

§ 80a-54. Acquisition of assets by business development companies

(a) Permissible assets; percentage

It shall be unlawful for a business development company to acquire any assets (other than those described in paragraphs (1) through (7) of this subsection) unless, at the time the acquisition is made, assets described in paragraphs (1) through (6) below represent at least 70 per centum of the value of its total assets (other than assets described in paragraph (7) below):

(1) securities purchased, in transactions not involving any public offering or in such other transactions as the Commission may, by rule, prescribe if it finds that enforcement of this subchapter and of the Securities Act of 1933 [15 U.S.C. 77a et seq.] with respect to such transactions is not necessary in the public interest or for the protection of investors by reason of the small amount, or the limited nature of the public offering, involved in such transactions—

(A) from the issuer of such securities, which issuer is an eligible portfolio company, from any person who is, or who within the preceding thirteen months has been, an affiliated person of such eligible portfolio company, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors; or

(B) from the issuer of such securities, which issuer is described in section 80a-2(a)(46)(A) and (B) of this title but is not an eligible portfolio company because it has issued a class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend or maintain credit to or for a customer pursuant to rules or regulations adopted by the Board of Governors of the Federal Reserve System under section 78g of this title, or from any person who is an officer or employee of such issuer, if—

(i) at the time of the purchase, the business development company owns at least 50 per centum of—

(I) the greatest number of equity securities of such issuer and securities convertible into or exchangeable for such securities; and

(II) the greatest amount of debt securities of such issuer,

held by such business development company at any point in time during the period when such issuer was an eligible portfolio company, except that options, warrants, and similar securities which have by their terms expired and debt securities which have been converted, or repaid or prepaid in the ordinary course of business or incident to a public offering of securities of such issuer, shall not be considered to have been held by such business development company for purposes of this requirement; and

(ii) the business development company is one of the 20 largest holders of record of such issuer's outstanding voting securities;

(2) securities of any eligible portfolio company with respect to which the business development company satisfies the requirements of section 80a-2(a)(46)(C)(ii) of this title;

(3) securities purchased in transactions not involving any public offering from an issuer described in sections 80a-2(a)(46)(A) and (B) of this title or from a person who is, or who within the preceding thirteen months has been, an affiliated person of such issuer, or from any person in transactions incident thereto, if such securities were—

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

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

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

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

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

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

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

(b) Valuation of assets

For purposes of this section, the value of a business development company's assets shall be determined as of the date of the most recent fi-

nancial statements filed by such company with the Commission pursuant to section 78m of this title, and shall be determined no less frequently than annually.

(Aug. 22, 1940, ch. 686, title I, § 55, as added Pub. L. 96-477, title I, § 105, Oct. 21, 1980, 94 Stat. 2278; amended Pub. L. 100-181, title VI, § 626, Dec. 4, 1987, 101 Stat. 1263; Pub. L. 104-290, title V, § 505, Oct. 11, 1996, 110 Stat. 3446.)

Editorial Notes

REFERENCES IN TEXT

The Securities Act of 1933, referred to in subsec. (a)(1), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

AMENDMENTS

1996—Subsec. (a)(1)(A). Pub. L. 104-290 substituted “from any person” for “or from any person” and inserted before semicolon “, or from any other person, subject to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”.

1987—Subsec. (a)(1)(B). Pub. L. 100-181 substituted “described in section” for “described in sections”.

§ 80a-55. Qualifications of directors

(a) Non-interested persons

A majority of a business development company’s directors or general partners shall be persons who are not interested persons of such company.

(b) Vacancies; suspension of provisions

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

(Aug. 22, 1940, ch. 686, title I, § 56, as added Pub. L. 96-477, title I § 105, Oct. 21, 1980, 94 Stat. 2280.)

§ 80a-56. Transactions with certain affiliates

(a) Transactions involving controlling or closely affiliated persons

It shall be unlawful for any person who is related to a business development company in a manner described in subsection (b) of this section, acting as principal—

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

(2) knowingly to purchase from such business development company or from any com-

pany controlled by such business development company, any security or other property (except securities of which the seller is the issuer);

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

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

(b) Controlling or closely affiliated persons

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

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

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

(c) Exemption orders

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

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

(2) the proposed transaction is consistent with the policy of the business development