 77p of this title with respect to covered class actions, of all suits in equity and actions at law brought to enforce any liability or duty created by this subchapter. Any such suit or action may be brought in the district wherein the defendant is found or is an inhabitant or transacts business, or in the district where the offer or sale took place, if the defendant participated therein, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. In any action or proceeding instituted by the Commission under this subchapter in a United States district court for any judicial district, a subpoena issued to compel the attendance of a witness or the production of documents or tangible things (or both) at a hearing or trial may be served at any place within the United States. Rule 45(c)(3)(A)(ii) of the Federal Rules of Civil Procedure shall not apply to a subpoena issued under the preceding sentence. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28. Except as provided in section 77p(c) of this title, no case arising under this subchapter and brought in any State court of competent jurisdiction shall be removed to any court of the United States. No costs shall be assessed for or against the Commission in any proceeding under this subchapter brought by or against it in the Supreme Court or such other courts.

In case of contumacy or refusal to obey a subpoena issued to any person, any of the said United States courts, within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides, upon application by the Commission may issue to such person an order requiring such person to appear before the Commission, or one of its examiners designated by it, there to produce documentary evidence if so ordered, or there to give evidence touching...
the matter in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(c) EXTRATERRITORIAL JURISDICTION The district courts of the United States and the United States courts of any Territory shall have jurisdiction of an action or proceeding brought or instituted by the Commission or the United States alleging a violation of section 77q(a) of this title involving—

(1) conduct within the United States that constitutes significant steps in furtherance of the violation, even if the securities transaction occurs outside the United States and involves only foreign investors; or

(2) conduct occurring outside the United States that has a foreseeable substantial effect within the United States.


15 U.S. Code § 77w. Unlawful representations

- U.S. Code
- Notes

Neither the fact that the registration statement for a security has been filed or is in effect nor the fact that a stop order is not in effect with respect thereto shall be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way passed upon the merits of, or given approval to, such security. It shall be unlawful to make, or cause to be made to any prospective purchaser any representation contrary to the foregoing provisions of this section.

(May 27, 1933, ch. 38, title I, § 23, 48 Stat. 87.)
Any person who willfully violates any of the provisions of this subchapter, or the rules and regulations promulgated by the Commission under authority thereof, or any person who willfully, in a registration statement filed under this subchapter, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be fined not more than $10,000 or imprisoned not more than five years, or both.


Nothing in this subchapter shall relieve any person from submitting to the respective supervisory units of the Government of the United States information, reports, or other documents that may be required by any provision of law.

(May 27, 1933, ch. 38, title I, § 25, 48 Stat. 87.)

If any provision of this chapter, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this chapter, or
the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(May 27, 1933, ch. 38, title I, § 26, 48 Stat. 88.)

15 U.S. Code § 77z–1. Private securities litigation

- U.S. Code
- Notes

(a) Private class actions
(1) In general
The provisions of this subsection shall apply to each private action arising under this subchapter that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.

(2) Certification filed with complaint
(A) In general Each plaintiff seeking to serve as a representative party on behalf of a class shall provide a sworn certification, which shall be personally signed by such plaintiff and filed with the complaint, that—
   (i) states that the plaintiff has reviewed the complaint and authorized its filing;
   (ii) states that the plaintiff did not purchase the security that is the subject of the complaint at the direction of plaintiff’s counsel or in order to participate in any private action arising under this subchapter;
   (iii) states that the plaintiff is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;
   (iv) sets forth all of the transactions of the plaintiff in the security that is the subject of the complaint during the class period specified in the complaint;
   (v) identifies any other action under this subchapter, filed during the 3-year period preceding the date on which the certification is signed by the plaintiff, in which the plaintiff has sought to serve, or served, as a representative party on behalf of a class; and
   (vi)
states that the plaintiff will not accept any payment for serving as a representative party on behalf of a class beyond the plaintiff’s pro rata share of any recovery, except as ordered or approved by the court in accordance with paragraph (4).

(B) Nonwaiver of attorney-client privilege
The certification filed pursuant to subparagraph (A) shall not be construed to be a waiver of the attorney-client privilege.

(3) Appointment of lead plaintiff
(A) Early notice to class members
(i) In general Not later than 20 days after the date on which the complaint is filed, the plaintiff or plaintiffs shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class—
(I) of the pendency of the action, the claims asserted therein, and the purported class period; and
(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

(ii) Multiple actions
If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter is filed, only the plaintiff or plaintiffs in the first filed action shall be required to cause notice to be published in accordance with clause (i).

(iii) Additional notices may be required under Federal rules
Notice required under clause (i) shall be in addition to any notice required pursuant to the Federal Rules of Civil Procedure.

(B) Appointment of lead plaintiff
(i) In general
Not later than 90 days after the date on which a notice is published under subparagraph (A)(i), the court shall consider any motion made by a purported class member in response to the notice, including any motion by a class member who is not individually named as a plaintiff in the complaint or complaints, and shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (hereafter in this paragraph referred to as the “most adequate plaintiff”) in accordance with this subparagraph.

(ii) Consolidated actions
If more than one action on behalf of a class asserting substantially the same claim or claims arising under this subchapter has been filed, and any party has sought to consolidate those actions for pretrial purposes or for trial, the court shall not make the determination required by clause (i) until after the decision on the motion to consolidate is rendered. As soon as practicable after such decision is rendered, the court shall appoint the most adequate plaintiff as lead plaintiff for the consolidated actions in accordance with this subparagraph.

(iii) Rebuttable presumption

(I) In general Subject to subclause (II), for purposes of clause (i), the court shall adopt a presumption that the most adequate plaintiff in any private action arising under this subchapter is the person or group of persons that—

(aa) has either filed the complaint or made a motion in response to a notice under subparagraph (A)(i);

(bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

(II) Rebuttal evidence The presumption described in subclause (I) may be rebutted only upon proof by a member of the purported plaintiff class that the presumptively most adequate plaintiff—

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

(iv) Discovery

For purposes of this subparagraph, discovery relating to whether a member or members of the purported plaintiff class is the most adequate plaintiff may be conducted by a plaintiff only if the plaintiff first demonstrates a reasonable basis for a finding that the presumptively most adequate plaintiff is incapable of adequately representing the class.

(v) Selection of lead counsel

The most adequate plaintiff shall, subject to the approval of the court, select and retain counsel to represent the class.

(vi) Restrictions on professional plaintiffs
Except as the court may otherwise permit, consistent with the purposes of this section, a person may be a lead plaintiff, or an officer, director, or fiduciary of a lead plaintiff, in no more than 5 securities class actions brought as plaintiff class actions pursuant to the Federal Rules of Civil Procedure during any 3-year period.

(4) Recovery by plaintiffs
The share of any final judgment or of any settlement that is awarded to a representative party serving on behalf of a class shall be equal, on a per share basis, to the portion of the final judgment or settlement awarded to all other members of the class. Nothing in this paragraph shall be construed to limit the award of reasonable costs and expenses (including lost wages) directly relating to the representation of the class to any representative party serving on behalf of the class.

(5) Restrictions on settlements under seal
The terms and provisions of any settlement agreement of a class action shall not be filed under seal, except that on motion of any party to the settlement, the court may order filing under seal for those portions of a settlement agreement as to which good cause is shown for such filing under seal. For purposes of this paragraph, good cause shall exist only if publication of a term or provision of a settlement agreement would cause direct and substantial harm to any party.

(6) Restrictions on payment of attorneys’ fees and expenses
Total attorneys’ fees and expenses awarded by the court to counsel for the plaintiff class shall not exceed a reasonable percentage of the amount of any damages and prejudgment interest actually paid to the class.

(7) Disclosure of settlement terms to class members
Any proposed or final settlement agreement that is published or otherwise disseminated to the class shall include each of the following statements, along with a cover page summarizing the information contained in such statements:

(A) Statement of plaintiff recovery
The amount of the settlement proposed to be distributed to the parties to the action, determined in the aggregate and on an average per share basis.

(B) Statement of potential outcome of case
  (i) Agreement on amount of damages
If the settling parties agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter, a statement concerning the average amount of such potential damages per share.

  (ii) Disagreement on amount of damages
If the parties do not agree on the average amount of damages per share that would be recoverable if the plaintiff prevailed on each claim alleged under this subchapter.
subchapter, a statement from each settling party concerning the issue or issues on which the parties disagree.

(iii) Inadmissibility for certain purposes
A statement made in accordance with clause (i) or (ii) concerning the amount of damages shall not be admissible in any Federal or State judicial action or administrative proceeding, other than an action or proceeding arising out of such statement.

(C) Statement of attorneys’ fees or costs sought
If any of the settling parties or their counsel intend to apply to the court for an award of attorneys’ fees or costs from any fund established as part of the settlement, a statement indicating which parties or counsel intend to make such an application, the amount of fees and costs that will be sought (including the amount of such fees and costs determined on an average per share basis), and a brief explanation supporting the fees and costs sought.

(D) Identification of lawyers’ representatives
The name, telephone number, and address of one or more representatives of counsel for the plaintiff class who will be reasonably available to answer questions from class members concerning any matter contained in any notice of settlement published or otherwise disseminated to the class.

(E) Reasons for settlement
A brief statement explaining the reasons why the parties are proposing the settlement.

(F) Other information
Such other information as may be required by the court.

(8) Attorney conflict of interest
If a plaintiff class is represented by an attorney who directly owns or otherwise has a beneficial interest in the securities that are the subject of the litigation, the court shall make a determination of whether such ownership or other interest constitutes a conflict of interest sufficient to disqualify the attorney from representing the plaintiff class.

(b) Stay of discovery; preservation of evidence
(1) In general
In any private action arising under this subchapter, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss, unless the court finds, upon the motion of any party, that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(2) Preservation of evidence
During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations (including electronically recorded or stored data), and tangible objects that are in the custody or control of such person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Federal Rules of Civil Procedure.

(3) SANCTION FOR WILLFUL VIOLATION
A party aggrieved by the willful failure of an opposing party to comply with paragraph (2) may apply to the court for an order awarding appropriate sanctions.

(4) CIRCUMVENTION OF STAY OF DISCOVERY
Upon a proper showing, a court may stay discovery proceedings in any private action in a State court as necessary in aid of its jurisdiction, or to protect or effectuate its judgments, in an action subject to a stay of discovery pursuant to this subsection.

(c) SANCTIONS FOR ABUSIVE LITIGATION
(1) MANDATORY REVIEW BY COURT
In any private action arising under this subchapter, upon final adjudication of the action, the court shall include in the record specific findings regarding compliance by each party and each attorney representing any party with each requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion.

(2) MANDATORY SANCTIONS
If the court makes a finding under paragraph (1) that a party or attorney violated any requirement of Rule 11(b) of the Federal Rules of Civil Procedure as to any complaint, responsive pleading, or dispositive motion, the court shall impose sanctions on such party or attorney in accordance with Rule 11 of the Federal Rules of Civil Procedure. Prior to making a finding that any party or attorney has violated Rule 11 of the Federal Rules of Civil Procedure, the court shall give such party or attorney notice and an opportunity to respond.

(3) PRESUMPTION IN FAVOR OF ATTORNEYS’ FEES AND COSTS
(A) In general Subject to subparagraphs (B) and (C), for purposes of paragraph (2), the court shall adopt a presumption that the appropriate sanction—

(i) for failure of any responsive pleading or dispositive motion to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys’ fees and other expenses incurred as a direct result of the violation; and
for substantial failure of any complaint to comply with any requirement of Rule 11(b) of the Federal Rules of Civil Procedure is an award to the opposing party of the reasonable attorneys' fees and other expenses incurred in the action.

(B) Rebuttal evidence The presumption described in subparagraph (A) may be rebutted only upon proof by the party or attorney against whom sanctions are to be imposed that—

(i) the award of attorneys' fees and other expenses will impose an unreasonable burden on that party or attorney and would be unjust, and the failure to make such an award would not impose a greater burden on the party in whose favor sanctions are to be imposed; or

(ii) the violation of Rule 11(b) of the Federal Rules of Civil Procedure was de minimis.

(C) Sanctions
If the party or attorney against whom sanctions are to be imposed meets its burden under subparagraph (B), the court shall award the sanctions that the court deems appropriate pursuant to Rule 11 of the Federal Rules of Civil Procedure.

(d) Defendant's right to written interrogatories
In any private action arising under this subchapter in which the plaintiff may recover money damages only on proof that a defendant acted with a particular state of mind, the court shall, when requested by a defendant, submit to the jury a written interrogatory on the issue of each such defendant's state of mind at the time the alleged violation occurred.


15 U.S. Code § 77z–2. Application of safe harbor for forward-looking statements

- U.S. Code
- Notes
(a) **APPLICABILITY** This section shall apply only to a forward-looking statement made by—

(1) an **issuer** that, at the time that the statement is made, is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title;

(2) a person acting on behalf of such **issuer**;

(3) an outside reviewer retained by such **issuer** making a statement on behalf of such **issuer**; or

(4) an underwriter, with respect to information provided by such **issuer** or information derived from information provided by the **issuer**.

(b) **EXCLUSIONS** Except to the extent otherwise specifically provided by rule, regulation, or order of the **Commission**, this section shall not apply to a forward-looking statement—

(1) that is made with respect to the business or operations of the **issuer**, if the **issuer**—

(A) during the 3-year period preceding the date on which the statement was first made—

(i) was convicted of any felony or misdemeanor described in clauses (i) through (iv) of section 78o(b)(4)(B) of this title; or

(ii) has been made the subject of a judicial or administrative decree or order arising out of a governmental action that—

(I) prohibits future violations of the antifraud provisions of the **securities laws**;

(II) requires that the **issuer** cease and desist from violating the antifraud provisions of the **securities laws**; or

(III) determines that the **issuer** violated the antifraud provisions of the **securities laws**;

(B) makes the forward-looking statement in connection with an offering of securities by a blank check company;

(C) issues **penny stock**;

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(D) makes the forward-looking statement in connection with a rollup transaction; or
(E) makes the forward-looking statement in connection with a going private transaction; or
(2) that is—
(A) included in a financial statement prepared in accordance with generally accepted accounting principles;
(B) contained in a registration statement of, or otherwise issued by, an investment company;
(C) made in connection with a tender offer;
(D) made in connection with an initial public offering;
(E) made in connection with an offering by, or relating to the operations of, a partnership, limited liability company, or a direct participation investment program; or
(F) made in a disclosure of beneficial ownership in a report required to be filed with the Commission pursuant to section 78m(d) of this title.

(c) Safe Harbor
(1) In general Except as provided in subsection (b), in any private action arising under this subchapter that is based on an untrue statement of a material fact or omission of a material fact necessary to make the statement not misleading, a person referred to in subsection (a) shall not be liable with respect to any forward-looking statement, whether written or oral, if and to the extent that—
(A) the forward-looking statement is—
(i) identified as a forward-looking statement, and is accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement; or
(ii) immaterial; or
(B) the plaintiff fails to prove that the forward-looking statement—
(i)
if made by a natural person, was made with actual knowledge by that person that the statement was false or misleading; or
(ii) if made by a business entity, was—
(I) made by or with the approval of an executive officer of that entity, and
(II) made or approved by such officer with actual knowledge by that officer that the statement was false or misleading.

(2) Oral forward-looking statements In the case of an oral forward-looking statement made by an issuer that is subject to the reporting requirements of section 78m(a) or section 78o(d) of this title, or by a person acting on behalf of such issuer, the requirement set forth in paragraph (1)(A) shall be deemed to be satisfied—
(A) if the oral forward-looking statement is accompanied by a cautionary statement—
(i) that the particular oral statement is a forward-looking statement; and
(ii) that the actual results could differ materially from those projected in the forward-looking statement; and
(B) if—
(i) the oral forward-looking statement is accompanied by an oral statement that additional information concerning factors that could cause actual results to differ materially from those in the forward-looking statement is contained in a readily available written document, or portion thereof;
(ii) the accompanying oral statement referred to in clause (i) identifies the document, or portion thereof, that contains the additional information about those factors relating to the forward-looking statement; and
(iii) the information contained in that written document is a cautionary statement that satisfies the standard established in paragraph (1)(A).

(3) Availability
Any document filed with the Commission or generally disseminated shall be deemed to be readily available for purposes of paragraph (2).

(4) Effect on other safe harbors
The exemption provided for in paragraph (1) shall be in addition to any exemption that the Commission may establish by rule or regulation under subsection (g).

(d) Duty to update
Nothing in this section shall impose upon any person a duty to update a forward-looking statement.

(e) Dispositive motion
On any motion to dismiss based upon subsection (c)(1), the court shall consider any statement cited in the complaint and cautionary statement accompanying the forward-looking statement, which are not subject to material dispute, cited by the defendant.

(f) Stay pending decision on motion
In any private action arising under this subchapter, the court shall stay discovery (other than discovery that is specifically directed to the applicability of the exemption provided for in this section) during the pendency of any motion by a defendant for summary judgment that is based on the grounds that—

(1) the statement or omission upon which the complaint is based is a forward-looking statement within the meaning of this section; and

(2) the exemption provided for in this section precludes a claim for relief.

(g) Exemption authority
In addition to the exemptions provided for in this section, the Commission may, by rule or regulation, provide exemptions from or under any provision of this subchapter, including with respect to liability that is based on a statement or that is based on projections or other forward-looking information, if and to the extent that any such exemption is consistent with the public interest and the protection of investors, as determined by the Commission.

(h) Effect on other authority of Commission
Nothing in this section limits, either expressly or by implication, the authority of the Commission to exercise similar authority or to adopt similar rules and regulations with respect to forward-looking statements under any other statute under which the Commission exercises rulemaking authority.

(i) Definitions
For purposes of this section, the following definitions shall apply:

(1) Forward-looking statement
The term “forward-looking statement” means—

(A) a statement containing a projection of revenues, income (including income loss), earnings (including earnings loss) per share, capital expenditures, dividends, capital structure, or other financial items;
(B) a statement of the plans and objectives of management for future operations, including plans or objectives relating to the products or services of the issuer;

(C) a statement of future economic performance, including any such statement contained in a discussion and analysis of financial condition by the management or in the results of operations included pursuant to the rules and regulations of the Commission;

(D) any statement of the assumptions underlying or relating to any statement described in subparagraph (A), (B), or (C);

(E) any report issued by an outside reviewer retained by an issuer, to the extent that the report assesses a forward-looking statement made by the issuer; or

(F) a statement containing a projection or estimate of such other items as may be specified by rule or regulation of the Commission.

(2) INVESTMENT COMPANY
The term “investment company” has the same meaning as in section 80a–3(a) of this title.

(3) PENNY STOCK
The term “penny stock” has the same meaning as in section 78c(a)(51) of this title, and the rules and regulations, or orders issued pursuant to that section.

(4) GOING PRIVATE TRANSACTION
The term “going private transaction” has the meaning given that term under the rules or regulations of the Commission issued pursuant to section 78m(e) of this title.

(5) SECURITIES LAWS
The term “securities laws” has the same meaning as in section 78c of this title.

(6) PERSON ACTING ON BEHALF OF AN ISSUER
The term “person acting on behalf of an issuer” means an officer, director, or employee of the issuer.

(7) OTHER TERMS
The terms “blank check company”, “rollup transaction”, “partnership”, “limited liability company”, “executive officer of an entity” and “direct participation investment program”, have the meanings given those terms by rule or regulation of the Commission.
15 U.S. Code § 77z–2a. Conflicts of interest relating to certain securitizations

(a) In general
An underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, of an asset-backed security (as such term is defined in section 78c of this title, which for the purposes of this section shall include a synthetic asset-backed security), shall not, at any time for a period ending on the date that is one year after the date of the first closing of the sale of the asset-backed security, engage in any transaction that would involve or result in any material conflict of interest with respect to any investor in a transaction arising out of such activity.

(b) Rulemaking
Not later than 270 days after July 21, 2010, the Commission shall issue rules for the purpose of implementing subsection (a).

(c) Exception The prohibitions of subsection (a) shall not apply to—
(1) risk-mitigating hedging activities in connection with positions or holdings arising out of the underwriting, placement, initial purchase, or sponsorship of an asset-backed security, provided that such activities are designed to reduce the specific risks to the underwriter, placement agent, initial purchaser, or sponsor associated with positions or holdings arising out of such underwriting, placement, initial purchase, or sponsorship; or
(2) purchases or sales of asset-backed securities made pursuant to and consistent with—
(A)
commitments of the underwriter, placement agent, initial purchaser, or sponsor, or any affiliate or subsidiary of any such entity, to provide liquidity for the asset-backed security, or

(B) bona fide market-making in the asset backed security.

(d) Rule of construction
This subsection [1] shall not otherwise limit the application of section 78o–11 of this title.


- U.S. Code
- Notes

The Commission, by rule or regulation, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of this subchapter or of any rule or regulation issued under this subchapter, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.


15 U.S. Code § 77aa. Schedule of information required in registration statement

- U.S. Code
- Notes

(prev next)
SCHEDULE A

(1) The name under which the issuer is doing or intends to do business;

(2) the name of the State or other sovereign power under which the issuer is organized;

(3) the location of the issuer’s principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;

(4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4), (5), and (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and
exchange rights, rights to dividends, profits, or capital of each class, with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded $25,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(17)
all **commissions** or discounts paid or to be paid, directly or indirectly, by the **issuer** to the underwriters in respect of the sale of the **security** to be offered. **Commissions** shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such **security**. A **commission** paid or to be paid in connection with the sale of such **security** by a person in which the **issuer** has an interest or which is controlled or directed by, or under common control with, the **issuer** shall be deemed to have been paid by the **issuer**. Where any such **commission** is paid the amount of such **commission** paid to each underwriter shall be stated;

(18)
the amount or estimated amounts, itemized in reasonable detail, of expenses, other than **commissions** specified in paragraph (17) of this schedule, incurred or borne by or for the account of the **issuer** in connection with the sale of the **security** to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19)
the net proceeds derived from any **security** sold by the **issuer** during the two years preceding the filing of the **registration statement**, the price at which such **security** was offered to the public, and the names of the principal underwriters of such **security**;

(20)
any amount paid within two years preceding the filing of the **registration statement** or intended to be paid to any promoter and the consideration for any such payment;

(21)
the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the **security** to be offered, the amount of any **commission** payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22)
full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the **issuer**, in any property acquired, not in the ordinary course of
business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of $2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Commission shall prescribe (with intangible items segregated), including any loan in excess of $20,000 to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Commission shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date
of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Commission shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the forms thereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Commission determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this subchapter, and brought up to date, (a) a copy of its articles of incorporation, with all
amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name, if the issuer be a corporation; (b) copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, or any other form of organization; and

(32)
a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Commission shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

SCHEDULE B

(1) Name of borrowing government or subdivision thereof;

(2) specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(3) the amount of the funded debt and the estimated amount of the floating debt outstanding and to be created by the security to be offered, excluding intergovernmental debt, and a brief description of the date, maturity, character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(4) whether or not the issuer or its predecessor has, within a period of twenty years prior to the filing of the registration statement, defaulted on the principal or interest of any external security, excluding intergovernmental debt, and, if so, the date, amount, and circumstances of such default, and the terms of the succeeding arrangement, if any;
(5) the receipts, classified by source, and the expenditures, classified by purpose, in such detail and form as the Commission shall prescribe for the latest fiscal year for which such information is available and the two preceding fiscal years, year by year;

(6) the names and addresses of the underwriters;

(7) the name and address of its authorized agent, if any, in the United States;

(8) the estimated net proceeds to be derived from the sale in the United States of the security to be offered;

(9) the price at which it is proposed that the security shall be offered in the United States to the public or the method by which such price is computed. A variation in price may be proposed prior to the date of the public offering of the security, but the Commission shall immediately be notified of such variation;

(10) all commissions paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which the underwriter is interested, made, in connection with the sale of such security. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated;

(11) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than the commissions specified in paragraph (10) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, and other charges;

(12) the names and addresses of counsel who have passed upon the legality of the issue;

(13) a copy of any agreement or agreements made with any underwriter governing the sale of the security within the United States; and

(14) an agreement of the issuer to furnish a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation, where necessary, into
the English language. Such opinion shall set out in full all laws, decrees, ordinances, or other acts of Government under which the issue of such security has been authorized.


17 CFR § 270.23c-1 - Repurchase of securities by closed-end companies.

- **CFR**

§ 270.23c-1 Repurchase of securities by closed-end companies.

(a) A registered closed-end company may purchase for cash a security of which it is the issuer, subject to the following conditions:

(1) If the security is a stock entitled to cumulative dividends, such dividends are not in arrears.

(2) If the security is a stock not entitled to cumulative dividends, at least 90 percent of the net income of the issuer for the last preceding fiscal year, determined in accordance with good accounting practice and not including profits or losses realized from the sale of securities or other properties, was distributed to its shareholders during such fiscal year or within 60 days after the close of such fiscal year.

(3) If the security to be purchased is junior to any class of outstanding security of the issuer representing indebtedness (except notes or other evidences of indebtedness held by a bank or other person, the issuance of which did not involve a public offering) all securities of such class shall have an asset coverage of at least 300 percent immediately after such purchase; and if the security to be purchased is junior to any class of outstanding senior security of the issuer which is a stock, all securities of such class shall have an asset coverage of at least 200 percent immediately after such purchase, and shall not be in arrears as to dividends.

(4) The seller of the security is not to the knowledge of the issuer an affiliated person of the issuer.

(5) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase.

(6) The purchase is made at a price not above the market value, if any, or the asset value of such security, whichever is lower, at the time of such purchase.
(7) The **issuer** discloses to the seller or, if the seller is acting through a broker, to the seller’s broker, either prior to or at the time of purchase the approximate or estimated asset coverage per unit of the security to be purchased.

(8) No brokerage commission is paid by the **issuer** to any **affiliated person** of the **issuer** in connection with the purchase.

(9) The purchase is not made in a manner or on a basis which discriminates unfairly against any holders of the class of securities purchased.

(10) If the security is a stock, the **issuer** has, within the preceding six months, informed stockholders of its intention to purchase stock of such class by letter or report addressed to all the stockholders of such class.

(11) The **issuer** files with the Commission, as an exhibit to Form N-CSR (§ 249.331 and § 274.128), a copy of any written solicitation to purchase securities under this **section** sent or given during the period covered by the report by or on behalf of the **issuer** to 10 or more persons.

(b) Notwithstanding the conditions of **paragraph (a)** of this **section**, a closed-end company may purchase fractional interests in, or fractional rights to receive, any security of which it is the **issuer**.

(c) This **rule** does not apply to purchase of securities made pursuant to **section** 23(c)(1) or (2) of the Act (54 Stat. 825; 15 U.S.C. 80a-23). A registered closed-end company may file an application with the Commission for an order under **section** 23(c)(3) of the Act permitting the purchase of any security of which it is the **issuer** which does not meet the conditions of this **rule** and which is not to be made pursuant to **section** 23(c)(1) or (2) of the Act.

(d) This **rule** relates exclusively to the requirements of **section** 23(c) of the Act, and the provisions hereof shall not be construed to authorize any action which contravenes any other applicable law, statutory or otherwise, or the provision of any indenture or other instrument pursuant to which securities of the **issuer** were issued.

[Rule N-23C-1, 7 FR 10424, Dec. 15, 1942, as amended at 68 FR 64975, Nov. 17, 2003]

**Cross Reference:**
For interpretative release applicable to § 270.23c-1, see No. 78 in tabulation, **part 271** of this chapter.
§ 242.600 NMS security designation and definitions.

(a) The term national market system security as used in section 11A(a)(2) of the Act (15 U.S.C. 78k-1(a)(2)) shall mean any NMS security as defined in paragraph (b) of this section.

(b) For purposes of Regulation NMS (§§ 242.600 through 242.612), the following definitions shall apply:

1. **Actionable indication of interest** means any indication of interest that explicitly or implicitly conveys all of the following information with respect to any order available at the venue sending the indication of interest:
   - (i) Symbol;
   - (ii) **Side** (buy or sell);
   - (iii) A **price** that is equal to or better than the national best bid for buy orders and the national best offer for sell orders; and
   - (iv) A size that is at least equal to one round lot.

2. **Aggregate quotation size** means the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any national securities exchange bids or offers for an NMS security at the same price.

3. **Alternative trading system** has the meaning provided in § 242.300(a).

4. **Automated quotation** means a quotation displayed by a trading center that:
   - (i) Permits an incoming order to be marked as immediate-or-cancel;
   - (ii) Immediately and automatically executes an order marked as immediate-or-cancel against the displayed quotation up to its full size;
   - (iii) Immediately and automatically cancels any unexecuted portion of an order marked as immediate-or-cancel without routing the order elsewhere;
   - (iv) Immediately and automatically transmits a response to the sender of an order marked as immediate-or-cancel indicating the action taken with respect to such order; and
(v) Immediately and automatically displays information that updates the displayed quotation to reflect any change to its material terms.

(5) **Automated trading center** means a trading center that:

(i) Has implemented such systems, procedures, and rules as are necessary to render it capable of displaying quotations that meet the requirements for an automated quotation set forth in paragraph (b)(4) of this section;

(ii) Identifies all quotations other than automated quotations as manual quotations;

(iii) Immediately identifies its quotations as manual quotations whenever it has reason to believe that it is not capable of displaying automated quotations; and

(iv) Has adopted reasonable standards limiting when its quotations change from automated quotations to manual quotations, and vice versa, to specifically defined circumstances that promote fair and efficient access to its automated quotations and are consistent with the maintenance of fair and orderly markets.

(6) **Average effective spread** means the share-weighted average of effective spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer at the time of order receipt and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer at the time of order receipt and the execution price.

(7) **Average realized spread** means the share-weighted average of realized spreads for order executions calculated, for buy orders, as double the amount of difference between the execution price and the midpoint of the national best bid and national best offer five minutes after the time of order execution and, for sell orders, as double the amount of difference between the midpoint of the national best bid and national best offer five minutes after the time of order execution and the execution price; provided, however, that the midpoint of the final national best bid and national best offer disseminated for regular trading hours shall be used to calculate a realized spread if it is disseminated less than five minutes after the time of order execution.

(8) **Best bid and best offer** mean the highest priced bid and the lowest priced offer.
(9) **Bid or offer** means the bid **price** or the offer **price** communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any **customer**, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

(10) **Block size with respect to an order** means it is:

   (i) Of at least 10,000 shares; or

   (ii) For a quantity of stock having a market value of at least $200,000.

(11) **Categorized by order size** means dividing **orders** into separate categories for sizes from 100 to 499 shares, from 500 to 1999 shares, from 2000 to 4999 shares, and 5000 or greater shares.

(12) **Categorized by order type** means dividing **orders** into separate categories for market **orders**, marketable limit **orders**, inside-the-quote limit **orders**, at-the-quote limit **orders**, and near-the-quote limit **orders**.

(13) **Categorized by security** means dividing **orders** into separate categories for each **NMS stock** that is included in a report.

(14) **Consolidated display means**:

   (i) The prices, sizes, and market identifications of the national best bid and national best offer for a security; and

   (ii) Consolidated last sale information for a security.

(15) **Consolidated last sale information** means the **price**, volume, and market identification of the most recent transaction report for a security that is disseminated pursuant to an effective national market system plan.

(16) **Covered order** means any market **order** or any limit **order** (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any **order** for which the **customer** requests special handling for execution, including, but not limited to, **orders** to be executed at a market opening **price** or a market closing **price**, **orders** submitted with stop **prices**, **orders** to be executed only at their full size, **orders** to be executed on a particular type of tick or bid, **orders** submitted on a “not held” basis, **orders** for other than regular settlement, and **orders** to be executed at **prices** unrelated to the market **price** of the security at the **time of execution**.

(17) **Customer** means any person that is not a broker or dealer.
(18) Customer limit order means an order to buy or sell an NMS stock at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(19) Customer order means an order to buy or sell an NMS security that is not for the account of a broker or dealer, but shall not include any order for a quantity of a security having a market value of at least $50,000 for an NMS security that is an option contract and a market value of at least $200,000 for any other NMS security.

(20) Directed order means an order from a customer that the customer specifically instructed the broker or dealer to route to a particular venue for execution.

(21) Dynamic market monitoring device means any service provided by a vendor on an interrogation device or other display that:

   (i) Permits real-time monitoring, on a dynamic basis, of transaction reports, last sale data, or quotations with respect to a particular security; and

   (ii) Displays the most recent transaction report, last sale data, or quotation with respect to that security until such report, data, or quotation has been superseded or supplemented by the display of a new transaction report, last sale data, or quotation reflecting the next reported transaction or quotation in that security.

(22) Effective national market system plan means any national market system plan approved by the Commission (either temporarily or on a permanent basis) pursuant to § 242.608.

(23) Effective transaction reporting plan means any transaction reporting plan approved by the Commission pursuant to § 242.601.

(24) Electronic communications network means, for the purposes of § 242.602(b)(5), any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term electronic communications network shall not include:

   (i) Any system that crosses multiple orders at one or more specified times at a single price set by the system (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or
(ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

(25) Exchange market maker means any member of a national securities exchange that is registered as a specialist or market maker pursuant to the rules of such exchange.

(26) Exchange-traded security means any NMS security or class of NMS securities listed and registered, or admitted to unlisted trading privileges, on a national securities exchange; provided, however, that securities not listed on any national securities exchange that are traded pursuant to unlisted trading privileges are excluded.

(27) Executed at the quote means, for buy orders, execution at a price equal to the national best offer at the time of order receipt and, for sell orders, execution at a price equal to the national best bid at the time of order receipt.

(28) Executed outside the quote means, for buy orders, execution at a price higher than the national best offer at the time of order receipt and, for sell orders, execution at a price lower than the national best bid at the time of order receipt.

(29) Executed with price improvement means, for buy orders, execution at a price lower than the national best offer at the time of order receipt and, for sell orders, execution at a price higher than the national best bid at the time of order receipt.

(30) Inside-the-quote limit order, at-the-quote limit order, and near-the-quote limit order mean non-marketable buy orders with limit prices that are, respectively, higher than, equal to, and lower by $0.10 or less than the national best bid at the time of order receipt, and non-marketable sell orders with limit prices that are, respectively, lower than, equal to, and higher by $0.10 or less than the national best offer at the time of order receipt.

(31) Intermarket sweep order means a limit order for an NMS stock that meets the following requirements:

   (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and

   (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is
superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders also must be marked as intermarket sweep orders.

(32) Interrogation device means any securities information retrieval system capable of displaying transaction reports, last sale data, or quotations upon inquiry, on a current basis on a terminal or other device.

(33) Joint self-regulatory organization plan means a plan as to which two or more self-regulatory organizations, acting jointly, are sponsors.

(34) Last sale data means any price or volume data associated with a transaction.

(35) Listed equity security means any equity security listed and registered, or admitted to unlisted trading privileges, on a national securities exchange.

(36) Listed option means any option traded on a registered national securities exchange or automated facility of a national securities association.

(37) Make publicly available means posting on an Internet Web site that is free and readily accessible to the public, furnishing a written copy to customers on request without charge, and notifying customers at least annually in writing that a written copy will be furnished on request.

(38) Manual quotation means any quotation other than an automated quotation.

(39) Market center means any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.

(40) Marketable limit order means any buy order with a limit price equal to or greater than the national best offer at the time of order receipt, or any sell order with a limit price equal to or less than the national best bid at the time of order receipt.

(41) Moving ticker means any continuous real-time moving display of transaction reports or last sale data (other than a dynamic market monitoring device) provided on an interrogation or other display device.

(42) Nasdaq security means any registered security listed on The Nasdaq Stock Market, Inc.

(43) National best bid and national best offer means, with respect to quotations for an NMS security, the best bid and best offer for such security that are calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan; provided, that in the event two or more market centers transmit to
the plan processor pursuant to such plan identical bids or offers for an NMS security, the best bid or best offer (as the case may be) shall be determined by ranking all such identical bids or offers (as the case may be) first by size (giving the highest ranking to the bid or offer associated with the largest size), and then by time (giving the highest ranking to the bid or offer received first in time).

(44) National market system plan means any joint self-regulatory organization plan in connection with:

(i) The planning, development, operation or regulation of a national market system (or a subsystem thereof) or one or more facilities thereof; or

(ii) The development and implementation of procedures and/or facilities designed to achieve compliance by self-regulatory organizations and their members with any section of this Regulation NMS and part 240, subpart A of this chapter promulgated pursuant to section 11A of the Act (15 U.S.C. 78k-1).


(47) NMS security means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

(48) NMS stock means any NMS security other than an option.

(49) Non-directed order means any order from a customer other than a directed order.

(50) Non-marketable limit order means any limit order other than a marketable limit order.

(51) Odd-lot means an order for the purchase or sale of an NMS stock in an amount less than a round lot.

(52) Options class means all of the put option or call option series overlying a security, as defined in section 3(a)(10) of the Act (15 U.S.C. 78c(a)(10)).

(53) Options series means the contracts in an options class that have the same unit of trade, expiration date, and exercise price, and other terms or conditions.
Orders providing liquidity means orders that were executed against after resting at a trading center.

Orders removing liquidity means orders that executed against resting trading interest at a trading center.

OTC market maker means any dealer that holds itself out as being willing to buy from and sell to its customers, or others, in the United States, an NMS stock for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

Participants, when used in connection with a national market system plan, means any self-regulatory organization which has agreed to act in accordance with the terms of the plan but which is not a signatory of such plan.

Payment for order flow has the meaning provided in § 240.10b-10 of this chapter.

Plan processor means any self-regulatory organization or securities information processor acting as an exclusive processor in connection with the development, implementation and/or operation of any facility contemplated by an effective national market system plan.

Profit-sharing relationship means any ownership or other type of affiliation under which the broker or dealer, directly or indirectly, may share in any profits that may be derived from the execution of non-directed orders.

Protected bid or protected offer means a quotation in an NMS stock that:

(i) Is displayed by an automated trading center;

(ii) Is disseminated pursuant to an effective national market system plan; and

(iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc.

Protected quotation means a protected bid or a protected offer.

Published aggregate quotation size means the aggregate quotation size calculated by a national securities exchange and displayed by a vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

Published bid and published offer means the bid or offer of a responsible broker or dealer for an NMS security communicated by it to its national securities exchange or association pursuant to § 242.602 and displayed by
a vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(65) Published quotation size means the quotation size of a responsible broker or dealer communicated by it to its national securities exchange or association pursuant to § 242.602 and displayed by a vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(66) Quotation means a bid or an offer.

(67) Quotation size, when used with respect to a responsible broker's or dealer's bid or offer for an NMS security, means:

   (i) The number of shares (or units of trading) of that security which such responsible broker or dealer has specified, for purposes of dissemination to vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or

   (ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that NMS security.

(68) Regular trading hours means the time between 9:30 a.m. and 4:00 p.m. Eastern Time, or such other time as is set forth in the procedures established pursuant to § 242.605(a)(2).

(69) Responsible broker or dealer means:

   (i) When used with respect to bids or offers communicated on a national securities exchange, any member of such national securities exchange who communicates to another member on such national securities exchange, at the location (or locations) or through the facility or facilities designated by such national securities exchange for trading in an NMS security a bid or offer for such NMS security, as either principal or agent; provided, however, that, in the event two or more members of a national securities exchange have communicated on or through such national securities exchange bids or offers for an NMS security at the same price, each such member shall be considered a responsible broker or dealer for that bid or offer, subject to the rules of priority and precedence then in effect on that national securities exchange; and further provided, that for a bid or offer which is transmitted from one member of a national securities exchange to another member who undertakes to represent such bid or offer on such national securities exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the responsible broker or dealer for that bid or offer; and
(ii) When used with respect to bids and offers communicated by a member of an association to a broker or dealer or a customer, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(70) **Revised bid or offer** means a market maker's bid or offer which supersedes its published bid or published offer.

(71) **Revised quotation size** means a market maker's quotation size which supersedes its published quotation size.

(72) **Self-regulatory organization** means any national securities exchange or national securities association.

(73) **Specified persons**, when used in connection with any notification required to be provided pursuant to § 242.602(a)(3) and any election (or withdrawal thereof) permitted under § 242.602(a)(5), means:

   (i) Each vendor;

   (ii) Each plan processor; and

   (iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities underlying options admitted to trading on any national securities exchange).

(74) **Sponsor**, when used in connection with a national market system plan, means any self-regulatory organization which is a signatory to such plan and has agreed to act in accordance with the terms of the plan.

(75) **SRO display-only facility** means a facility operated by or on behalf of a national securities exchange or national securities association that displays quotations in a security, but does not execute orders against such quotations or present orders to members for execution.

(76) **SRO trading facility** means a facility operated by or on behalf of a national securities exchange or a national securities association that executes orders in a security or presents orders to members for execution.

(77) **Subject security** means:

   (i) With respect to a national securities exchange:

      (A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported pursuant to an effective transaction reporting plan or effective national market system plan; and
(B) Any other NMS security for which such exchange has in effect an election, pursuant to § 242.602(a)(5)(i), to collect, process, and make available to a vendor bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of a national securities association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported pursuant to an effective transaction reporting plan or effective national market system plan; and

(B) Any other NMS security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to § 242.602(a)(5)(ii), to communicate to its association bids, offers, and quotation sizes for the purpose of making such bids, offers, and quotation sizes available to a vendor.

(78) Time of order execution means the time (to the second) that an order was executed at any venue.

(79) Time of order receipt means the time (to the second) that an order was received by a market center for execution.

(80) Time of the transaction has the meaning provided in § 240.10b-10 of this chapter.

(81) Trade-through means the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.

(82) Trading center means a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.

(83) Trading rotation means, with respect to an options class, the time period on a national securities exchange during which:

(i) Opening, re-opening, or closing transactions in options series in such options class are not yet completed; and

(ii) Continuous trading has not yet commenced or has not yet ended for the day in options series in such options class.
(84) **Transaction report** means a report containing the price and volume associated with a transaction involving the purchase or sale of one or more round lots of a security.

(85) **Transaction reporting association** means any person authorized to implement or administer any transaction reporting plan on behalf of persons acting jointly under § 242.601(a).

(86) **Transaction reporting plan** means any plan for collecting, processing, making available or disseminating transaction reports with respect to transactions in securities filed with the Commission pursuant to, and meeting the requirements of, § 242.601.

(87) **Vendor** means any securities information processor engaged in the business of disseminating transaction reports, last sale data, or quotations with respect to NMS securities to brokers, dealers, or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker, or interrogation device.


17 CFR § 270.23c-2 - Call and redemption of securities issued by registered closed-end companies.

§ 270.23c-2 Call and redemption of securities issued by registered closed-end companies.

(a) Notwithstanding the provisions of § 270.23c-1 (Rule N-23c-1), a registered closed-end investment company may call or redeem any securities of which it is the issuer, in accordance with the terms of such securities or the charter, indenture or other instrument pursuant to which such securities were issued: Provided, That, if less than all the outstanding securities of a class or series are to be called or redeemed the call or redemption shall be made by lot, on a pro rata basis, or in such other manner as will not discriminate unfairly against any holder of the securities of such class or series.

(b) A registered closed-end investment company which proposes to call or redeem any securities of which it is the issuer shall file with the Commission notice of its intention to call or redeem such securities at least 30 days prior to the date set for the call or redemption; Provided, however, That if notice of the call or the redemption is required to be published in a newspaper or otherwise, notice shall be given to the Commission at least 10 days in advance of the date
of publication. Such notice shall be filed in triplicate and shall include (1) the title of the class of securities to be called or redeemed, (2) the date on which the securities are to be called or redeemed, (3) the applicable provisions of the governing instrument pursuant to which the securities are to be called or redeemed and, (4) if less than all the outstanding securities of a class or series are to be called or redeemed, the principal amount or number of shares and the basis upon which the securities to be called or redeemed are to be selected.

[Rule N-23C-2, 7 FR 6669, Aug. 25, 1942]

17 CFR § 275.204-1 - Amendments to Form ADV.

- CFR

§ 275.204-1 Amendments to Form ADV.

(a) When amendment is required. You must amend your Form ADV (17 CFR 279.1):

(1) Parts 1 and 2:

   (i) At least annually, within 90 days of the end of your fiscal year; and

   (ii) More frequently, if required by the instructions to Form ADV.

(2) Part 3 at the frequency required by the instructions to Form ADV.

(b) Electronic filing of amendments.

(1) Subject to paragraph (c) of this section, you must file all amendments to Part 1A, Part 2A, and Part 3 of Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under § 275.203-3. You are not required to file with the Commission amendments to brochure supplements required by Part 2B of Form ADV.

(2) If you have received a continuing hardship exemption under § 275.203-3, you must, when you are required to amend your Form ADV, file a completed Part 1A, Part 2A and Part 3 of Form ADV on paper with the SEC by mailing it to FINRA.

(c) Filing fees. You must pay FINRA (the operator of the IARD) an initial filing fee when you first electronically file Part 1A of Form ADV. After you pay the initial filing fee, you must pay an annual filing fee each time you file your annual updating amendment. No portion of either fee is refundable. The Commission has approved the filing fees. Your amended Form ADV will not be accepted by FINRA, and thus will not be considered filed with the Commission, until you have paid the filing fee.
Advisory Rule 204-1 - Amendments to Form ADV.

(a) When amendment is required. You must amend your Form ADV:

(1) At least annually, within 90 days of the end of your fiscal year; and

(2) More frequently, if required by the instructions to Form ADV.

(b) Electronic filing of amendments.

(1) You must file all amendments to Part 1A of Form ADV and Part 2A of Form ADV electronically with the IARD, unless you have received a continuing hardship exemption under Rule 203-3 under this Act. You are not required to file with the Commission amendments to brochure supplements required by Part 2B of Form ADV.
(2) If you have received a continuing hardship exemption under Rule 203-3 under this Act, you must, when you are required to amend your Form ADV, file a completed Part 1A of Form ADV and Part 2A of Form ADV on paper with the SEC by mailing it to FINRA. Note to paragraphs (a) and (b): Information on how to file with the IARD is available on our Web site at http://www.sec.gov/iard. For the annual updating amendment: Summaries of material changes that are not included in the adviser’s brochure must be filed with the Commission as an exhibit to Part 2A of Form ADV in the same electronic file; and if you are not required to prepare a brochure, a summary of material changes, or an annual updating amendment to your brochure, you are not required to file them with the Commission. See the instructions for Part 2A of Form ADV.

(c) Filing fees. You must pay FINRA (the operator of the IARD) an initial filing fee when you first electronically file Part 1A of Form ADV. After you pay the initial filing fee, you must pay an annual filing fee each time you file your annual updating amendment. No portion of either fee is refundable. The Commission has approved the filing fees. Your amended Form ADV will not be accepted by FINRA, and thus will not be considered filed with the Commission, until you have paid the filing fee.

(d) Amendments to Form ADV are reports. Each amendment required to be filed under this section is a “report” within the meaning of Section 204 and Section 207 of the Act.

17 CFR § 275.204-3 - Delivery of brochures and brochure supplements.

(a) General requirements. If you are registered under the Act as an investment adviser, you must deliver a brochure and one or more brochure supplements to each client or prospective client that contains all information required by Part 2 of Form ADV [17 CFR 279.1].

(b) Delivery requirements. Subject to paragraph (g), you (or a supervised person acting on your behalf) must:

(1) Deliver to a client or prospective client your current brochure before or at the time you enter into an investment advisory contract with that client.

(2) Deliver to each client, annually within 120 days after the end of your fiscal year and without charge, if there are material changes in your brochure since your last annual updating amendment:
(i) A current brochure, or

(ii) The summary of material changes to the brochure as required by Item 2 of Form ADV, Part 2A that offers to provide your current brochure without charge, accompanied by the Web site address (if available) and an e-mail address (if available) and telephone number by which a client may obtain the current brochure from you, and the Web site address for obtaining information about you through the Investment Adviser Public Disclosure (IAPD) system.

(3) Deliver to each client or prospective client a current brochure supplement for a supervised person before or at the time that supervised person begins to provide advisory services to the client; provided, however, that if investment advice for a client is provided by a team comprised of more than five supervised persons, a current brochure supplement need only be delivered to that client for the five supervised persons with the most significant responsibility for the day-to-day advice provided to that client. For purposes of this section, a supervised person will provide advisory services to a client if that supervised person will:

(i) Formulate investment advice for the client and have direct client contact; or

(ii) Make discretionary investment decisions for the client, even if the supervised person will have no direct client contact.

(4) Deliver the following to each client promptly after you create an amended brochure or brochure supplement, as applicable, if the amendment adds disclosure of an event, or materially revises information already disclosed about an event, in response to Item 9 of Part 2A of Form ADV or Item 3 of Part 2B of Form ADV (Disciplinary Information), respectively, (i) the amended brochure or brochure supplement, as applicable, along with a statement describing the material facts relating to the change in disciplinary information, or (ii) a statement describing the material facts relating to the change in disciplinary information.

(c) Exceptions to delivery requirement.

(1) You are not required to deliver a brochure to a client:

(i) That is an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 to 80a-64] or a business development company as defined in that Act, provided that the advisory contract with that client meets the requirements of section 15(c) of that Act [15 U.S.C. 80a-15(c)]; or
(ii) Who receives only impersonal investment advice for which you charge less than $500 per year.

(2) You are not required to deliver a brochure supplement to a client:

(i) To whom you are not required to deliver a brochure under subparagraph (c)(1) of this section;

(ii) Who receives only impersonal investment advice; or

(iii) Who is an officer, employee, or other person related to the adviser that would be a “qualified client” of your firm under § 275.205-3(d)(1)(iii).

(d) *Wrap fee program brochures.*

(1) If you are a sponsor of a wrap fee program, then the brochure that paragraph (b) of this section requires you to deliver to a client or prospective client of the wrap fee program must be a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV. Any additional information in a wrap fee program brochure must be limited to information applicable to wrap fee programs that you sponsor.

(2) You do not have to deliver a wrap fee program brochure if another sponsor of the wrap fee program delivers, to the client or prospective client of the wrap fee program, a wrap fee program brochure containing all the information required by Part 2A, Appendix 1 of Form ADV.

**Note to paragraph (D):**

A wrap fee program brochure does not take the place of any brochure supplements that you are required to deliver under paragraph (b) of this section.

(e) *Multiple brochures.* If you provide substantially different advisory services to different clients, you may provide them with different brochures, so long as each client receives all information about the services and fees that are applicable to that client. The brochure you deliver to a client may omit any information required by Part 2A of Form ADV if the information does not apply to the advisory services or fees that you will provide or charge, or that you propose to provide or charge, to that client.

(f) *Other disclosure obligations.* Delivering a brochure or brochure supplement in compliance with this section does not relieve you of any other disclosure obligations you have to your advisory clients or prospective clients under any federal or state laws or regulations.

(g) *Definitions.* For purposes of this section:

(1) *Impersonal investment advice* means investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.
FORM N-CEN
ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

Form N-CEN is to be used by all registered investment companies, other than face-amount certificate companies, to file annual reports with the Commission. Such reports should be filed not later than 75 days after the close of the fiscal year for which the report is being prepared, except that unit investment trusts shall file such reports not later than 75 days after the close of the calendar year for which the report is being prepared, pursuant to rule 30a-1 under the Investment Company Act of 1940 (“Act”) (17 CFR 270.30a-1). Face-amount certificate companies should continue to file periodic reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (“Exchange Act”). The Commission may use the information provided on Form N-CEN in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.
GENERAL INSTRUCTIONS

A. Rule as to Use of Form N-CEN

Form N-CEN is the reporting form that is to be used for annual reports filed pursuant to rule 30a1 under the Act (17 CFR 270.30a-1) by registered investment companies, other than face-amount certificate companies, under section 30(a) of the Act and, in the case of small business investment companies and registered unit investment trusts, under section 13 or 15(d) of the Exchange Act, if applicable.

Registrants must respond to all items in the relevant Parts of Form N-CEN, as listed below in this General Instruction A. If an item within a required Part is inapplicable, the Registrant should respond “N/A” to that item. Registrants are not, however, required to respond to items in Parts of Form N-CEN that they are not required by this General Instruction A to respond to.

Management investment companies: Management investment companies other than small business investment companies must complete Parts A, B, C, and G of this Form.
Management investment companies that offer multiple series must complete Part C as to each series separately, even if some information is the same for two or more series. Closed- end management investment companies also must complete Part D of this Form. Small business investment companies must complete Parts A, B, D, and G of this Form.
Management investment companies that are registered on Form N-3 also must complete certain items in Part F of this Form as directed by Item B.6.c.i.

Exchange-traded funds or exchange-traded managed funds: Funds that are exchange-traded funds or exchange-traded managed funds, as defined by this Form, must complete Part E of this Form in addition to any other required Parts.

Unit investment trusts: Unit investment trusts must complete Parts A, B, F, and G of this Form.

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.
Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this Form, except that any provision in the Form or in these instructions shall be controlling.

Filing of Report

1. All registered investment companies with shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Act) must file a report on Form N-CEN at least annually. Management investment companies offering multiple series with different fiscal year ends must file a report as of each fiscal year end that responds to (i) Parts A, B, and G, and (ii) Part C and, if applicable, Part E as to only those series with the fiscal year end covered by the report.

If a Registrant changes its fiscal year, a report filed on Form N-CEN may cover a period shorter than 12 months, but in no event may a report filed on Form N-CEN cover a period longer than 12 months or a period that overlaps with a period covered by a previously filed report. For example, if in 2017 a Registrant with a September 30 fiscal year end changes its fiscal year end to December 31, the Registrant could file a report on this Form for the fiscal period ending September 30, 2017 and a report for the period ending December 31, 2017. A Registrant could not, however, only file a report for the fiscal period ending December 31, 2017 if its last report was filed for the fiscal period ending September 30, 2016.

An extension of time of up to 15 days for filing the form may be obtained by following the procedures specified in rule 12b-25 under the Exchange Act (17 CFR 240.12b-25).

2. A registrant may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A registrant that
files an amendment to a previously filed report must provide information in response to all required items of Form N-CEN, regardless of why the amendment is filed.

3. Reports must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system in accordance with Regulation S-T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

Paperwork Reduction Act Information

A registrant is required to disclose the information specified by Form N-CEN, and the Commission will make this information public, except for information reported in response
to Item B.9.h. A registrant is not required to respond to the collection of information contained in Form N-CEN unless the form displays a currently valid Office of Management and Budget ("OMB") control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, Washington, DC 20549. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N-CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

“Class” means a class of shares issued by a Fund that has more than one class that represents interest in the same portfolio of securities under rule 18f-3 under the Act (17 CFR 270.18f-3) or under an order exempting the Fund from provisions of section 18 of the Act (15 U.S.C. 80a-18).

“CRD number” means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

“Exchange-Traded Fund” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“Exchange-Traded Managed Fund” means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at net asset value-based prices, and that has formed and
operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

“Fund” means the Registrant or a separate Series of the Registrant. When an item of Form N-CEN specifically applies to a Registrant or Series, those terms will be used.

“LEI” means, with respect to any company, the “legal entity identifier” as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation. In the case of a financial institution, if a “legal entity identifier” has not been assigned, then provide the RSSD ID, if any, assigned by the National Information Center of the Board of Governors of the Federal Reserve System.
“Money Market Fund” means an open-end management investment company registered under the Act, or Series thereof, that is regulated as a money market fund pursuant to rule 2a-7 under the Act (17 CFR 270.2a-7).

“PCAOB number” means the registration number issued to an independent public accountant registered with the Public Company Accounting Oversight Board.

“Registrant” means the investment company filing this report or on whose behalf the report is filed.

“SEC File number” means the number assigned to an entity by the Commission when that entity registered with the Commission in the capacity in which it is named in Form N-CEN.

“Series” means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other Series of shares for assets specifically allocated to that Series in accordance with rule 18f-2(a) (17 CFR 270.18f-2(a)).
FORM N-CEN
ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

   a. Report for period ending: [yyyy/mm/dd]
   b. Does this report cover a period of less than 12 months? [Y/N]

Part B: Information About the Registrant Item B.1.

   Background information.
   a. Full name of Registrant: ______
   b. Investment Company Act file number (e.g., 811-): ___
   c. CIK: ___
   d. LEI: ___

Item B.2. Address and telephone number of Registrant.
   a. Street: ___
   b. City: ___
   c. State, if applicable: ______
   d. Foreign country, if applicable: ______
   e. Zip code and zip code extension, or foreign postal code: ___
   f. Telephone number (including country code if foreign): ___
   g. Public website, if any: ___

Item B.3. Location of books and records.
   a. Name of person (e.g., a custodian of records): ___
   b. Street: ___
   c. City: ___
   d. State, if applicable: ______
e. Foreign country, if applicable: ______

f. Zip code and zip code extension, or foreign postal code: ______

g. Telephone number (including country code if foreign): ______
h. Briefly describe the books and records kept at this location: ___

i. **Instruction.** Provide the requested information for each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) of the Act (15 U.S.C. 80a-30(a)) and the rules under that section.

j. Item B.4. Initial or final filings.
   a. Is this the first filing on this form by the Registrant? [Y/N]
   b. Is this the last filing on this form by the Registrant? [Y/N]

k. **Instruction.** Respond “yes” to Item B.4.b only if the Registrant has filed an application to deregister or will file an application to deregister before its next required filing on this form.

l. Item B.5. Family of investment companies.
   a. Is the Registrant part of a family of investment companies? [Y/N]
      i. Full name of family of investment companies: ___

m. **Instruction.** “Family of investment companies” means, except for insurance company separate accounts, any two or more registered investment companies that (i) share the same investment adviser or principal underwriter; and (ii) hold themselves out to investors as related companies for purposes of investment and investor services. In responding to this item, all Registrants in the family of investment companies should report the name of the family of investment companies identically.

n. Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar.

o. Item B.6. Organization. Indicate the classification of the Registrant by checking the applicable item below.
   a. Open end management investment company registered under the Act on Form N-1A: ___
i. **Total number of Series of the Registrant:** ___

ii. If a Series of the Registrant with a fiscal year end covered by the report was terminated during the reporting period, provide the following information:

   ii.1. **Name of the Series:** ____
   
   ii.2. **Series identification number:**
   
   ii.3. **Date of termination (month/year):**

b. **Closed-end management investment company registered under the Act on Form N-2:**

   p.
c. Separate account offering variable annuity contracts which is registered under the Act as a management investment company on Form N-3: ________
q.
  r. s. t. Registrants that indicate they are a management investment company registered
  under the Act on Form N-3, should respond to Item F.13 through Item F.16 of this
v. Form in addition to the Parts required by General Instruction A of this Form.
w. x. Separate account offering variable annuity contracts which is registered under the
  Act as a unit investment trust on Form N-4:
  aa. b c
    Form N-4: . .
ad. ae. Small business investment company registered under the Act on Form N-5:
  af
ah. Separate account offering variable life insurance contracts which is registered under
  the Act as a unit investment trust on Form N-6:
  ak. a l m
    Form N-6: . .
  an. a p q
  ao. Unit investment trust registered under the Act on Form N-8B-2: . .
ar. Instruction. For Item B.6.a.i, the Registrant should include all Series that have been established by the Registrant and have shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Act).
as. Item B.7. Securities Act registration. Is the Registrant the
Issuer of a class of securities registered under the Securities Act of 1933 ("Securities Act")? [Y/N]

Item B.8. Directors: Provide the information requested below about each person serving as director of the Registrant (management investment companies only):

a. Full name: _

b. CRD number, if any: _____

c. Is the person an “interested person” of the Registrant as that term is defined in section 2(a)(19) of the Act (15 U.S.C. 80a-2(a) (19))? [Y/N]

d. Investment Company Act file number of any other registered investment company for which the person also serves as a director (e.g., 811-): _____

Item B.9. Chief compliance officer. Provide the information requested below about each person serving as chief compliance officer of the Registrant for purposes of rule 38a-1 (17 CFR 270.38a-1):

a. Full name: _

b. CRD number, if any: _____

c. Street: _

d. City: _

e. State, if applicable: _____

f. Foreign country, if applicable: _____
g. Zip code and zip code extension, or foreign postal code: _

h. Telephone number (including country code if foreign): ___

i. Has the chief compliance officer changed since the last filing? [Y/N]

j. If the chief compliance officer is compensated or employed by any person other than the Registrant, or an affiliated person of the Registrant, for providing chief compliance officer services, provide:

   i. Name of the person: _

   ii. Person's IRS Employer Identification Number: ___

k. Item B.10. Matters for security holder vote. Were any matters submitted by the Registrant for its security holders’ vote during the reporting period? [Y/N]

   a. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

      i. Series name: _

      ii. Series identification number: ___

l. Instruction. Registrants registered on Forms N-3, N-4 or N-6, should respond “yes” to this Item only if security holder votes were solicited on contract-level matters.

m. Item B.11. Legal proceedings.

   a. Have there been any material legal proceedings, other than routine litigation incidental to the business, to which the Registrant or any of its subsidiaries was a party or of which any of their property was the subject during the reporting period? [Y/N] If yes, include the attachment required by Item G.1.a.i.

      i. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

         i. Series name: ___
b. Has any proceeding previously reported been terminated? [Y/N] If yes, include the attachment required by Item G.1.a.i.
   i. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

i1. **Series name:** ___

i2. **Series identification number:** ____________
i.3. **Instruction.** For purposes of this Item, the following proceedings should be described: (1) any bankruptcy, receivership or similar proceeding with respect to the Registrant or any of its significant subsidiaries; (2) any proceeding to which any director, officer or other affiliated person of the Registrant is a party adverse to the Registrant or any of its subsidiaries; and (3) any proceeding involving the revocation or suspension of the right of the Registrant to sell securities.

i.4. **Item B.12. Fidelity bond and insurance (management investment companies only).**

a. Were any claims with respect to the Registrant filed under a fidelity bond (including, but not limited to, the fidelity insuring agreement of the bond) during the reporting period? [Y/N]

i. If yes, enter the aggregate dollar amount of claims filed: _____

i.5. **Item B.13. Directors and officers/errors and omissions insurance (management investment companies only).**

a. Are the Registrant’s officers or directors covered in their capacities as officers or directors under any directors and officers/errors and omissions insurance policy owned by the Registrant or anyone else? [Y/N]

i. If yes, were any claims filed under the policy during the reporting period with respect to the Registrant? [Y/N]

i.6. **Item B.14. Provision of financial support.** Did an affiliated person, promoter, or principal underwriter of the Registrant, or an affiliated person of such a person, provide any form of financial support to the Registrant during the reporting period? [Y/N] If yes, include the attachment required by **Item G.1.a.ii**, unless the Registrant is a Money Market Fund.

a. If yes and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

i. Series name:  

ii. Series identification number: __________
iii. **Instruction.** For purposes of this Item, a provision of financial support includes any

iv. (1) capital contribution, (2) purchase of a security from a Money Market Fund in reliance on rule 17a-9 under the Act (17 CFR 270.17a-9), (3) purchase of any defaulted or devalued security at fair value reasonably intended to increase or stabilize the value or liquidity of the Registrant’s portfolio, (4) execution of letter of credit or letter of indemnity, (5) capital support agreement (whether or not the Registrant ultimately received support),

v. (6) performance guarantee, or (7) other similar action reasonably intended to increase or stabilize the value or liquidity of the Registrant’s portfolio. Provision of financial support does not include any (1) routine waiver of fees or reimbursement of Registrant’s expenses,

vi. (2) routine inter-fund lending, (3) routine inter-fund purchases of Registrant’s shares, or

(4) action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Registrant’s portfolio.

vii. **Item B.15. Exemptive orders.**

a. During the reporting period, did the Registrant rely on any orders from the Commission granting an exemption from one or more provisions of the Act, Securities Act or Exchange Act? [Y/N]

   a.i. If yes, provide below the release number for each order: ____ Item B.16.

Principal underwriters.

a. Provide the information requested below about each principal underwriter:

i. Full name: ____

ii. SEC file number (e.g., 8-): _____________

iii. CRD number: _

iv. LEI, if any: ____

v. State, if applicable: _____________
vi. **Foreign country, if applicable:** _________

vii. **Is the principal underwriter an affiliated person of the Registrant, or its investment adviser(s) or depositor? [Y/N]**

b. **Have any principal underwriters been hired or terminated during the reporting period? [Y/N]**

viii. **Item B.17. Independent public accountant. Provide the following information about each independent public accountant:**

a. **Full name:** 

b. **PCAOB number:** _________
c. LEI, if any:  

d. State, if applicable:  

e. Foreign country, if applicable:  

f. Has the independent public accountant changed since the last filing? [Y/N]

g. Item B.18. Report on internal control (management investment companies only). For the reporting period, did an independent public accountant's report on internal control note any material weaknesses? [Y/N]

h. Instruction. Small business investment companies are not required to respond to this item.

i. Item B.19. Audit opinion. For the reporting period, did an independent public accountant issue an opinion other than an unqualified opinion with respect to its audit of the Registrant's financial statements? [Y/N]

a. If yes, and to the extent the response relates only to certain series of the Registrant, indicate the series involved:

i. Series name:  

ii. Series identification number:  

j. Item B.20. Change in valuation methods. Have there been material changes in the method of valuation (e.g., change from use of bid price to mid price for fixed income securities or change in trigger threshold for use of fair value factors on international equity securities) of the Registrant’s assets during the reporting period? [Y/N] If yes, provide the following:

a. Date of change:  

b. Explanation of the change:  

c. Asset type involved:  

d. Type of investments involved:  

e. **Statutory or regulatory basis, if any:** ____

f. To the extent the response relates only to certain series of the Registrant, indicate the series involved:

i. **Series name:** __

ii. **Series identification number:** ____
iii. **Instruction.** Responses to this item need not include changes to valuation techniques used for individual securities (e.g., changing from market approach to income approach for a private equity security). In responding to Item B.20.c., provide the applicable “asset type” category specified in Item C.4.a. of Form N-PORT. In responding to Item B.20.d., provide a brief description of the type of investments involved. If the change in valuation methods applies only to certain sub-asset types included in the response to Item B.20.c., please provide the sub-asset types in the response to Item B.20.d. The responses to Item B.20.c. and Item iv. B.20.d. should be identical only if the change in valuation methods applies to all assets within that category.

iv. Item B.20. Change in accounting principles and practices. Have there been any changes in accounting principles or practices, or any change in the method of applying any such accounting principles or practices, which will materially affect the financial statements filed or to be filed for the current year with the Commission and which has not been previously reported? [Y/N] If yes, include the attachment required by Item G.1.a.iv.

vi. Item B.22. Net asset value error corrections (open-end management investment companies only).

20.a. During the reporting period, were any payments made to shareholders or shareholder accounts reprocessed as a result of an error in calculating the Registrant’s net asset value (or net asset value per share)? [Y/N]

20.a.i. If yes, and to the extent the response relates only to certain Series of the Registrant, indicate the Series involved:

20.ai.1. Series name: _

20.ai.2. Series identification number: _

vii. Item B.23. Rule 19a-1 notice (management investment companies only). During the reporting period, did the Registrant pay any
dividend or make any distribution in the nature of a dividend payment, required to be accompanied by a written statement pursuant to section 19(a) of the Act (15 U.S.C. 80a-19(a)) and rule 19a-1 thereunder (17 CFR 270.19a-1)? [Y/N]

a. If yes, and to the extent the response relates only to certain Series of the Registrant, indicate the Series involved:

i. **Series name:**

ii. **Series identification number:**
iii. Part C: Additional Questions for Management Investment Companies

iv.

v. Item C.1. Background information.

a. Full name of the Fund: __

b. Series identification number, if any: _____

c. LEI: __

d. Is this the first filing on this form by the Fund? [Y/N]

vi. Item C.2. Classes of open-end management investment companies.

a. How many Classes of shares of the Fund (if any) are authorized? __

b. How many new Classes of shares of the Fund were added during the reporting period? __

c. How many Classes of shares of the Fund were terminated during the reporting period? __

d. For each Class with shares outstanding, provide the information requested below:

i. Full name of Class: __________

ii. Class identification number, if any: __________

iii. Ticker symbol, if any: __________

vii. Item C.3. Type of fund. Indicate if the Fund is any one of the types listed below. Check all that apply.

a. Exchange-Traded Fund or Exchange-Traded Managed Fund or offers a Class that itself is an Exchange-Traded Fund or Exchange-Traded Managed Fund:

i. Exchange-Traded Fund: __________

ii. Exchange-Traded Managed Fund: __________

b. Index Fund: __________
i. **Is the index whose performance the Fund tracks, constructed:**

i.1. **By an affiliated person of the fund? [Y/N]**

i.2. **Exclusively for the fund? [Y/N]**

   ii. **Provide the annualized difference between the Fund’s total return during the reporting period and the index’s return during the reporting period (i.e., the Fund’s total return less the index’s return):**

ii.1. **Before Fund fees and expenses:** ____________

ii.2. **After Fund fees and expenses (i.e., net asset value):** ________
iii. Provide the annualized standard deviation of the daily difference between the Fund’s total return and the index’s return during the reporting period:

iii.1. Before Fund fees and expenses: ____________

iii.2. After Fund fees and expenses (i.e., net asset value): ____________

   c. __________________ Seeks to achieve performance results that are a multiple of an index or other benchmark, the inverse of an index or other benchmark, or a multiple of the inverse of an index or other benchmark: _

d. Interval Fund: ____________

e. Fund of Funds: ____________

f. Master-Feeder Fund: ____________

   i. If the Registrant is a master fund, then provide the information requested below with respect to each feeder fund:

   i.1. Full name: _____

   i.2. For registered feeder funds:

   i.2.A. Investment Company Act file number (e.g., 811-): _____

   i.2.B. Series identification number, if any: __

   i.2.C. LEI of feeder fund: ___

   i.3. For unregistered feeder funds:

   i.3.A. SEC file number of the feeder fund’s investment adviser (e.g., 801-): ________

   i.3.B. LEI of feeder fund, if any: ___

   ii. If the Registrant is a feeder fund, then provide the information requested below with respect to a master fund registered under the Act:

   ii.1. Full name: _
ii.2. Investment Company Act file number (e.g., 811-): ____

ii.3. SEC file number of the master fund’s investment adviser (e.g., 801-): ________________________________

ii.4. LEI: __

g. Money Market Fund: __________

h. Target Date Fund: __________

i. Underlying fund to a variable annuity or variable life insurance contract: ___
Instructions.

1. “Fund of Funds” means a fund that acquires securities issued by any other investment company in excess of the amounts permitted under paragraph (A) of section 12(d)(1) of the Act (15 U.S.C. 80a-12(d)(1)(A)), but, for purposes of this Item, does not include a fund that acquires securities issued by another investment company solely in reliance on rule 12d1-1 under the Act (CFR 270.12d1-1).

2. “Index Fund” means an investment company, including an Exchange-Traded Fund, that seeks to track the performance of a specified index.

3. “Interval Fund” means a closed-end management investment company that makes periodic repurchases of its shares pursuant to rule 23c-3 under the Act (17 CFR 270.23c-3).

4. “Master-Feeder Fund” means a two-tiered arrangement in which one or more funds (each a feeder fund) holds shares of a single Fund (the master fund) in accordance with section 12(d)(1)(E) of the Act (15 U.S.C. 80a-12(d)(1)(E)) or pursuant to exemptive relief granted by the Commission.

5. “Target Date Fund” means an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor’s age, target retirement date, or life expectancy.

k. Item C.4. Diversification. Does the Fund seek to operate as a “non-diversified company” as such term is defined in section 5(b)(2) of the Act (15 U.S.C. 80a-5(b)(2))? [Y/N]

l. Item C.5. Investments in certain foreign corporations.

a. Does the fund invest in a controlled foreign corporation for the purpose of investing in certain types of instruments such as, but not limited to, commodities? [Y/N]

b. If yes, provide the following information:
b.i. **Full name of subsidiary:** ___

b.ii. **LEI of subsidiary, if any:** ___

m. ***Instruction.*** “Controlled foreign corporation” has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

n. **Item C.6. Securities lending.**

a. **Is the Fund authorized to engage in securities lending transactions?** [Y/N]

b. **Did the Fund lend any of its securities during the reporting period?** [Y/N]

   i. **If yes, during the reporting period, did any borrower fail to return the loaned securities by the contractual deadline with the result that:**
i.1. The Fund (or its securities lending agent) liquidated collateral pledged to secure the loaned securities? [Y/N]

i.2. The Fund was otherwise adversely impacted? [Y/N]

ii. *Instruction.* For purposes of this Item, other adverse impacts would include, for example,

iii. (1) a loss to the Fund if collateral and indemnification were not sufficient to replace the loaned securities or their value, (2) the Fund’s ineligibility to vote shares in a proxy, or

iv. (3) the Fund’s ineligibility to receive a direct distribution from the issuer.

c. Provide the information requested below about each securities lending agent, if any, retained by the Fund:

i. Full name of securities lending agent: 

ii. LEI, if any: 

iii. Is the securities lending agent an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

iv. Does the securities lending agent or any other entity indemnify the fund against borrower default on loans administered by this agent? [Y/N]

v. If the entity providing the indemnification is not the securities lending agent, provide the following information:

v.1. Name of person providing indemnification: ___

v.2. LEI, if any, of person providing indemnification: ___

vi. Did the Fund exercise its indemnification rights during the reporting period? [Y/N]

d. If a person managing any pooled investment vehicle in which cash collateral is invested in connection with the Fund’s securities lending activities (*i.e.*, a cash collateral manager) does not also serve as securities lending agent, provide the following information about each person:
i. Full name of cash collateral manager: ______

ii. LEI, if any: __________

iii. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of a securities lending agent retained by the Fund? [Y/N]

iv. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

e. Types of payments made to one or more securities lending agents and cash collateral managers (check all that apply):

   i. Revenue sharing split: ______
ii. **Non-revenue sharing split (other than administrative fee):**

iii. **Administrative fee:** 

iv. **Cash collateral reinvestment fee:** 

v. **Indemnification fee:** 

vi. **Other:** If other, describe: 

f. Provide the monthly average of the value of portfolio securities on loan during the reporting period. 

  
  
  g. Provide the net income from securities lending activities.

  
  
  i. Item C.7. Reliance on certain rules. Did the Fund rely on any of the following rules

  ii. under the Act during the reporting period? (check all that apply)

  iii. iv. **Rule 10f-3** (17 CFR 270.10f-3):

  b. vii. **Rule 12d1-1** (17 CFR 270.12d1-1):

  ix. x. **Rule 15a-4** (17 CFR 270.15a-4):

  xi. 

  d. xiii. **Rule 17a-6** (17 CFR 270.17a-6):

  xv. xvi. **Rule 17a-7** (17 CFR 270.17a-7):

  xvii. 

  e. xix. **Rule 17a-8** (17 CFR 270.17a-8):

  xx. 

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  xx.
f. 270.17a-8):


xxiii. ______

xxiv. xxv. Rule 22d-1 (17 CFR 270.22d-1):

xxvi. ______

xxvii. Rule 23c-1 (17 CFR 270.23c-1):

xxviii. ______

xxix. ______

xxx. Instruction. Provide information concerning any direct or indirect limitations, waivers or reductions, on the level of expenses incurred by the fund during the reporting period. A limitation, for example, may be applied indirectly (such as when an adviser agrees to accept a reduced fee pursuant to a voluntary fee waiver) or it may apply only for a temporary period such as for a new fund in its start-up phase.
xxxv.  **Item C.9. Investment advisers.**

a.  Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:

   i.  **Full name:**  
   ii. **SEC file number (e.g., 801-):**  
   iii. **CRD number:**  
   iv. **LEI, if any:**  
   v. **State, if applicable:**  
   vi. **Foreign country, if applicable:**  
   vii. **Was the investment adviser hired during the reporting period?**  
       [Y/N]

   vii.1.  If the investment adviser was hired during the reporting period, indicate the investment adviser's start date:  

b.  If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:

   i.  **Full name:**  
   ii. **SEC file number (e.g., 801-):**  
   iii. **CRD number:**  
   iv. **LEI, if any:**  
   v. **State, if applicable:**  
   vi. **Foreign country, if applicable:**  
   vii. **Termination date:**  

c.  For each sub-adviser to the Fund, provide the information requested:

   i.  **Full name:**  
   ii. **SEC file number (e.g., 801-):**  
   iii. **CRD number:**  
iv. LEI, if any:  

v. State, if applicable:  

vi. Foreign country, if applicable:  

vii. Is the sub-adviser an affiliated person of the Fund’s investment adviser(s)? [Y/N]

viii. Was the sub-adviser hired during the reporting period? [Y/N]
viii.1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date: _____

d. If a sub-adviser was terminated during the reporting period, provide the following with respect to each such sub-adviser:

   i. Full name: _
   ii. SEC file number (e.g., 801-): _____
   iii. CRD number: _
   iv. LEI, if any: _
   v. State, if applicable: ___
   vi. Foreign country, if applicable: ___
   vii. Termination date: _____ Item C.10.

   Transfer agents.
   a. Provide the following information about each person providing transfer agency services to the Fund:

      i. Full name: _
      ii. SEC file number (e.g., 84- or 85-): _____
      iii. LEI, if any: _
      iv. State, if applicable: ___
      v. Foreign country, if applicable: ___

   vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

   vii. Is the transfer agent a sub-transfer agent? [Y/N]

   b. Has a transfer agent been hired or terminated during the reporting period? [Y/N] Item C.11. Pricing services.

   a. Provide the following information about each person that provided pricing services to the Fund during the reporting period:
i. Full name: 

ii. LEI, if any, or provide and describe other identifying number: 

iii. State, if applicable: 

iv. Foreign country, if applicable: 

v. Is the pricing service an affiliated person of the Fund or its investment adviser(s)? [Y/N]

b. Was a pricing service hired or terminated during the reporting period? [Y/N] Item C.12. Custodians.

a. Provide the following information about each person that provided custodial services to the Fund during the reporting period:

i. Full name: __

ii. LEI, if any: __

iii. State, if applicable: __

iv. Foreign country, if applicable: __

v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Is the custodian a sub-custodian? [Y/N]

vii. With respect to the custodian, check below to indicate the type of custody:


2. Member national securities exchange — rule 17f-1 (17 CFR 270.17f-1): ________________


5. Foreign custodian — rule 17f-5 (17 CFR 270.17f-5): __

6. Futures commission merchants and commodity clearing organizations — rule 17f-6 (17 CFR 270.17f-6): __

7. Foreign securities depository — rule 17f-7 (17 CFR 270.17f-7): __

8. Insurance company sponsor — rule 26a-2 (17 CFR 270.26a-2): __
9. **Other:** __. If other, describe: __.

b. **Has a custodian been hired or terminated during the reporting period? [Y/N]**
   Item C.13. **Shareholder servicing agents.**

   a. **Provide the following information about each shareholder servicing agent of the Fund:**

   i. **Full name:** __

   ii. **LEI, if any, or provide and describe other identifying number:** __

   iii. **State, if applicable:** __
iv. Foreign country, if applicable: ___  

v. Is the shareholder servicing agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]  

vi. Is the shareholder servicing agent a sub-shareholder servicing agent? [Y/N]  

b. Has a shareholder servicing agent been hired or terminated during the reporting period? [Y/N]  


a. Provide the following information about each administrator of the Fund:  

i. Full name: _  

ii. LEI, if any, or provide and describe other identifying number: _  

iii. State, if applicable: ___  

iv. Foreign country, if applicable: ___  

v. Is the administrator an affiliated person of the Fund or its investment adviser(s)? [Y/N]  

vi. Is the administrator a sub-administrator? [Y/N]  

b. Has an administrator been hired or terminated during the reporting period? [Y/N]  

ii. Item C.15. Affiliated broker-dealers. Provide the following information about each affiliated broker-dealer:  

a. Full name: _  

b. SEC file number: ___  

c. CRD number: _  

d. LEI, if any: _  

e. State, if applicable: _____  

f. Foreign country, if applicable: _____
g. **Total commissions paid to the affiliated broker-dealer for the reporting period:**

   

**Item C.16. Brokers.**

a. For each of the ten brokers that received the largest dollar amount of brokerage commissions (excluding dealer concessions in underwritings) by virtue of direct or indirect participation in the Fund’s portfolio transactions, provide the information below:

   i. **Full name of broker:** __

   ii. **SEC file number:** _____
iii. CRD number: _

iv. LEI, if any: _

v. State, if applicable: __

vi. Foreign country, if applicable: ___

vii. Gross commissions paid by the Fund for the reporting period: _

b. Aggregate brokerage commissions paid by Fund during the reporting period: ____________________________

Item C.17. Principal transactions.

a. For each of the ten entities acting as principals with which the Fund did the largest dollar amount of principal transactions (include all short-term obligations, and U.S. government and tax-free securities) in both the secondary market and in underwritten offerings, provide the information below:

i. Full name of dealer: __

ii. SEC file number: ______

iii. CRD number: _

iv. LEI, if any: _

v. State, if applicable: __

vi. Foreign country, if applicable: ___

vii. Total value of purchases and sales (excluding maturing securities) with Fund:

b. Aggregate value of principal purchase/sale transactions of Fund during the reporting period: ___

ii. Instructions to Item C.16 and Item C.17.

iii. To help Registrants distinguish between agency and principal transactions, and to promote consistent reporting of the information required
by these items, the following criteria should be used:

1. If a security is purchased or sold in a transaction for which the confirmation specifies the amount of the commission to be paid by the Registrant, the transaction should be considered an agency transaction and included in determining the answers to Item C.16.

2. If a security is purchased or sold in a transaction for which the confirmation specifies only the net amount to be paid or received by the Registrant and such net amount is equal to the market value of the security at the time of the transaction, the transaction should be considered a principal transaction and included in determining the amounts in Item C.17.
3. If a security is purchased by the Registrant in an underwritten offering, the acquisition should be considered a principal transaction and included in answering Item C.17 even though the Registrant has knowledge of the amount the underwriters are receiving from the issuer.

4. If a security is sold by the Registrant in a tender offer, the sale should be considered a principal transaction and included in answering Item C.17 even though the Registrant has knowledge of the amount the offeror is paying to soliciting brokers or dealers.

5. If a security is purchased directly from the issuer (such as a bank CD), the purchase should be considered a principal transaction and included in answering Item C.17.

6. The value of called or maturing securities should not be counted in either agency or principal transactions and should not be included in determining the amounts shown in Item C.16 and Item C.17. This means that the acquisition of a security may be included, but it is possible that its disposition may not be included. Disposition of a repurchase agreement at its expiration date should not be included.

7. The purchase or sales of securities in transactions not described in paragraphs (1) through (6) above should be evaluated by the Fund based upon the guidelines established in those paragraphs and classified accordingly. The agents considered in Item C.16 may be persons or companies not registered under the Exchange Act as securities brokers. The persons or companies from whom the investment company purchased or to whom it sold portfolio instruments on a principal basis may be persons or entities not registered under the Exchange Act as securities dealers.

8. Item C.18. Payments for brokerage and research. During the reporting period, did the Fund pay commissions to broker-dealers for “brokerage and research services” within the meaning of section 28(e) of the Exchange Act (15 U.S.C. 78bb)? [Y/N]


a. Provide the Fund’s (other than a money market fund’s) monthly
average net assets during the reporting period:  _

b. Provide the money market fund’s daily average net assets during the reporting period: ____

10. Item C.20. Lines of credit, interfund lending, and interfund borrowing. For open-end management investment companies, respond to the following:

a. Does the Fund have available a line of credit? [Y/N] If yes, for each line of credit, provide the information requested below:

i. Is the line of credit a committed or uncommitted line of credit? [committed/uncommitted]
ii. What size is the line of credit? [insert dollar amount]

iii. With which institution(s) is the line of credit? [list name(s)]

iv. Is the line of credit just for the Fund, or is it shared among multiple funds? [sole/shared]

iv1. If shared, list the names of other funds that may use the line of credit. [list names and SEC File numbers]

v. Did the Fund draw on the line of credit this period? [Y/N]

vi. If the Fund drew on the line of credit during this period, what was the average amount outstanding when the line of credit was in use? [insert dollar amount]

vii. If the Fund drew on the line of credit during this period, what was the number of days that the line of credit was in use? [insert amount]

b. Did the Fund engage in interfund lending? [Y/N] If yes, for each loan provide the information requested below:

i. What was the average amount of the interfund loan when the loan was outstanding? [insert dollar amount]

ii. What was the number of days that the interfund loan was outstanding? [insert amount]

c. Did the Fund engage in interfund borrowing? [Y/N] If yes, for each loan provide the information requested below:

i. What was the average amount of the interfund loan when the loan was outstanding? [insert dollar amount]

ii. What was the number of days that the interfund loan was outstanding? [insert amount]

iii. Item C.21. Swing pricing. For open-end management investment companies, respond to the following:

a. Did the Fund (if not a Money Market Fund, Exchange-Traded Fund, or Exchange-Traded Managed Fund) engage in swing pricing? [Y/N]

i. If so, what was the swing factor upper limit?
Part D: Additional Questions for Closed-End Management
Investment Companies and Small Business Investment

Item D.1. Securities issued by Registrant. Indicate by checking below which of the following securities have been issued by the Registrant. Indicate all that apply.

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- xvi.
- xxiv.
- Ex
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- xxvi.
- xxv
- xxvii.
- xxix.
- xxx.
- ii.
- iii.

b. x
- xxxii.
- xx
- x
- xxxi
- i.
- ii
- .

P

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- xxxv
- i.
- xx
- x
- xxxi
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- x
- xxxii.
- xx
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- xxxv
- i.
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- xxxv
- i.
- xx
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i. Ti

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ii. change vii

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iii.

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lxvii. lxix. Ex lx

where change x.

where listed:

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lxxvii. lxxviii. lxxix.

d. Convertible

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Exchanging where listed:

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xli.

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xliii.
Instruction. For any security issued by the Fund that is not listed on a securities exchange but that has a ticker symbol, provide that ticker symbol.

Item D.2. Rights offerings.

a. Did the Fund make a rights offering with respect to any type of security during the reporting period? [Y/N] If yes, answer the following as to each rights offering made by the Fund:

b. Type of security.
i. Common stock: 
ii. Preferred stock: ______
iii. Warrants: 
iv. Convertible securities: ______
v. Bonds: 
vi. Other: If other, describe:
c. Percentage of participation in primary rights offering: ____
d. **Instruction.** For Item D.2.c., the “percentage of participation in primary rights offering” is calculated as the percentage of subscriptions exercised during the primary rights offering relative to the amount of securities available for primary subscription.
a. Did the Fund make a secondary offering during the reporting period? [Y/N]
b. If yes, indicate by checking below the type(s) of security. Indicate all that apply.
   i. Common stock: 
   ii. Preferred stock: ______
   iii. Warrants: 
   iv. Convertible securities: ______
   v. Bonds: 
   vi. Other: If other, describe: 
      ______. Item D.4.
      Repurchases.
a. Did the Fund repurchase any outstanding securities issued by the Fund during the reporting period? [Y/N]
b. If yes, indicate by checking below the type(s) of security. Indicate all that apply:
i. Common stock: 
ii. Preferred stock: 
iii. Warrants: 
iv. Convertible securities: 
v. Bonds: 
vi. Other: If other, describe:  

Item D.5.

Default on long-term debt.
a. Were any issues of the Fund’s long-term debt in default at the close of the reporting period with respect to the payment of principal, interest, or amortization? [Y/N] If yes, provide the following:
   i. Nature of default: ____
   ii. Date of default: __
   iii. Amount of default per $1,000 face amount: __
   iv. Total amount of default: __

vii. Instruction. The term “long-term debt” means debt with a period of time from date of initial issuance to maturity of one year or greater.


a. Were any accumulated dividends in arrears on securities issued by the Fund at the close of the reporting period? [Y/N] If yes, provide the following:
   i. Title of issue: __
   ii. Amount per share in arrears: ____

ix. Instruction. The term “dividends in arrears” means dividends that have not been declared by the board of directors or other governing body of the Fund at the end of each relevant dividend period set forth in the constituent instruments establishing the rights of the stockholders.

x.

xi. Item D.7. Modification of securities. Have the terms of any constituent instruments defining the rights of the holders of any class of the Registrant’s securities been materially modified? [Y/N] If yes, provide the attachment required by Item G.1.b.ii.

xii. Instruction. Base the percentage on amounts incurred during the reporting period.

xiii. Item D.8. Management fee (closed-end companies only). Provide the Fund’s advisory fee as of the end of the reporting period as a percentage of net assets: _____________________________
xvi. **Item D.9.** Net annual operating expenses. Provide the Fund's net annual operating expenses as of the end of the reporting period (net of any waivers or reimbursements) as a percentage of net assets: ______________________

xvii. **Item D.10.** Market price. Market price per share at end of reporting period: ____

xviii. **Instruction.** Respond to this item with respect to common stock issued by the Registrant only.

xix. **Item D.11.** Net asset value. Net asset value per share at end of reporting period: __

xx. **Instruction.** Respond to this item with respect to common stock issued by the Registrant only.
xxi. Item D.12. Investment advisers (small business investment companies only).

a. Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:

i. Full name: 
ii. SEC file number (e.g., 801-): 
iii. CRD number: 
iv. LEI, if any: 
v. State, if applicable: 
vi. Foreign country, if applicable: 
vii. Was the investment adviser hired during the reporting period? [Y/N]

vii.1. If the investment adviser was hired during the reporting period, indicate the investment adviser’s start date: 

b. If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:

i. Full name: 
ii. SEC file number (e.g., 801-): 
iii. CRD number: 
iv. LEI, if any: 
v. State, if applicable: 
vi. Foreign country, if applicable: 
vii. Termination date: 

c. For each sub-adviser to the Fund, provide the information requested:

i. Full name: 
ii. SEC file number (e.g., 801-): 

iii. CRD number: __

iv. LEI, if any: __

v. State, if applicable: ___

vi. Foreign country, if applicable: ___

vii. Is the sub-adviser an affiliated person of the Fund’s investment adviser(s)? [Y/N]

viii. Was the sub-adviser hired during the reporting period? [Y/N]
viii.1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser’s start date: ____

d. If a sub-adviser was terminated during the reporting period, provide the following with respect to each such sub-adviser:

   i. Full name: 
   ii. SEC file number (e.g., 801-): ____
   iii. CRD number: 
   iv. LEI, if any: 
   v. State, if applicable: __
   vi. Foreign country, if applicable: __
   vii. Termination date: ____

viii. Item D.13. Transfer agents (small business investment companies only).

a. Provide the following information about each person providing transfer agency services to the Fund:

   i. Full name: 
   ii. SEC file number (e.g., 84- or 85-): ____
   iii. LEI, if any: 
   iv. State, if applicable: __
   v. Foreign country, if applicable: __

vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vii. Is the transfer agent a sub-transfer agent? [Y/N]

b. Has a transfer agent been hired or terminated during the reporting period? [Y/N] Item D.14. Custodians (small business investment companies only).

a. Provide the following information about each person that
provided custodial services to the Fund during the reporting period:

i. Full name: 

ii. LEI, if any: 

iii. State, if applicable: 

iv. Foreign country, if applicable: 
v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Is the custodian a sub-custodian? [Y/N]

vii. With respect to the custodian, check below to indicate the type of custody:

viii.1. Member national securities exchange — rule 17f-1 (17 CFR 270.17f-1):


5. Foreign custodian — rule 17f-5 (17 CFR 270.17f-5):

6. Futures commission merchants and commodity clearing organizations — rule 17f-6 (17 CFR 270.17f-6):

7. Foreign securities depository — rule 17f-7 (17 CFR 270.17f-7):

8. Insurance company sponsor — rule 26a-2 (17 CFR 270.26a-2):

9. Other: ___. If other, describe: ___.

b. Has a custodian been hired or terminated during the reporting period? [Y/N]
   i.

ii. Part E: Additional Questions for Exchange-Traded Funds and Exchange-Traded Managed Funds

iii.

iv.


a. Exchange where listed. Provide the name of the national securities exchange on which the Fund's shares are listed: ____

b. Ticker. Provide the Fund’s ticker symbol: ____

vi. Item E.2. Authorized participants. For each authorized
participant of the Fund, provide the following information:

a. Full name:  

b. SEC file number: ___

c. CRD number:  

d. LEI, if any:  

e. The dollar value of the Fund shares the authorized participant purchased from the Fund during the reporting period:  

f. The dollar value of the Fund shares the authorized participant redeemed during the reporting period: _____
g. Did the Fund require that an authorized participant post collateral to the Fund or any of its designated service providers in connection with the purchase or redemption of Fund shares during the reporting period? [Y/N]

h. **Instruction.** The term “authorized participant” means a broker-dealer that is also a member of a clearing agency registered with the Commission or a DTC Participant, and which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its designated service providers that allows the authorized participant to place orders to purchase or redeem creation units of the Exchange-Traded Fund or Exchange-Traded Managed Fund.

i. **Item E.3. Creation units.**

   a. Number of Fund shares required to form a creation unit as of the last business day of the reporting period: __

   b. Based on the dollar value paid for each creation unit purchased by authorized participants during the reporting period, provide:

   i. The average percentage of that value composed of cash: _____%

   ii. The standard deviation of the percentage of that value composed of cash: __%

   iii. The average percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: __%

   iv. The standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: ____________%

   c. Based on the dollar value paid for creation units redeemed by authorized participants during the reporting period, provide:

   i. The average percentage of that value composed of cash: _____%
ii. **The standard deviation of the percentage of that value composed of cash:** __%  

iii. **The average**
    percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis: __%  

iv. **The standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an “in-kind” basis:** __%  

d. For creation units purchased by authorized participants during the reporting period, provide:  

i. **The average transaction fee charged to an authorized participant for transacting in the creation units, expressed as:**  

i1. **Dollars per creation unit, if charged on that basis:** $________
i.2. Dollars for one or more creation units purchased on the same day, if charged on that basis: $___

i.3. A percentage of the value of each creation unit, if charged on that basis:___%

ii. The average transaction fee charged to an authorized participant for transacting in those creation units the consideration for which was fully or partially composed of cash, expressed as:

ii.1. Dollars per creation unit, if charged on that basis: $________

ii.2. Dollars for one or more creation units purchased on the same day, if charged on that basis: $___

ii.3. A percentage of the cash in each creation unit, if charged on that basis:___%

e. For creation units redeemed by authorized participants during the reporting period, provide:

i. The average transaction fee charged to an authorized participant for transacting in the creation units, expressed as:

i.1. Dollars per creation unit, if charged on that basis: $________

i.2. Dollars for one or more creation units redeemed on the same day, if charged on that basis: $___

i.3. A percentage of the value of each creation unit, if charged on that basis:___%

ii. The average transaction fee charged to an authorized participant for transacting in those creation units the consideration for which was fully or partially composed of cash, expressed as:

ii.1. Dollars per creation unit, if charged on that basis: $________

ii.2. Dollars for one or more creation units redeemed on the same day, if charged on that basis: $___

ii.3. A percentage of the cash in each creation unit, if charged on that basis:___%

ii.4. Instruction. The term “creation unit” means a specified number of
Exchange-Traded Fund or Exchange-Traded Managed Fund shares that the fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of specified securities, cash, and other assets or positions.

ii.5. Item E.4. Benchmark return difference (unit investment trusts only).

a. If the Fund is an Index Fund as defined in Item C.3 of this Form, provide the following information:

i. Is the index whose performance the Fund tracks, constructed:

i1. By an affiliated person of the fund? [Y/N]
i.2. Exclusively for the fund? [Y/N]

ii. The annualized difference between the Fund’s total return during the reporting period and the index’s return during the reporting period (i.e., the Fund’s total return less the index’s return):
   ii.1. Before Fund fees and expenses: ___
   ii.2. After Fund fees and expenses (i.e., net asset value): _____

iii. The annualized standard deviation of the daily difference between the Fund’s total return and the index’s return during the reporting period:
   iii.1. Before Fund fees and expenses: __
   iii.2. After Fund fees and expenses (i.e., net asset value): _____
   iii.3. Item E.5. In-Kind ETF. Is the Fund an “In-Kind Exchange-Traded Fund” as defined in rule 22e-4 under the Act (17 CFR 270.22e-4)? [Y/N]
   iii.4.
   iii.5. Part F: Additional Questions for Unit Investment Trusts
   iii.6. iii.7. Item F.1. Depositor. Provide the following information about each depositor:
   a. Full name: _
   b. CRD number, if any: _____
   c. LEI, if any: _
   d. State, if applicable: _____
   e. Foreign country, if applicable: _____
   f. Full name of ultimate parent of depositor: ________________________________

Item F.2. Administrators.
  a. Provide the following information about each administrator of the Fund:
i. **Full name: **

ii. **LEI, if any, or provide and describe other identifying number:**

iii. **State, if applicable:** 

iv. **Foreign country, if applicable:** 

v. **Is the administrator an affiliated person of the Fund or depositor? [Y/N]**

vi. **Is the administrator a sub-administrator? [Y/N]**

b. **Has an administrator been hired or terminated during the reporting period? [Y/N]**

**ii.B. Item F.3. Insurance company separate accounts. Is the Registrant a separate account of an insurance company? [Y/N]**
iii.9. **Instruction.** If the answer to Item F.3 is yes, respond to Item F.12 through Item F.17. If the answer to Item F.3 is no, respond to Item F.4 through Item F.11, and Item F.17.

   iii.10. Item F.4. Sponsor. Provide the following information about each sponsor:
   
   a. **Full name:** 
   
   b. **CRD number, if any:** ____
   
   c. **LEI, if any:** 
   
   d. **State, if applicable:** ____
   
   e. **Foreign country, if applicable:** ____

   iii.11. Item F.5. Trustees. Provide the following information about each trustee:
   
   a. **Full name:** 
   
   b. **State, if applicable:** ____
   
   c. **Foreign country, if applicable:** ____________________


   a. Provide the number of series existing at the end of the reporting period that had outstanding securities registered under the Securities Act: ________________________________

   b. Provide the CIK for each of these existing series: ________________________________

Item F.7. New series.

   a. Number of new series for which registration statements under the Securities Act became effective during the reporting period: 

      __________
b. **Total aggregate value of the portfolio securities on the date of
deposit for the new series:** __

iii.13. **Units with a current prospectus. Number of series for
which a current prospectus was in existence at the end
of the reporting period:** ____________________________

iii.15. **Item** iii.16. **Number of existing series for which
additional units were registered under the Securities Act.**

a. **Number of existing series for which additional units were
registered under the Securities Act during the reporting period:** __

b. **Total value of additional units:** ______

iii.18. **Item F.10.** Value of units placed in portfolios of subsequent series. Total value of units of prior series that were placed in the portfolios of subsequent series during the reporting period (the value of these units is to be measured on the date they were placed in the subsequent series): ____________________________

iii.19. **Item F.11.** Assets. Provide the total assets of all series of the Registrant combined as of

ii.2. **end of the reporting period:** __

iii.22. **the** ii.23. __

i. 2

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iii.25. **Item F.12.** Series ID of separate account. Series identification number: __

ii.26. **Number of contracts. For each security that has a contract identification**
iii.30 number assigned pursuant to rule 313 of Regulation S-T (17 CFR 232.313),

iii.32 provide the number of individual contracts that are in force at the end of the

iii.34.

iii.36.

iii.37.

Instruction. In the case of group contracts, each participant certificate should be counted as an individual contract.

Item F.14. Information on the security issued through the separate account. For each security that has a contract identification number assigned pursuant to rule 313 of Regulation S-T (17 CFR 232.313), provide the following information as of the end of the reporting period:

a. Full name of the security: ____

b. Contract identification number: ____

c. Total assets attributable to the security: _____

d. Number of contracts sold during the reporting period: ____

e. Gross premiums received during the reporting period: ____

f. Gross premiums received pursuant to section 1035 exchanges: ________________

g. Number of contracts affected in connection with premiums paid in pursuant to section 1035 exchanges: ____

h. Amount of contract value redeemed during the reporting period: ________________

i. Amount of contract value redeemed pursuant to section 1035 exchanges: ________________

j. Number of contracts affected in connection with contract value redeemed pursuant to section 1035 exchanges: ____

Instruction. In the case of group contracts, each participant
certificate should be counted as an individual contract.

iii.42. Item F.15. Reliance on rule 6c-7. Did the Registrant rely on rule 6c-7 under the Act (17 CFR 270.6c-7) during the reporting period? [Y/N]

iii.43. Item F.16. Reliance on rule 11a-2. Did the Registrant rely on rule 11a-2 under the Act (17 CFR 270.11a-2) during the reporting period? [Y/N]

iii.44. Item F.17. Divestments under section 13(c) of the Act.

a. If the Registrant has divested itself of securities in accordance with section 13(c) of the Act (15 U.S.C. 80a-13(c)) since the end of the reporting period immediately prior
b. to the current reporting period and before filing of the current report, disclose the information requested below for each such divested security:

i. Full name of the issuer: ____

ii. Ticker symbol: __

iii. CUSIP number: __

iv. Total number of shares or, for debt securities, principal amount divested: ____________________________

v. Date that the securities were divested: ____

vi. Name of the statute that added the provision of section 13(c) in accordance with which the securities were divested: __

c. If the Registrant holds any securities of the issuer on the date of the filing, provide the information requested below:

i. Ticker symbol: __

ii. CUSIP number: __

iii. Total number of shares or, for debt securities, principal amount held on the date of the filing: ______

d. Instructions.

e. This item may be used by a unit investment trust that divested itself of securities in accordance with section 13(c). A unit investment trust is not required to include disclosure under this item; however, the limitation on civil, criminal, and administrative actions under section 13(c) does not apply with respect to a divestment that is not disclosed under this item.

f. If a unit investment trust divests itself of securities in accordance with section 13(c) during the period that begins on the fifth business day before the date of filing a report on Form N-CEN and ends on the date of filing, the unit investment trust may disclose the divestment in either the report or an amendment thereto that is filed not later than five business days after the date of filing the report.

g. For purposes of determining when a divestment should be reported
under this item, if a unit investment trust divests its holdings in a particular security in a related series of transactions, the unit investment trust may deem the divestment to occur at the time of the final transaction in the series. In that case, the unit investment trust should report each transaction in the series on a single report on Form N-CEN, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

h. Item F.17 shall terminate one year after the first date on which all statutory provisions that underlie section 13(c) have terminated.
Part G: Attachments

j. Item G.1. Attachments.

a. Attachments applicable to all Registrants. All Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items below:

i. Legal proceedings: 

ii. Provision of financial support: 

iii. Independent public accountant’s report on internal control (management investment companies other than small business investment companies only):

iv. Change in accounting principles and practices: 

v. Information required to be filed pursuant to exemptive orders: 

vi. Other information required to be included as an attachment pursuant to Commission rules and regulations: 

m. Instructions.

n.

p. Item G.1.a.i. Legal proceedings.

1.

q. If the Registrant responded “YES” to Item B.11.a., provide a brief description of the proceedings. As part of the description, provide the case or docket number (if any), and the full names of the principal parties to the proceeding.

r. If the Registrant responded “YES” to Item B.11.b., identify the proceeding and give its date of termination.

u. Item G.1.a.ii. Provision of financial support. If the Registrant responded “YES” to Item B.14., provide the following information (unless the Registrant is a Money Market Fund):
w.  x. **Description of nature of support.**

(a)

y.  z. **Person providing support.**

(b)

aa.  ab. **Brief description of relationship between the person providing support and the Registrant.**

(c)

ac.  ad. **Date support provided.**

(d)

ae.  af. **Amount of support.**

(e)

ag.  ah. **Security supported (if applicable). Disclose the full name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (e.g., CIK, CUSIP, ISIN, LEI).**
(g) Value of security supported on date support was initiated (if applicable).

(h) Brief description of reason for support.

(i) Term of support.

(j) Brief description of any contractual restrictions relating to support.

iii.45. Item G.1.a.iii. Independent public accountant’s report on internal control (management investment companies other than small business investment companies only). Each management investment company shall furnish a report of its independent public accountant on the company’s system of internal accounting controls. The accountant’s report shall be based on the review, study and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements for the reporting period. The report should disclose any material weaknesses in: (a) the accounting system; (b) system of internal accounting control; or (c) procedures for safeguarding securities which exist as of the end of the Registrant’s fiscal year.

ai. The accountant’s report shall be furnished as an exhibit to the form and shall: (1) be addressed to the Registrant’s shareholders and board of directors; (2) be dated; (3) be signed manually; and (4) indicate the city and state where issued.

aj. Attachments that include a report that discloses a material weakness should include an indication by the Registrant of any corrective action taken or proposed.

ak. The fact that an accountant’s report is attached to this form shall not be regarded as acknowledging any review of this form by the independent public accountant.

iii.46. Item G.1.a.iv. Change in accounting principles and practices. If the Registrant responded “YES” to Item B.21, provide an
attachment that describes the change in accounting principles or practices, or the change in the method of applying any such accounting principles or practices. State the date of the change and the reasons therefor. A letter from the Registrant’s independent accountants, approving or otherwise commenting on the change, shall accompany the description.

iii.47. **Item G.1.a.v.** Information required to be filed pursuant to exemptive orders. File as an attachment any information required to be reported on Form N-CEN or any predecessor form to Form N-CEN (e.g., Form N-SAR) pursuant to exemptive orders issued by the Commission and relied on by the Registrant.

iii.48. **Item G.1.a.vi.** Other information required to be included as an attachment pursuant to Commission rules and regulations. File as an attachment any other information required to be included as an attachment pursuant to Commission rules and regulations.
b. Attachments to be filed by closed-end management investment companies and small business investment companies. Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items below.

i. Material amendments to organizational documents: ___

ii. Instruments defining the rights of the holders of any new or amended class of securities: ___

iii. New or amended investment advisory contracts:

iv. Information called for by Item 405 of Regulation S-K:

v. Code of ethics (small business investment companies only):

iii.49. Instructions.

iii.50. Item G.1.b.i. Material amendments to organizational documents. Provide copies of all material amendments to the Registrant’s charters, by-laws, or other similar organizational documents that occurred during the reporting period.

iii.51. Item G.1.b.ii. Instruments defining the rights of the holders of any new or amended class of securities. Provide copies of all constituent instruments defining the rights of the holders of any new or amended class of securities for the current reporting period. If the Registrant has issued a new class of securities other than short-term paper, furnish a description of the class called for by the applicable item of Form N-2. If the constituent instruments defining the rights of the holders of any class of the Registrant’s securities have been materially modified during the reporting period, give the title of the class involved and state briefly the general effect of the modification upon the rights of the holders of such securities.

iii.52. Item G.1.b.iii. New or amended investment advisory contracts. Provide copies of any new or amended investment advisory
contracts that became effective during the reporting period.

iii.53. Item G.1.b.iv. Information called for by Item 405 of Regulation S-K. Provide the information called for by Item 405 of Regulation S-K concerning failure of certain closed-end management investment company and small business investment company shareholders to file certain ownership reports.
Item G.1.b.v. Code of ethics (small business investment companies only).

(a)  (1) Disclose whether, as of the end of the period covered by the report, the Registrant has adopted a code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party. If the Registrant has not adopted such a code of ethics, explain why it has not done so.

(2) For purposes of this instruction, the term “code of ethics” means written standards that are reasonably designed to deter wrongdoing and to promote: (i) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (ii) full, fair, accurate, timely, and understandable disclosure in reports and documents that a Registrant files with, or submits to, the Commission and in other public communications made by the Registrant; (iii) compliance with applicable governmental laws, rules, and regulations;

(iv) the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and (v) accountability for adherence to the code.

(3) The Registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction. The Registrant must file a copy of any such amendment as an exhibit to this report on Form N-CEN, unless the
Registrant has elected to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its website pursuant to paragraph (a)(6)(ii) of this Instruction, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (a)(6)(iii) of this instruction.

(4) If the Registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the Registrant’s principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, that relates to one or more of the items set forth in paragraph (a)(2) of this instruction, the Registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.
If the Registrant intends to satisfy the disclosure requirement under paragraph (a)(3) or paragraph (a)(4) of this instruction regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction by posting such information on its Internet website, disclose the Registrant's Internet address and such intention.

The Registrant must: (i) file with the Commission a copy of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its report on this Form N-CEN; (ii) post the text of such code of ethics on its Internet website and disclose, in its most recent report on this Form N-CEN, its Internet address and the fact that it has posted such code of ethics on its Internet website; or (iii) undertake in its most recent report on this Form N-CEN to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

A Registrant may have separate codes of ethics for different types of officers. Furthermore, a “code of ethics” within the meaning of paragraph (a)(2) of this instruction may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a)(1) of this instruction. In satisfying the requirements of paragraph (a)(6) of this instruction, a Registrant need only file, post, or provide the portions of a broader document that constitutes a “code of ethics” as defined in paragraph (a)(2) of this instruction and that apply to the persons specified in paragraph (a)(1) of this instruction.

If a Registrant elects to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its Internet website
pursuant to paragraph (a)(6)(ii), the code of ethics must remain accessible on its website for as long as the Registrant remains subject to the requirements of this instruction and chooses to comply with this instruction by posting its code on its Internet website pursuant to paragraph (a)(6)(ii).
(10) The Registrant does not need to provide any information pursuant to paragraphs (a)(3) and (4) of this instruction if it discloses the required information on its Internet website within five business days following the date of the amendment or waiver and the Registrant has disclosed in its most recently filed report on this Form N-CEN its Internet website address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the Registrant elects to disclose this information through its website, such information must remain available on the website for at least a 12-month period. The Registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the Registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

(11) The Registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.

(12) For purposes of this instruction: (i) the term “waiver” means the approval by the Registrant of a material departure from a provision of the code of ethics; and (ii) the term “implicit waiver” means the Registrant’s failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in rule 3b-7 under the Exchange Act (17 CFR 240.3b-7), of the Registrant.

(b) (1) Disclose that the Registrant’s board of directors has determined that the Registrant either: (i) has at least one audit committee financial expert serving on its audit committee; or (ii) does not have an audit committee financial expert serving on its audit committee.

(2) If the Registrant provides the disclosure required by paragraph (b) (1)(i) of this instruction, it must disclose the name of the audit committee financial expert and whether that person is “independent.” In order to be
considered “independent” for purposes of this instruction, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (i) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an “interested person” of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a-2(a)(19)).

(3) If the Registrant provides the disclosure required by paragraph (b)(1)(ii) of this instruction, it must explain why it does not have an audit committee financial expert.
If the Registrant's board of directors has determined that the Registrant has more than one audit committee financial expert serving on its audit committee, the Registrant may, but is not required to, disclose the names of those additional persons. A Registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (b)(2) of this instruction.

For purposes of this instruction, an “audit committee financial expert” means a person who has the following attributes:

(i) an understanding of generally accepted accounting principles and financial statements;
(ii) the ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;
(iii) experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Registrant’s financial statements, or experience actively supervising one or more persons engaged in such activities;
(iv) an understanding of internal controls and procedures for financial reporting; and
(v) an understanding of audit committee functions.

A person shall have acquired such attributes through:

(i) education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions;
(ii) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;
(iii) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or
(iv) other relevant experience.

(i) A person who is determined to be an audit committee financial expert will not be deemed an “expert” for any purpose,
including without limitation for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this instruction; (ii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; (iii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.
If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (b)(6)(iv) of this Instruction, the Registrant shall provide a brief listing of that person's relevant experience.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

(Registrant) ________________________________

Date __________

(Signature)* ________________________________

*Print full name and title of the signing officer under his/her signature.