

## Section 12 -- Functions and Activities of Investment Companies

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- a. Purchase of securities on margin; joint trading accounts; short sales of securities; exceptions. It shall be unlawful for any registered investment company, in contravention of such rules and regulations or orders as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors--
  1. to purchase any security on margin, except such short-term credits as are necessary for the clearance of transactions;
  2. to participate on a joint or a joint and several basis in any trading account in securities, except in connection with an underwriting in which such registered company is a participant; or
  3. to effect a short sale of any security, except in connection with an underwriting in which such registered company is a participant.
- b. Distribution by investment company of securities of which it is issuer. It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section 10(d) [15 USCS § 80a-10(d)]) to act as a distributor of securities of which it is the issuer, except through an underwriter, in the contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- c. Limitations on commitments as underwriter. It shall be unlawful for any registered diversified company to make any commitment as underwriter, if immediately thereafter the amount of its outstanding underwriting commitments, plus the value of its investments in securities of issuers (other than investment companies) of which it owns more than 10 per centum of the outstanding voting securities, exceeds 25 per centum of the value of its total assets.
- d. Limitations on acquisition by investment companies of securities of other specific businesses.
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    - 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--

- i. more than 3 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and any company or companies controlled by it; or
  - ii. more than 10 per centum of the total outstanding voting stock of the acquired company is owned by the acquiring company and other investment companies and companies controlled by them.
- C. It shall be unlawful for any investment company (the "acquiring company") and any company or companies controlled by the acquiring company to purchase or otherwise acquire any security issued by a registered closed-end investment company, if immediately after such purchase or acquisition the acquiring company, other investment companies having the same investment adviser, and companies controlled by such investment companies, own more than 10 per centum of the total outstanding voting stock of such closed-end company.
- D. The provisions of this paragraph shall not apply to a security received as a dividend or as a result of an offer of exchange approved pursuant to section 11 [15 USCS § 80a-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 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. the purchase or acquisition is made pursuant to an arrangement with the issuer of, or principal underwriter for the issuer of, the security whereby such investment company is obligated--

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

(bb) in the event that such investment company is not a registered investment company, to refrain from substituting such security unless the Commission shall have approved such substitution in the manner provided in section 26 of this Act [15 USCS § 80a-26].

- F. The provisions of this paragraph shall not apply to securities purchased or otherwise acquired by a registered investment company if--
- i. immediately after such purchase or acquisition not more than 3 per centum of the total outstanding stock of such issuer is owned by such registered investment company and all affiliated persons of such registered investment company; and
  - ii. such registered investment company has not offered or sold after January 1, 1971, and is not proposing to offer or sell any security issued by it through a principal underwriter or otherwise at a public offering price which includes a sales load of more than 1 1/2 per centum.

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

- G. i. This paragraph does not apply to securities of a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the "acquired company") purchased or otherwise acquired by a registered open-end investment company or a registered unit investment trust (hereafter in this subparagraph referred to as the "acquiring company") if--

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

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

(bb) securities of the acquiring company, any sales loads and other distribution-related fees charged, when aggregated with any sales load and distribution-related fees paid by the acquiring company with respect to securities of the acquired company, are not excessive

under rules adopted pursuant to section 22(b) or section 22(c) [15 USCS § 80a-22(b) or (c)] by a securities association registered under section 15A of the Securities Exchange Act of 1934 [15 USCS § 78o-3], or the Commission;

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

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

- ii. For purposes of this subparagraph, the term "group of investment companies" means any 2 or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services.
- B. For the purposes of this paragraph, the value of an investment company's total assets shall be computed as of the time of a purchase or acquisition or as closely as is reasonably possible.
  - C. In any action brought to enforce the provisions of this paragraph, the Commission may join as a party the issuer of any security purchased or otherwise acquired in violation of this paragraph, and the court may issue any order with respect to such issuer as may be necessary or appropriate for the enforcement of the provisions of this paragraph.
  - D. The Commission, by rule or regulation, upon its own motion or by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision of this subsection, if and to the extent that such exemption is consistent with the public interest and the protection of investors.
2. It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security (except a security received as a dividend or as a result of a plan of reorganization of any company, other than a plan devised for the purpose of evading the provisions of this paragraph) issued by any insurance company of which such registered investment company and any company or companies controlled by such registered company do not, at the time of such purchase or acquisition, own in the aggregate at least 25 per centum of the total outstanding voting stock, if such registered company and any company or companies controlled by it own in the aggregate, or as a result of such purchase or acquisition will own in the aggregate, more than 10 per centum of the total outstanding voting stock of such insurance company.
  3. It shall be unlawful for any registered investment company and any company or companies controlled by such registered investment company to purchase or otherwise acquire any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under title II of this Act [15 USCS § § 80b-1 et seq.], 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.

- b. Acquisition of securities issued by corporations in business of underwriting, furnishing capital to industry, etc. Notwithstanding any provisions of this title, any registered investment company may hereafter purchase or otherwise acquire any security issued by any one corporation engaged or proposing to engage in the business of underwriting, furnishing capital to industry, financing promotional enterprises, purchasing securities of issuers for which no ready market is in existence, and reorganizing companies or similar activities; provided--
  1. That the securities issued by such corporation (other than short-term paper and securities representing bank loans) shall consist solely of one class of common stock and shall have been originally issued or sold for investment to registered investment companies only;
  2. That the aggregate cost of the securities of such corporation purchased by such registered investment company does not exceed 5 per centum of the value of the total assets of such registered company at the time of any purchase or acquisition of such securities; and
  3. That the aggregate paid-in capital and surplus of such corporation does not exceed \$ 100,000,000.

For the purpose of paragraph (1) of section 5(b) [15 USCS § 80a-5(b)(1)] any investment in any such corporation shall be deemed to be an investment in an investment company.

- c. Organization and ownership by one registered face-amount certificate company of all or part of capital stock of not more than two other face-amount certificate companies; limitations. Notwithstanding any provisions of this Act, any registered face-amount certificate company may organize not more than two face-amount certificate companies and acquire and own all or any part of the capital stock thereof only if such stock is acquired and held for investment: Provided, That the aggregate cost to such registered company of all such stock so acquired shall not exceed six times the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 28 [15 USCS § 80a-28(a)(1)] for a face-amount company organized on or after March 15, 1940: And provided further, That the aggregate cost to such registered company of all such capital stock issued by face-amount certificate companies organized or otherwise created under laws other than the laws of the United States or any State thereof shall not exceed twice the amount of the minimum capital stock requirement provided in subdivision (1) of subsection (a) of section 28 [15 USCS § 80a-28(a)(1)] for a company organized on or after March 15, 1940. Nothing contained in this subsection shall be deemed to prevent the sale of any such stock to any other person if the original purchase was made by such registered face-amount certificate company in good faith for investment and not for resale.
- d. Exceptions to limitation on ownership by investment company of securities of insurance company. Notwithstanding the provisions of this section any registered investment company and any company or companies controlled by such registered company may purchase or otherwise acquire from another investment company or any company or companies controlled by such registered company more than 10 per centum of the total outstanding voting stock of any insurance company owned by any such company or companies, or may acquire the securities of any insurance company if the Commission by order determines that such acquisition is in the public interest because the financial condition of such insurance company will be improved as a result of such acquisition or any plan contemplated as a result thereof. This section shall not be deemed to prohibit the

promotion of a new insurance company or the acquisition of the securities of any newly created insurance company by a registered investment company, alone or with other persons. Nothing contained in this section shall in any way affect or derogate from the powers of any insurance commissioner or similar official or agency of the United States or any State, or to affect the right under State law of any insurance company to acquire securities of any other insurance company or insurance companies.