

Public Law 91-547

AN ACT

December 14, 1970
[S. 2224]

To amend the Investment Company Act of 1940 and the Investment Advisers Act of 1940 to define the equitable standards governing relationships between investment companies and their investment advisers and principal underwriters, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Investment Company Amendments Act of 1970".

Investment
Company Amend-
ments Act of 1970.

SEC. 2. (a) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)) is amended as follows:

54 Stat. 790.

(1) Paragraph (5) is amended by striking out "under section 11(k) of the Federal Reserve Act, as amended" and inserting in lieu thereof "under the authority of the Comptroller of the Currency".

(2) Paragraphs (19) through (35) are redesignated as paragraphs (20) through (36), respectively, and paragraphs (36) through (42) are redesignated as paragraphs (38) through (44), respectively.

(3) A new paragraph is inserted immediately after paragraph (18) to read as follows:

"Interested
person."

"(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 fiscal years of such company has acted as legal counsel for such company,

"(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and

48 Stat. 881.
15 USC 78a.

"(vi) 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 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 or principal underwriter or by a controlling person of 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 fiscal years of such investment company has acted as legal counsel for such investment adviser or principal underwriter,

“(v) any broker or dealer registered under the Securities Exchange Act of 1934 or any affiliated person of such a broker or dealer, and

“(vi) 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 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.

48 Stat. 881.
15 USC 78a.

“Member of the immediate family.”

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 (vi) 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 (vi) 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 title or for any other purpose for any period prior to the effective date of such order.”

(4) A new paragraph is inserted immediately after redesignated paragraph (36) (formerly paragraph (35)) as follows:

“Separate account.”

“(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.”

(5) A new paragraph is inserted immediately after redesignated paragraph (44) (formerly paragraph (42)) as follows:

“Savings and loan association.”

“(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.”

54 Stat. 811.

(b) Section 13(b) of such Act (15 U.S.C. 80a-13(b)) is amended by striking out “paragraph (40)” and inserting in lieu thereof “paragraph (42)”.

Exemptions.
54 Stat. 797.

SEC. 3. (a) The second sentence of paragraph (2) of section 3(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(b)(2)) is amended by inserting “in good faith” after “paragraph”.

80 Stat. 243.

(b) Section 3(c) of such Act (15 U.S.C. 80a-3(c)) is amended as follows:

(1) The material preceding paragraph (1) is amended to read as follows:

“(c) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this title:”

(2) Strike paragraph (8); redesignate paragraphs (5) through (15) as paragraphs (4) through (13), respectively; and strike “paragraphs

(3), (5), and (6)" in redesignated paragraph (6) (formerly paragraph (7)) and insert in lieu thereof "paragraphs (3), (4), and (5)".

(3) Redesignated paragraph (5) (formerly paragraph (6)) is amended by inserting "redeemable securities," before "face-amount certificates".

(4) Redesignated paragraph (8) (formerly paragraph (10)) is amended to read as follows:

"(8) Any company subject to regulation under the Public Utility Holding Company Act of 1935."

(5) Redesignated paragraph (11) (formerly paragraph (13)) is amended to read as follows:

"(11) Any employees' stock bonus, pension, or profit-sharing trust which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954; or any collective trust fund maintained by a bank consisting solely of assets of such trusts; or any separate account the assets of which are derived solely from (A) contributions under pension or profit-sharing plans which meet the requirements of such section or the requirements for deduction of the employer's contribution under section 404(a) (2) of such Code, and (B) advances made by an insurance company in connection with the operation of such separate account."

(c) (1) Section 8(b) (2) of such Act (15 U.S.C. 80a-8(b) (2)) is amended to read as follows:

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

(2) Paragraphs (3) and (4) are redesignated as paragraphs (4) and (5), respectively.

(3) A new paragraph is inserted immediately after paragraph (2) to read as follows:

"(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;"

(d) Section 13(a) (3) of such Act (15 U.S.C. 80a-13(a) (3)) is amended to read as follows:

"(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 8(b) (3);"

SEC. 4. (a) That part of section 9(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(a)) which precedes paragraph (1) is amended by inserting "employee," before "officer".

(b) Section 9 of such Act (15 U.S.C. 80a-9) is further amended by redesignating subsection (b) as subsection (c) and inserting immediately after subsection (a) a new subsection to read as follows:

"(b) 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 title any statement which was at the time and in the light of the circumstances under which it was made false or

54 Stat. 798.
15 USC 80a-3.

49 Stat. 838.
15 USC 79.
Certain trust
funds and ac-
counts, exclusion.

68A Stat. 134;
76 Stat. 809, 1141;
80 Stat. 1577.
26 USC 401.

26 USC 404.

Registration
statement.

Policy change-
able only by
shareholder vote.

54 Stat. 804.

Fundamental
policy.

Investment
policy deviation,
prohibition.

Supra.

Ineligibility.

Certain persons
serving invest-
ment companies,
SEC administra-
tive action.

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; or

“(2) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of any rule or regulation under any of such statutes; or

“(3) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title II of this Act, or of this title, or of any rule or regulation under any of such statutes.”

SEC. 5. (a) Section 10(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-10(a)) is amended to read as follows:

“(a) 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) Section 10(b) of such Act (15 U.S.C. 80a-10(b)) is amended—

(1) by striking out “After one year from the effective date of this title, no” and inserting in lieu thereof “No”; and

(2) by striking out “affiliated”, each place it appears in paragraph (2) and inserting in lieu thereof “interested”.

(c) Section 10(c) of such Act (15 U.S.C. 80a-10(c)) is amended to read as follows:

“(c) 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, 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) Section 10(d) of such Act (15 U.S.C. 80a-10(d)) is amended to read as follows:

“(d) 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 company is registered under title II of this Act and is engaged principally in the business of rendering investment supervisory services as defined in title 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;

48 Stat. 74, 881.
15 USC 77a, 78a.
54 Stat. 847.
15 USC 80b-1.

Board of directors, restrictions.
54 Stat. 806.

Bank collective funds for managing agency accounts, exemptions.
Supra.

“(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.”

SEC. 6. Section 11(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-11(b)) is amended to read as follows:

“(b) 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.”

Reorganization,
exchange of
series shares.
54 Stat. 808.

SEC. 7. Section 12(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-12(d)) is amended to read as follows:

Fund holding
companies, limi-
tations.

“(d) (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, 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—

48 Stat. 881.
15 USC 78a.

“(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.

Exceptions.

Ante, p. 1417.

“(D) The provisions of this paragraph (1) shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 11 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 (1) 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, 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) in the event such investment company is not a registered investment company, 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) to refrain from substituting such security unless the Commission shall have approved such substitution in the manner provided in section 26 of this Act.

“(F) The provisions of this paragraph (1) 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) For the purposes of this paragraph (1), 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 it reasonably possible.

“(H) In any action brought to enforce the provisions of this paragraph (1), the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this para-

48 Stat. 881.
15 USC 78a.

Post, p. 1424.

graph (1), 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 (1).

“(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 title II of this Act, 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.”

SEC. 8. (a) Section 15(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-15(a)) is amended to read as follows:

“(a) 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) Section 15(b) of such Act (15 U.S.C. 80a-15(b)) is amended to read as follows:

“(b) 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—

54 Stat. 847.
15 USC 80b-1.

Investment
adviser, contract
requirements.
54 Stat. 812.

Principal under-
writer, contract
requirements.

“(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) Section 15(c) of such Act (15 U.S.C. 80a-15(c)) is amended to read as follows:

“(c) 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.”

(d) Section 15 of such Act (15 U.S.C. 80a-15) is amended by striking out subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 9. (a) Section 17(f) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(f)) is amended to read as follows:

“(f) Every registered management company shall place and maintain its securities and similar investments in the custody of (1) a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of this title for the trustees of unit investment trusts; or (2) a company which is a member of a national securities exchange as defined in the Securities Exchange Act of 1934, subject to such rules and regulations as the Commission may from time to time prescribe for the protection of investors; or (3) 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. 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, 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. 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. No such member

Advisory and
underwriting con-
tracts, approval.
54 Stat. 813.

Securities,
custody.

54 Stat. 827.
15 USC 80a-26.

48 Stat. 881.
15 USC 78a.

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. 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 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 section 17(g) of this title, covering the officers or employees authorized to draw on such account or accounts."

54 Stat. 827.
15 USC 80a-26.

Infra.

Securities or
funds in custody
of bank, access,
bonding.
54 Stat. 816.

(b) Section 17(g) of such Act (15 U.S.C. 80a-17(g)) is amended to read as follows:

"(g) 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."

(c) Section 17 of such Act (15 U.S.C. 80a-17) is further amended by adding at the end thereof a new subsection as follows:

Insider trading,
prohibition.

"(j) 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."

SEC. 10. Section 18(f) (2) of the Investment Company Act of 1940 (15 U.S.C. 80a-18(f) (2)) is amended to read as follows:

"(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

"Senior
security."

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."

SEC. 11. Section 19 of the Investment Company Act of 1940 (15 U.S.C. 80a-19) is amended by inserting "(a)" after "SEC. 19.", and by adding at the end thereof a new subsection as follows:

"(b) 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 the Internal Revenue Code of 1954, more often than once every twelve months."

SEC. 12. (a) Section 22(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-22(b)) is amended to read as follows:

"(b) (1) Such a securities association may also, by rules adopted and in effect in accordance with said section 15A, and notwithstanding the provisions of subsection (b)(8) 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 the date of enactment of the Investment Company Amendments Act of 1970, or after a securities association has adopted rules as contemplated by this subsection, the Commission may make such rules and regulations pursuant to section 15(b)(10) of the Securities Exchange Act of 1934 as are appropriate to effectuate the purpose of this subsection with respect to sales of shares of a registered investment company by broker-dealers subject to regulation under section 15(b)(8) of that Act: *Provided*, That the underwriter of such shares may file with the Commission at any time a notice of election to comply with the rules prescribed pursuant to this subsection by a national securities association specified in such notice, and thereafter the sales load shall not exceed that prescribed by such rules of such association, and the rules of the Commission as hereinabove authorized shall thereafter be inapplicable to such sales.

"(3) At any time after the expiration of eighteen months from the date of enactment of the Investment Company Amendments Act of 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

Long-term capital gains, distribution, limitation.
54 Stat. 821.

68A Stat. 3.
26 USC 1.

Redeemable securities, excessive sales load, prohibition.

52 Stat. 1070;
78 Stat. 574.
15 USC 78o-3.

Exemption.

Regulations.

Ante, p. 1413.

78 Stat. 573.
15 USC 78o.

Compliance notice.

Rules changes.

in the manner provided by section 15A(k)(2) of the Securities Exchange Act of 1934.

"(4) If any provision of this subsection is in conflict with any provision of any law of the United States in effect on the date this subsection takes effect, the provisions of this subsection shall prevail."

(b) Section 22(c) of such Act (15 U.S.C. 80a-22(c)) is amended to read as follows:

"(c) 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."

(c) Section 22(d) of such Act (15 U.S.C. 80a-22(d)) is amended to read as follows:

"(d) 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 11 including any offer made pursuant to section 11(b); (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 12."

Sec. 13. (a) Section 24(d) of the Investment Company Act of 1940 (15 U.S.C. 80a-24(d)) is amended to read as follows:

"(d) The exemption provided by paragraph (8) of section 3(a) of the Securities Act of 1933 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) shall not apply to any security of which a registered investment company is the issuer, except a security sold or disposed of by the issuer or bona fide offered to the public prior to the effective date of this title, and with respect to a security so sold, disposed of, or offered, shall not apply to any new offering thereof on or after the effective date of this title. The exemption provided by section 4(3) of the Securities Act of 1933 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, 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."

78 Stat. 578,
15 USC 78o-3.

Rules and
regulations, appli-
cability.
54 Stat. 823.

Sales restric-
tions.

54 Stat. 808,
15 USC 80a-11.
Ante, p. 1417.

Registration,
exemption provi-
sions.

54 Stat. 826;
68 Stat. 689.
48 Stat. 76.
15 USC 77c.
48 Stat. 906.

78 Stat. 580.
15 USC 77d.

68 Stat. 684.
15 USC 77e.

Securities, retroactive registration.
54 Stat. 825;
68 Stat. 689.

(b) Section 24 of such Act (15 U.S.C. 80a-24) is further amended by adding at the end thereof a new subsection to read as follows:

“(f) In the case of securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust, which are sold in an amount in excess of the number of securities included in an effective registration statement of any such company, such company may, in accordance with such rules and regulations as the Commission shall adopt as it deems necessary or appropriate in the public interest or for the protection of investors, elect to have the registration of such securities deemed effective as of the time of their sale, upon payment to the Commission, within six months after any such sale, of a registration fee of three times the amount of the fee which would have otherwise been applicable to such securities. Upon any such election and payment, the registration statement of such company shall be considered to have been in effect with respect to such shares. The Commission may also adopt rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors to permit the registration of an indefinite number of the securities issued by a face-amount certificate company or redeemable securities issued by an open-end management company or unit investment trust.”

Reorganization plan consummation, enjoyment.

SEC. 14. Section 25(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-25(c)) is amended to read as follows:

“(c) 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.”

Unit investment trust, securities, substitution.

SEC. 15. (a) Section 26 of the Investment Company Act of 1940 (15 U.S.C. 80a-26) is amended by redesignating subsections (b) and (c) thereof as subsections (c) and (d), respectively, and by inserting immediately after subsection (a) a new subsection as follows:

Commission, approval.

“(b) 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 title.”

Contract.

(b) Redesignated subsection (c) (formerly subsection (b)) of section 26 of such Act is amended to read as follows:

“(c) 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) of this section, 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 of agreement have been filed with the Commission.”

Periodic payment plan certificates, regulations.

SEC. 16. Section 27 of the Investment Company Act of 1940 (15 U.S.C. 80a-27) is amended by adding at the end thereof the following new subsections:

“(d) 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 provides 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) 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.

Refund privileges, notice.

“(f) With respect to any periodic payment plan, 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 certificates 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.

Charges, statement.

“(g) 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.

Governing provisions.
54 Stat. 829.
15 USC 80a-27.

“(h) 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—

Restrictions.

“(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 26(a)) 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."

54 Stat. 827.
15 USC 80a-26.

Face-amount
certificates, sale.

SEC. 17. Section 28 of the Investment Company Act of 1940 (15 U.S.C. 80a-28) is amended by adding at the end thereof a new subsection as follows:

"(i) 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.

Reserve pay-
ments.

"(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 $3\frac{1}{2}$ 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."

SEC. 18. Section 32(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-31(a)) is amended to read as follows:

"(a) 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

Surrender value.

54 Stat. 832.
15 USC 80a-28.

Independent
public account-
ants.

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.

Vacancy.

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 16(b), 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 16(b) 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 2(a) 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.”

54 Stat. 814,
15 USC 80a-16.

Ante, p. 1413.

54 Stat. 839.

SEC. 19. Section 33 of the Investment Company Act of 1940 (15 U.S.C. 80a-32) is amended to read as follows:

“FILING OF DOCUMENTS WITH COMMISSION IN CIVIL ACTIONS

“SEC. 33. 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 document shall be filed with the Commission not later than five days after such filing or delivery.”

SEC. 20. Section 36 of the Investment Company Act of 1940 (15 U.S.C. 80a-35) is amended to read as follows:

“BREACH OF FIDUCIARY DUTY

“SEC. 36. (a) 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 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—

“(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 1(b) of this title.

Enjoinment.

“(b) 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.

Burden of proof.

“(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 payments 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 17 of this title, or rules, regulations, or orders thereunder, or to sales loans for the acquisition of any security issued by a registered investment company.

Ante, p. 1420.

“(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 title for the purposes of sections 9 and 49 of this title, section 15 of the Securities Exchange Act of 1934, or section 203 of title II of this Act, or (B) for an injunction to prohibit any person from serving in any of the capacities enumerated in subsection (a) of this section.”

54 Stat. 805,
846; *Ante*, p. 1415.
15 USC 80a-48.
52 Stat. 1075;
78 Stat. 570.
15 USC 78o.
Infra.

SEC. 21. The last sentence of section 43(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-42(a)) is amended by striking out “sections 239 and 240 of the Judicial Code, as amended” and inserting in lieu thereof “section 1254 of title 28, United States Code”.

54 Stat. 844.
62 Stat. 928.

SEC. 22. Section 44 of the Investment Company Act of 1940 (15 U.S.C. 80a-43) is amended—

(1) by striking out the next to the last sentence and inserting in lieu thereof “Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291, 1292, and 1294 of title 28, United States Code.”; and

(2) by adding at the end thereof a new sentence as follows: “The Commission may intervene as a party in any action or suit to enforce any liability or duty created by, or to enjoin any non-compliance with, section 36(b) of this title at any stage of such action or suit prior to final judgment therein.”

Ante, p. 1429.

SEC. 23. Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)) is amended as follows.

54 Stat. 847;
74 Stat. 885.

(1) Paragraph (2) is amended by striking out “under section 11(k) of the Federal Reserve Act, as amended” and inserting in lieu thereof “under the authority of the Comptroller of the Currency”.

(2) Paragraphs (17) through (20) are redesignated as paragraphs (18) through (21), respectively, and a new paragraph is inserted immediately after paragraph (16) to read as follows:

“Person associated with an investment adviser.”

“(17) The term ‘person associated with an investment adviser’ means any partner, officer, or director of such investment adviser (or any person performing similar functions), or any person directly or indirectly controlling or controlled by such investment adviser, including any employee of such investment adviser, except that for the purposes of section 203 of this title (other than subsection (f) thereof), persons associated with an investment adviser whose functions are clerical or ministerial shall not be included in the meaning of such term. The Commission may by rules and regulations classify, for the purposes of any portion or portions of this title, persons, including employees controlled by an investment adviser.”

Infra.

Registration requirements, exemptions.

SEC. 24. (a) Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(b)) is amended to read as follows:

“(b) The provisions of subsection (a) shall not apply to—

“(1) any investment adviser all of whose clients are residents of the State within which such investment adviser maintains his or its principal office and place of business, and who does not furnish advice or issue analyses or reports with respect to securities listed or admitted to unlisted trading privileges on any national securities exchange;

“(2) any investment adviser whose only clients are insurance companies; or

“(3) any investment adviser who during the course of the preceding twelve months has had fewer than fifteen clients and who neither holds himself out generally to the public as an investment adviser nor acts as an investment adviser to any investment company registered under title I of this Act.”

74 Stat. 885.

(b) Section 203(c) of such Act (15 U.S.C. 80b-3(c)) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

“(F) whether such investment adviser, or any person associated with such investment adviser, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of such investment adviser under the provisions of subsection (e), and”.

(c) Section 203 of such Act (15 U.S.C. 80b-3) is further amended by redesignating subsection (d) as subsection (e), redesignating subsection (e) as subsection (g), and inserting after subsection (c) a new subsection as follows:

“(d) Any provision of this title (other than subsection (a) of this section) which prohibits any act, practice, or course of business if the mails or any means or instrumentality of interstate commerce are used in connection therewith shall also prohibit any such act, practice, or course of business by any investment adviser registered pursuant to this section or any person acting on behalf of such an investment adviser, irrespective of any use of the mails or any means or instrumentality of interstate commerce in connection therewith.”

(d) Redesignated subsection (e) (formerly subsection (d) of section 203 of such Act) (15 U.S.C. 80b-3(d)) is amended to read as follows:

“(e) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, or suspend for a period not exceeding twelve months, or revoke the registration of, an investment adviser, if it finds that such censure, denial, suspension, or revocation is in the public interest and that such investment adviser or any person associated with such investment adviser, whether prior to or subsequent to becoming such—

“(1) has willfully made or caused to be made in any application for registration or report filed with the Commission under this title, or in any proceeding before the Commission with respect to registration, 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 who has omitted to state in any such application or report any material fact which is required to be stated therein; or

“(2) has been convicted within ten years preceding the filing of the application or at any time thereafter of any felony or misdemeanor which the Commission finds (A) involves the purchase or sale of any security, (B) arises out of the conduct of the business of a broker, dealer, or investment adviser, (C) involves embezzlement, fraudulent conversion, or misappropriation of funds or securities, or (D) involves the violation of section 1341, 1342, or 1343 of title 18, United States Code; or

“(3) is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, or dealer, or an affiliated person or employee of any investment company, bank, or insurance company, 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

“(4) has willfully violated any provision of the Securities Act of 1933, or of the Securities Exchange Act of 1934, or of title I of this Act, or of this title, or of any rule or regulation under any of such statutes; or

“(5) has aided, abetted, counseled, commanded, induced, or procured the violation by any other person of the Securities Act of 1933, or the Securities Exchange Act of 1934, or of title I of this Act, or of this title, or of any rule or regulation under any of such statutes or has failed reasonably to supervise, with a view to pre-

Infra.

54 Stat. 850;
74 Stat. 885.

Registration,
denial or suspension.

Notice.
Hearing opportunity.

62 Stat. 763.

48 Stat. 74, 881.
15 USC 77a,
78a.
54 Stat. 789.
15 USC 80a-1,
80b-1.

venting violations of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision: *Provided*, That, for the purposes of this paragraph (5), no person shall be deemed to have failed reasonably to supervise any person, if—

“(A) there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person; and

“(B) such person has reasonably discharged the duties and obligations incumbent upon him by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

Infra.

“(6) is subject to an order of the Commission entered pursuant to subsection (f) of this section barring or suspending the right of such person to be associated with an investment adviser, which order is in effect with respect to such person.”

54 Stat. 850;
74 Stat. 885.

(e) Section 203 of such Act (15 U.S.C. 80b-3) is further amended by redesignating subsections (f) and (g) as subsections (h) and (i), respectively, and inserting after redesignated subsection (e) a new subsection as follows:

Certain persons,
censure.

“(f) The Commission may, after appropriate notice and opportunity for hearing, by order censure any person or bar or suspend for a period not exceeding twelve months any person from being associated with an investment adviser, if the Commission finds that such censure, barring, or suspension is in the public interest and that such person has committed or omitted any act or omission enumerated in paragraph (1), (4), or (5) of subsection (e) of this section, or has been convicted of any offense specified in paragraph (2) of subsection (e) within ten years of the commencement of the proceedings under this subsection, or is enjoined from any action, conduct, or practice specified in paragraph (3) of subsection (e). It shall be unlawful for any person as to whom such an order barring or suspending him from being associated with an investment adviser is in effect, willfully to become, or to be, associated with an investment adviser, without the consent of the Commission, and it shall be unlawful for any investment adviser to permit such a person to become, or remain, a person associated with such investment adviser without the consent of the Commission, if such investment adviser knew, or in the exercise of reasonable care should have known of such order.”

SEC. 25. Section 205 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-5) is amended to read as follows:

“INVESTMENT ADVISORY CONTRACTS

Ante, p. 1430.

“SEC. 205. No investment adviser, unless exempt from registration pursuant to section 203(b), shall make use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, to enter into, extend, or renew any investment advisory contract, or in any way to perform any investment advisory contract entered into, extended, or renewed on or after the effective date of this title, if such contract—

“(1) provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

“(2) fails to provide, in substance, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract; or

“(3) fails to provide, in substance, that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of such partnership within a reasonable time after such change.

Paragraph (1) of this section shall not (A) be construed to prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, or (B) apply to an investment advisory contract with—

“(i) an investment company registered under title I of this Act, or

“(ii) any other person (except a trust, collective trust fund or separate account referred to in section 3(c) (11) of title I of this Act), provided that the contract relates to the investment of assets in excess of \$1 million,

Ante, p. 1415.

which contract provides for compensation based on the asset value of the company or fund under management averaged over a specified period and increasing and decreasing proportionately with the investment performance of the company or fund over a specified period in relation to the investment record of an appropriate index of securities prices or such other measure of investment performance as the Commission by rule, regulation, or order may specify. For purposes of clause (B) of the preceding sentence, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of such company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be deemed appropriate unless the Commission by order shall determine otherwise. As used in paragraphs (2) and (3) of this section, ‘investment advisory contract’ means any contract or agreement whereby a person agrees to act as investment adviser or to manage any investment or trading account of another person other than an investment company registered under title I of this Act.”

“Investment advisory contract.”

SEC. 26. The Investment Advisers Act of 1940 (15 U.S.C. 80b-1-21) is further amended by inserting immediately after section 206 a new section as follows:

54 Stat. 847;
74 Stat. 887.
15 USC 80b-6.

“EXEMPTIONS

“SEC. 206A. The Commission, by rules and regulations, upon its own motion, or by order upon application, may conditionally or unconditionally exempt any person or transaction, or any class or classes of persons, or transactions, from any provision or provisions of this title 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 title.”

SEC. 27. (a) Section 2 of the Securities Act of 1933 (15 U.S.C. 77b) is amended by adding at the end thereof two new paragraphs as follows:

48 Stat. 74, 905;
68 Stat. 683.

“(13) The term ‘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 territory or the District of Columbia; or any receiver or similar official or any liquidating agent for such company, in his capacity as such.

“Insurance company.”

"Separate account."

"(14) The term '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, the District of Columbia, 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."

Federal, State, etc., exempted securities.

48 Stat. 906;
Ante, p. 718;
Post, p. 1498.

(b) Section 3(a)(2) of such Act (15 U.S.C. 77c(a)(2)) is amended to read as follows:

"(2) Any security issued or guaranteed by the United States or any territory thereof, or by the District of Columbia, or by any State of the United States, or by any political subdivision of a State or territory or by any public instrumentality of one or more States or territories, or by any 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; or any security issued or guaranteed by any bank; or any security issued by or representing an interest in or a direct obligation of a Federal Reserve bank; or any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; or any interest or participation in a single or collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph (i) under which an amount in excess of the employer's contribution for any period is allocated to the purchase of securities issued by the employer or any company directly or indirectly controlling, controlled by or under common control with the employer or (ii) which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code. The Commission, by rules and regulations or order, shall exempt from the provisions of section 5 of this title any interest or participation issued in connection with a stock bonus, pension, profit-sharing, or annuity plan which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of the Internal Revenue Code of 1954, if and to the extent that the Commission determines this to be 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 title. For the purposes of this paragraph, a security issued or guaranteed by a bank shall not include any interest or participation in any collective trust fund maintained by a bank; and the term 'bank' means any national bank, or any banking institution organized under the laws of any State, territory, or the District of Columbia, the business of which is substantially confined to banking and is supervised by the State or territorial banking commission or similar official; except that in the case of a common trust fund or similar fund, or a collective trust fund, the term 'bank' has the same meaning as in the Investment Company Act of 1940."

68A Stat. 134;
76 Stat. 809,
1141; 80 Stat.
1577.

26 USC 401.
26 USC 404.

68 Stat. 684.
15 USC 77e.

"Bank."

Savings and loan associations, exempted securities.

48 Stat. 76.

(c) Sections 3(a)(5) of such Act (15 U.S.C. 77c(a)(5)) is amended to read as follows:

"(5) Any security issued (A) by a savings and loan association, building and loan association, cooperative bank, homestead associa-

tion, or similar institution, which is supervised and examined by State or Federal authority having supervision over any such institution, except that the foregoing exemption shall not apply with respect to any such security where the issuer takes from the total amount paid or deposited by the purchaser, by way of any fee, cash value or other device whatsoever, either upon termination of the investment at maturity or before maturity, an aggregate amount in excess of 3 per centum of the face value of such security; or (B) by (i) a farmer's cooperative organization exempt from tax under section 521 of the Internal Revenue Code of 1954, (ii) a corporation described in section 501(c)(16) of such Code and exempt from tax under section 501(a) of such Code, or (iii) a corporation described in section 501(c)(2) of such Code which is exempt from tax under section 501(a) of such Code and is organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization or corporation described in clause (i) or (ii):".

68A Stat. 176.
26 USC 521.
26 USC 501.

SEC. 28. (a) Section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)) is amended to read as follows:

"(12) The term 'exempted security' or 'exempted securities' includes securities which are direct obligations of or obligations guaranteed as to principal or interest by the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors; securities which are direct obligations of or obligations guaranteed as to principal or interest by a State or any political subdivision thereof, or by any agency or instrumentality of a State or any political subdivision thereof, or by any municipal corporate instrumentality of one or more States; any interest or participation in any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of assets contributed thereto by such bank in its capacity as trustee, executor, administrator, or guardian; any interest or participation in a collective trust fund maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (A) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (B) an annuity plan which meets the requirements for the deduction of the employer's contribution under section 404(a)(2) of such Code, other than any plan described in clause (A) or (B) of this paragraph which covers employees some or all of whom are employees within the meaning of section 401(c)(1) of such Code; and such other securities (which may include, among others, unregistered securities the market in which is predominantly intrastate) as the Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to 'exempted securities'."

48 Stat. 884;
Ante, p. 718;
Post, p. 1499.
"Exempted
security."

(b) Section 3(a)(19) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(19)) is amended to read as follows:

68A Stat. 134;
76 Stat. 809, 1141;
80 Stat. 1577.
26 USC 401.
26 USC 404.

"(19) the terms 'investment company', 'affiliated person', 'insurance company', and 'separate account' have the same meanings as in the Investment Company Act of 1940."

Definitions.
78 Stat. 565.

(c) Section 12(g)(2) of such Act (15 U.S.C. 78l(g)(2)) is amended by adding at the end thereof a new subparagraph as follows:

54 Stat. 789.
15 USC 80a-51.
Exemptions.
78 Stat. 566.

"(H) any interest or participation in any collective trust funds

maintained by a bank or in a separate account maintained by an insurance company which interest or participation is issued in connection with (i) a stock-bonus, pension, or profit-sharing plan which meets the requirements for qualification under section 401 of the Internal Revenue Code of 1954, or (ii) an annuity plan which meets the requirements for deduction of the employer's contribution under section 404(a)(2) of such Code."

68A Stat. 134;
76 Stat. 809, 1141;
80 Stat. 1577.
26 USC 401.
26 USC 404.
Nonapplicability.
48 Stat. 74.
15 USC 77a.
54 Stat. 789.
15 USC 80a-51.

SEC. 29. The provisions of the Securities Act of 1933 and the Investment Company Act of 1940 shall not apply, except for purposes of definition of terms used in this section, to any interest or participation (including any separate account or other fund providing for the sharing of income or gains and losses, and any interest or participation in such account or fund) in any contract, certificate, or policy providing for life insurance benefits which was issued prior to March 23, 1959, by an insurance company, if (1) the form of such contract, certificate, or policy was approved by the insurance commissioner, or similar official or agency, of a State, territory or the District of Columbia, and (2) under such contract, certificate, or policy not to exceed 49 per centum of the gross premiums or other consideration paid was to be allocated to a separate account or other fund providing for the sharing of income or gains and losses. Nothing herein contained shall be taken to imply that any such interest or participation constitutes a "security" under any other laws of the United States.

Effective dates.

SEC. 30. This Act shall take effect on the date of its enactment, except that—

(1) sections 5 (a), (b), and (c); 8; 9(a); 11; 18; 24(a); and 25 (amending sections 10 (a), (b), and (c); 15; 17(f); 19; and 32(a) of the Investment Company Act of 1940; and sections 203 (b) and 205 of the Investment Advisers Act of 1940, respectively) shall take effect upon the expiration of one year after the date of enactment of this Act;

(2) that part of section 5(d) which substitutes "interested persons" for "affiliated persons" in section 10(d) of the Investment Company Act of 1940 shall take effect upon the expiration of one year after the date of enactment of this Act;

(3) sections 16 and 17 (amending section 27 and 28 of the Investment Company Act of 1940) shall take effect upon the expiration of six months after the date of enactment of this Act; and

(4) that part of section 20 which adds a subsection (b) to section 36 of the Investment Company Act of 1940 shall take effect upon the expiration of eighteen months after the date of enactment of this Act.

Approved December 14, 1970.

Public Law 91-548

AN ACT

December 14, 1970
[H. R. 13934]

To amend the Act of September 21, 1959 (73 Stat. 590), to authorize the Secretary of the Interior to revise the boundaries of Minute Man National Historical Park, and for other purposes.

Minute Man
National Historical
Park.
Boundary revision.
16 USC 410s.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of September 21, 1959 (73 Stat. 590) is amended by inserting "(a)" after the word "that" in the first sentence and adding two subsections, as follows: