

Securities and Exchange Commission

§ 270.3a-9

(iii) Is not entered into for the purpose of avoiding regulation under the Act;

(7) *Investments in securities* means all securities other than securities issued by majority-owned subsidiaries and companies controlled primarily by the issuer that conduct similar types of businesses, through which the issuer is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities;

(8) *Other investment* means an investment in securities that is not a capital preservation investment; and

(9) *Research and development expenses* means research and development costs as defined in FASB ASC Topic 730, *Research and Development*, as currently in effect or as it may be subsequently revised.

[68 FR 37052, June 20, 2003, as amended at 76 FR 50123, Aug. 12, 2011]

§ 270.3a-9 Crowdfunding vehicle.

(a) Notwithstanding section 3(a) of the Act, a crowdfunding vehicle will be deemed not to be an investment company if the vehicle:

(1) Is organized and operated for the sole purpose of directly acquiring, holding, and disposing of securities issued by a single crowdfunding issuer and raising capital in one or more offerings made in compliance with §§ 227.100 through 227.504 (Regulation Crowdfunding);

(2) Does not borrow money and uses the proceeds from the sale of its securities solely to purchase a single class of securities of a single crowdfunding issuer;

(3) Issues only one class of securities in one or more offerings under Regulation Crowdfunding in which the crowdfunding vehicle and the crowdfunding issuer are deemed to be co-issuers under the Securities Act (15 U.S.C. 77a *et seq.*);

(4) Receives a written undertaking from the crowdfunding issuer to fund or reimburse the expenses associated with its formation, operation, or winding up, receives no other compensation, and any compensation paid to any person operating the vehicle is paid solely by the crowdfunding issuer;

(5) Maintains the same fiscal year-end as the crowdfunding issuer;

(6) Maintains a one-to-one relationship between the number, denomination, type and rights of crowdfunding issuer securities it owns and the number, denomination, type and rights of its securities outstanding;

(7) Seeks instructions from the holders of its securities with regard to:

(i) The voting of the crowdfunding issuer securities it holds and votes the crowdfunding issuer securities only in accordance with such instructions; and

(ii) Participating in tender or exchange offers or similar transactions conducted by the crowdfunding issuer and participates in such transactions only in accordance with such instructions;

(8) Receives, from the crowdfunding issuer, all disclosures and other information required under Regulation Crowdfunding and the crowdfunding vehicle promptly provides such disclosures and other information to the investors and potential investors in the crowdfunding vehicle's securities and to the relevant intermediary; and

(9) Provides to each investor the right to direct the crowdfunding vehicle to assert the rights under State and Federal law that the investor would have if he or she had invested directly in the crowdfunding issuer and provides to each investor any information that it receives from the crowdfunding issuer as a shareholder of record of the crowdfunding issuer.

(b) For purposes of this section:

(1) *Crowdfunding issuer* means a company that seeks to raise capital as a co-issuer with a crowdfunding vehicle in an offering that complies with all of the requirements under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) and Regulation Crowdfunding.

(2) *Crowdfunding vehicle* means an issuer formed by or on behalf of a crowdfunding issuer for the purpose of conducting an offering under section 4(a)(6) of the Securities Act (15 U.S.C. 77d(a)(6)) as a co-issuer with the crowdfunding issuer, which offering is controlled by the crowdfunding issuer.

§ 270.3c-1

(3) *Regulation Crowdfunding* means the regulations set forth in §§ 227.100 through 227.504 of this chapter.

[86 FR 3602, Jan. 14, 2021]

§ 270.3c-1 Definition of beneficial ownership for certain 3(c)(1) funds.

(a) As used in this section:

(1) The term *Covered Company* means a company that is an investment company, a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(b) For purposes of section 3(c)(1)(A) of the Act [15 U.S.C. 80a-3(c)(1)(A)], beneficial ownership by a Covered Company owning 10 percent or more of the outstanding voting securities of a Section 3(c)(1) Company shall be deemed to be beneficial ownership by one person, *provided that*:

(1) On April 1, 1997, the Covered Company owned 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company or non-voting securities that, on such date and in accordance with the terms of such securities, were convertible into or exchangeable for voting securities that, if converted or exchanged on or after such date, would have constituted 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company; and

(2) On the date of any acquisition of securities of the Section 3(c)(1) Company by the Covered Company, the value of all securities owned by the Covered Company of all issuers that are Section 3(c)(1) or Section 3(c)(7) Companies does not exceed 10 percent of the Covered Company's total assets.

[62 FR 17529, Apr. 9, 1997]

§ 270.3c-2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a com-

17 CFR Ch. II (4-1-22 Edition)

pany owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: *Provided*, That such State development corporation is not, or as a result of its investment in the small business investment company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 6, 74 Stat. 412; 15 U.S.C. 80a-6)

[33 FR 11451, Aug. 13, 1968]

§ 270.3c-3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term *public offering* as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or accompanied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

[37 FR 7590, Apr. 18, 1972]