

S. No. 364  
H. No. 3210

[REPUBLIC ACT NO. 2629]

INVESTMENT COMPANY ACT

*Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:*

SECTION 1. *Short title.*—This Act may be cited as the "Investment Company Act".

SEC. 2. *Declaration of policy.*—It is hereby declared that the policy and purposes of this Act in accordance with which the provisions of this Act shall be interpreted, are to mitigate and, so far as is feasible, to eliminate the following conditions which adversely affect the national public interest and the interest of investors:

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

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

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

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

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

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

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

(h) When investment companies operate without adequate assets or reserves.

SEC. 3. *Definitions.*—When used in this Act, unless the context otherwise requires—(a) “Advisory board” means a board, whether elected or appointed, which is distinct from the board of directors or board of trustees, or an investment company, and which is composed solely of persons who do not serve such company in any other capacity, whether or not the functions of such board are such as to render its members “directors” within the definition of that term, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased or sold by such company.

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

(c) “Affiliated person” of another person means (1) any person directly or indirectly owning, controlling or holding with power to vote, ten *per centum* or more of the outstanding voting securities of such other person; (2) any person ten *per centum* or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (3) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (4) any officer, director, partner, copartner, or employee of such other person; and (5) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

(d) “Bank” means (1) a banking institution organized under the laws of the Philippines, (2) any other banking institution or trust company, doing business under the laws of the Philippines, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks.

(e) “Broker” means any person engaged in the business of effecting transactions in securities for the account of others, but does not include a bank or any person solely by reason of the fact that such person is an underwriter for one or more investment companies.

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

(g) "Company" means a corporation, a registered partnership, or an association lawfully transacting business in the Philippines.

(h) "Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.

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

(i) "Convicted" includes a verdict, judgment, or plea of guilty, if such verdict, judgment or plea has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed.

(j) "Dealers" means any person regularly engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank, insurance company, or investment company, or any person insofar as he is engaged in investing, reinvesting, or trading in securities, or in owning or holding securities, for his own account, either individually or in some fiduciary capacity, but not as a part of a regular business.

(k) "Director" means any director of a corporation or any person performing similar functions with respect to any organization.

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

(m) "Government security" means any security issued or guaranteed as to principal or interest by the Republic of the Philippines, or by a person controlled or supervised by and acting as an instrumentality of the Government of the Republic of the Philippines pursuant to authority granted by the Congress of the Philippines; or any certificate of deposit for any of the foregoing.

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(n) "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 any receiver or similar official or any liquidating agent for such a company, in his capacity as such.

(o) "Investment adviser" of an investment company means (1) any person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of such company as such) who pursuant to contract with such company regularly furnishes advice to such company with respect to the desirability of investing in, purchasing or selling securities or other property, or is empowered to determine what securities or other property shall be purchased or sold by such company, and (2) any other person who pursuant to contract with a person described in clause (1) of this paragraph regularly performs substantially all of the duties undertaken by such person described in said clause (1); but does not include (A) a person whose advice is furnished solely through uniform publications distributed to subscribers thereto, (B) a person who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities, (C) a company furnishing such services at cost to one or more investment companies, insurance companies, or other financial institutions, (D) any person the character and amount of whose compensation for such services must be approved by a court or (E) such other persons as the Commission may by rules and regulations or order determine not to be within the intent of this definition.

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

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

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

(s) "Majority-owned subsidiary" of a person means a company fifty *per centum* or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.

(t) "Periodic payment plan certificate" means (1) any certificate, investment contract, or other security providing for a series of periodic payments by the holders, and representing an undivided interest in certain specified securities or in a unit or fund of securities purchased wholly or partly with the proceeds of such payments, and (2) any security the issuer of which is also issuing securities

of the character described in clause (1) and the holder of which has substantially the same rights and privileges as those which holders of securities of the character described in said clause (1) have upon completing the periodic payments for which such securities provide.

(u) "Person" means a natural person or a company.

(v) "Principal underwriter" of or for any investment company other than a closed-end company, or of any security issued by such a company, means any underwriter who as principal purchases from such company, or pursuant to contract has the right (whether absolute or conditional) from time to time to purchase from such company, any such security for distribution, or who as agent for such company sells or has the right to sell any such security to a dealer or to the public or both, but does not include a dealer who purchases from such company through a principal underwriter acting as agent for such company. "Principal underwriter" of or for a closed-end company or any issuer which is not an investment company, or of any security issued by such a company or issuer, means any underwriter who, in connection with a primary distribution of securities, (1) is in privity of contract with the issuer or an affiliated person of the issuer; (2) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (3) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution.

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

(x) "Redeemable security" means any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer or to a person designated by the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

(y) "Reorganization" means (1) a reorganization under the supervision of a court of competent jurisdiction; (2) a merger or consolidation; (3) a sale of seventy-five *per centum* or more in value of the assets of a company; (4) a restatement of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities; (5) a voluntary dissolution or liquidation of a company; (6) a recapitalization or other procedure or transaction which has the effect of the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company, as provided in its charter or other instrument creating or defining such rights, preferences, and privileges; (7) an exchange of securities issued by another company or companies, preliminary to and for the purpose of effecting or consummating any of the foregoing; or (8) any exchange of securities by a company which is not an investment company for securities issued by a registered investment company.

(z) "Sale", "sell", "offer to sell", or "offer for sale" includes every contract of sale or disposition of, attempt or offer to dispose of, or solicitation of an offer to buy, a

security or interest in security, for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

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

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

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

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

(ee) "Value", with respect to assets of registered investment companies, means—

(1) As used in section four, (A) with respect to securities owned at the end of the last preceding fiscal quarter for which market quotations are readily available, the market value at the end of such quarter; (B)

with respect to other securities and assets owned at the end of the last preceding fiscal quarter, fair value at the end of such quarter, as determined in good faith by the board of directors; and (C) with respect to securities and other assets acquired after the end of the last preceding fiscal quarter, the cost thereof; and

(2) As used elsewhere in this Act, (A) with respect to securities for which market quotations are readily available, the market value of such securities; and (B) with respect to other securities and assets, fair value as determined in good faith by the board of directors; in each case as of such time or times as determined pursuant to this Act, and the rules and regulations issued by the Commission thereunder. Notwithstanding the fact that market quotations for securities issued by controlled companies are available, the board of directors may in good faith determine the value of such securities: *Provided*, That the value so determined is not in excess of the higher of market value or asset value of such securities in the case of majority-owned subsidiaries, and is not in excess of market value in the case of other controlled companies.

The foregoing definition shall not derogate from the authority of the Commission with respect to the reports, information, and documents to be filed with the Commission by any registered company, or with respect to the accounting policies and principles to be followed by any such company, as provided in sections seven, twenty-seven and twenty-eight.

(ff) "Voting security" means any security presently entitling the owner or holder thereof to vote for the election of directors of a company.

(gg) "Wholly-owned subsidiary" of a person means a company ninety-five *per centum* or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph is a wholly-owned subsidiary of such person.

(hh) "Securities Act" means Commonwealth Act Numbered Eighty-three as heretofore or hereafter amended.

No provision in this Act shall apply to, or be deemed to include, the Philippines or any political subdivision thereof, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned directly or indirectly by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

SEC. 4. *Definition of investment company.*—(a) when used in this Act "investment company" means any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities;

(b) Notwithstanding subsection (a), none of the following persons is an investment company within the meaning of this Act;

(1) Any issuer primarily engaged, directly or through a wholly-owned subsidiary or subsidiaries, in a business

or businesses other than that of investing, reinvesting, or trading in securities.

(2) Any issuer which the Commission, upon application by such issuer, finds and by order declares to be primarily engaged in a business or businesses other than that of investing, reinvesting, or trading in securities either directly or (A) through majority-owned subsidiaries or (B) through controlled companies conducting similar types of business. The filing of an application under this paragraph by an issuer other than a registered investment company shall exempt the applicant for a period of sixty days from all provisions of this Act applicable to investment companies as such. For cause shown, the Commission by order may extend such period of exemption for an additional period or periods. Whenever the Commission, upon its own motion or upon application, finds that the circumstances which gave rise to the issuance of an order granting an application under this paragraph no longer exist, the Commission shall by order revoke such order.

(3) Any issuer all the outstanding securities of which (other than short-term paper and directors' qualifying shares) are directly or indirectly owned by a company excepted from the definition of investment company.

(c) Notwithstanding subsection (a), and (b), none of the following persons is an investment company within the meaning of this Act:

(1) Any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than twenty-five persons and which is not making and does not presently propose to make a public offering of its securities. For the purpose of this paragraph, beneficial ownership by a company shall be deemed to be beneficial ownership by one person; except that, if such company owns ten *per centum* or more of the outstanding voting securities of the issuer, the beneficial ownership shall be deemed to be that of the holders of such company's outstanding securities (other than short-term paper).

(2) Any person primarily engaged in the business of underwriting and distributing securities issued by other persons, selling securities to customers, and acting as broker, or any one or more of such activities, whose gross income normally is derived principally from such business and related activities.

(3) Any bank or insurance company; any savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, or any receiver, conservator, liquidator, liquidating agent, or similar official or person thereof or therefor; any common trust fund or similar fund maintained by a bank exclusively for the collective investment and reinvestment of moneys contributed thereto by the bank in its capacity as a trustee, executor, administrator, or guardian.

(4) Any person substantially all of whose business is confined to industrial banking or similar business.

(5) Any person who is primarily engaged in one or more of the following business: (A) Purchasing or otherwise acquiring notes, drafts, acceptances, open ac-

counts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and service; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

(6) Any company primarily engaged, directly or through majority-owned subsidiaries, in one or more of the businesses described in paragraphs (3), (4) and (5), or in one or more of such businesses (from which not less than forty *per centum* of such company's gross income during its last fiscal year was derived) together with an additional business or businesses other than investing, reinvesting, owning, holding or trading in securities.

(7) Any company ninety *per centum* or more of the value of whose investment securities are represented by securities of a single issuer included within a class of persons enumerated in paragraphs (4), (5), or (6).

(8) Any person substantially all of whose business consist of owning or holding oil, gas, or other mineral royalties or leases, or fractional interests therein, or certificates of interest or participation in or investment contracts relative to such royalties, leases, or fractional interests.

(9) Any company organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes, no part of the net earnings of which inures to the benefit of any private shareholders or individual.

(10) Any employees' stock bonus, pension, or profit-sharing trust.

(11) Any voting trust the assets of which consist exclusively of securities of a single issuer which is not an investment company.

(12) Any security holders' protective committee or similar issuer having outstanding and issuing no securities other than certificates of deposit and short-term paper.

SEC. 5. *Classification of investment companies.*—(a) For the purposes of this Act, investment companies are divided into open-end and closed-end companies, defined as follows:

(1) "Open-end company" means an investment company which is offering for sale or has outstanding any redeemable security of which it is the issuer.

(2) "Closed-end company" means any investment company other than an open-end company.

SEC. 6. *Transactions by investment companies.*—(a) No investment company organized or otherwise created under the laws of the Philippines and having a board of directors, unless registered under section seven, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, within the Philippines, any security or any interest in a security, whether the issuer of such security is such investment company or another person;

(2) purchase, redeem, retire, or otherwise acquire or attempt to acquire, within the Philippines, any security, or any interest in a security, whether the

issuer of such security is such investment company or another person;

(3) control any investment company which does any of the acts enumerated in paragraphs (1) and (2).

The provisions of this subsection shall not apply to transactions of an investment company which are merely incidental to its dissolution.

(b) No depositor or trustee of or underwriter for any investment company, organized or otherwise created under the laws of the Philippines and not having a board of directors, unless such company is registered under section eight or exempt under section six, shall directly or indirectly—

(1) offer for sale, sell, or deliver after sale, within the Philippines, any security or any interest in a security of which such company is the issuer;

(2) purchase, redeem, or otherwise acquire or attempt to acquire, within the Philippines, any security, or interest in a security of which such company is the issuer; or

(3) sell or purchase for the account of such company, within the Philippines, any security or interest in a security, by whomsoever issued.

The provisions of this subsection shall not apply to transactions which are merely incidental to the dissolution of an investment company.

SEC. 7. *Registration of investment companies.*—(a) Any investment company organized or otherwise created under the laws of the Philippines may register for the purposes of this Act by filing with the Commission a registration statement, in such form as the Commission shall by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors. An investment company shall be deemed to be registered upon approval by the Commission of such registration statement and the publication thereof in the *Official Gazette* for two consecutive weeks and in two dailies of general circulation for two consecutive days.

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

(1) a recital of the policy of the registrant in respect of each of the following types of activities, such recital consisting in each case of a statement whether the registrant reserves freedom of action to engage in activities of such type, and if such freedom of action is reserved, a statement briefly indicating, insofar as is practicable, the extent to which the registrant intends to engage therein: (A) the classification, as defined in section five, within which the registrant proposes to operate; (B) borrowing money; (C) the issuance of senior securities; (D) engaging in the business of underwriting securities issued by other persons; (E) concentrating investments in a particular industry or group of industries; (F) the purchase and sale of real estate and commodities, or

either of them; (G) making loans to other persons; and (H) portfolio turn-over (including a statement showing the aggregate peso amount of purchases and sales of portfolio securities, other than Government securities, in each of the full fiscal years preceding the filing of such registration statement);

(2) a recital of the policy of the registrant in respect of matters, not enumerated in paragraph (1), which the registrant deems matters of fundamental policy and elects to treat as such;

(3) the name and address of each affiliated person of the registrant; the name and principal address of every company, other than the registrant, of which each such person is an officer, director or partner; a brief statement of the business experience for the preceding five years of each officer and director of the registrant; and

(4) the information and documents which would be required to be filed in order to register under the Securities Act all securities (other than short-term paper) which the registrant has outstanding or proposes to issue.

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

(1) copies of the most recent registration statement filed by the registrant under the Securities Act and currently effective under such Act;

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

(d) Every investment company as defined in this Act, existing on the date of effectivity hereof shall register pursuant to the provisions of this section within six months from the approval of this Act.

(e) The Commission, in the exercise of its sound judgment and discretion, shall have power to limit the registration of investment companies to such number as the investment opportunities then obtaining would permit, and to allow the registration of new investment companies only when the conditions warrant it. This provision, however, shall not apply to investment companies already existing on the date of effectivity of this Act.

(f) If it appears to the Commission that a registered investment company has failed to file the registration statement required by this section or a report required pursuant to section twenty-seven (a), or (b), or has filed such registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section thirty-one (b), the Commission shall notify such company by registered mail of the failure to file such registration statement or report, or of the respects in which such registration statement or report appears to be materially incomplete or misleading, as the case may be, and

shall fix a date (in no event earlier than thirty days after the mailing of such notice) prior to which such company may file such registration statement or report or correct the same. If such registration statement or report is not filed or corrected within the time so fixed by the Commission or any extension thereof, the Commission, after appropriate notice and opportunity for hearing, and upon such conditions and with such exemptions as it deems appropriate for the protection of investors, may by order suspend the registration of such company until such statement or report is filed or corrected, or may by order revoke such registration, if the evidence establishes—

(1) that such company has failed to file a registration statement required by this section or a report required pursuant to section twenty-seven (a) or (b), or has filed such a registration statement or report but omitted therefrom material facts required to be stated therein, or has filed such a registration statement or report in violation of section thirty-one (b); and

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

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

SEC. 8. *Ineligibility of certain affiliated persons and underwriters.*—(a) It shall be unlawful for any of the following persons to serve or act in the capacity of officer, or director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company;

(1) any person who within ten years has been convicted of any felony or misdemeanor involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, or employee of any investment company, bank, or insurance company;

(2) any person who, by reason of any misconduct, is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or as an affiliated person, salesman, 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

(3) a company any affiliated person of which is ineligible, by reason of paragraph (1) or (2), to serve or act in the foregoing capacities.

(b) Any person who is ineligible, by reason of subsection (a), to serve or act in the capacities enumerated

in such subsection, may file with the Commission an application for an exemption from the provisions of such subsection. The Commission shall by order grant such application either unconditionally or on an appropriate temporary or other condition of basis, if it is established that the prohibitions of such subsection, as applied to such person, are unduly or disproportionately severe or that the grant of such exemption has been such as not to make it against the public interest or protection of investors to grant such application.

SEC. 10. *Affiliations of directors, officers and employees.* (a) After one year from the effective date of this Act, no registered investment company shall have a board of directors more than fifty per centum of the members of which are persons who are investment advisers of, or agents or employees of, such registered company.

(b) For one year from the effective date of this Act, no registered investment company shall—

(1) employ as regular broker any director, officer, or employee of such registered company, or any person of which any such director, officer, or employee is an affiliated person;

(2) use a principal underwriter of securities issued by any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an affiliated person; or

(3) have as director, officer, or employee any investment banker, or any affiliated person of an investment banker. For the purposes of this paragraph, a person shall not be deemed an affiliated person of an investment banker solely by reason of the fact that he is an affiliated person of a company (A) 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) which 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.

(c) After the effective date of this Act no registered investment company shall have a majority of its board of directors consisting of persons who are officers or directors of any bank. Provided that, if prior to the effective date of this Act, any registered investment company shall have had a majority of its directors consisting of persons who are directors, officers, or employees of any one bank, such registered 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) For any reason of the death, disqualification, or bona fide resignation of any director or directors, the requirements of the foregoing provisions of this section in respect of directors shall not be violated by a registered investment company if the operation of such provision shall be suspended as to such registered company for a period of thirty days if the vacancy or vacancies may be filled by action of the board of directors, and for a period of sixty

days if a vote of stockholders is required to fill the vacancy or vacancies, or for such longer period as the Commission may prescribe, by rules and regulations upon its own motion or by order upon application, as not inconsistent with the protection of investors.

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

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

(g) In the case of a registered investment company which does not have a board of directors, the provisions of this section shall apply as follows:

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

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

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

SEC. 10. *Offers to exchange securities.*—(a) It shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the commission or are in accordance with such rules and regulations as the Commission may have prescribed in respect of such offers which are in effect at the time such offer is made. For the purposes of this section, (1) an offer by a principal underwriter means an

offer communicated to holders of securities of a class or series but does not include an offer made by such principal underwriter to an individual investor in the course of a retail business conducted by such principal underwriter, and (2) the net asset value means the net asset value which is in effect for the purpose of determining the price at which the securities, or class or series of securities involved, are offered for sale to the public either (A) at the time of the receipt by the offeror of the acceptance of the offer or (B) at such later time as is specified in the offer.

(b) The provisions of this section shall not apply to any offer made pursuant to (1) 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; or (2) the right of conversion, at the option of the holder, from one class or series into another class or series of securities issued by the same company upon such terms as are specified in the charter, certificate of incorporation, articles of association, by-laws, or trust indenture subject to which the securities to be converted were issued or are to be issued.

SEC. 11. *Functions and activities of investment companies.*—(a) 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) It shall be unlawful for any registered open-end company (other than a company complying with the provisions of section ten) to act as a distributor of securities of which it is the issuer, except through an underwriter, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

(c) It shall be unlawful for any investment company to—

(1) Generate funds for promoting the private business or industry of any employee, official, director, organizer, incorporator or stockholder thereof;

(2) Allow any of its employee, official, director, organizer, incorporator or stockholder to buy real estate, personal property or any other kind of property and sell the same to the company at a price higher than the procurement cost or sell any property of the company, or a portion thereof, at a price below the market value thereof to any of the aforementioned persons.

SEC. 12. *Changes in investment policy.*—(a) No registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities—

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

(2) deviate from its policy in respect of concentration of investments in any particular industry or group of industries as recited in its registration statement, or deviate from any fundamental policy recited in its registration statement pursuant to section seven (b) (2); or

(3) change the nature of its business so as to cease to be an investment company.

(b) Where the change will involve an amendment of the organization papers of the investment company, the pertinent provisions of law on the vote necessary and other requisites to effectuate the same, shall likewise be complied with.

SEC. 13. *Size of investment companies.*—No registered investment company organized after the effective date of this Act, and no principal underwriter for such a company, shall make a public offering of securities of which such company is the issuer, unless—

(1) such company has a paid-up capital of at least five hundred thousand pesos, as certified to by an independent certified public accountant; or

(2) such company has previously made a public offering of its securities, and at the time of such offering had a paid-up capital of at least five hundred thousand pesos, as certified to by an independent certified public accountant: *Provided, however,* That no investment company shall redeem, directly or indirectly, any security of which such company is the issuer unless the remaining unimpaired capital shall be at least two hundred fifty thousand pesos or fifty per cent of its outstanding liabilities to the creditors of said company, whichever is higher.

SEC. 14. *Contracts of advisers and underwriters.*—(a) After the effective date of this Act 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, unless in effect prior to the effective date of this Act, 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 two-thirds 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 by the investment adviser.

(b) After one year from the effective date of this Act, 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, unless in effect prior to the effective date of this Act—

(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 two-thirds of the outstanding voting securities of such company; and

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

(c) In addition to the requirements of subsections (a) and (b) 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, except a written agreement which was in effect prior to the effective date of this Act, 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 (1) by a majority of the directors who are not parties to such contract or agreement or affiliated persons of any such party, or (2) by the vote of a majority of the outstanding voting securities of such company.

(d) It shall be unlawful for any person, after the effective date of this Act—

(1) to serve or act as investment adviser of a registered investment company, pursuant to a written contract which was in effect prior to the effective date of this Act; or

(2) as principal underwriter for a registered open-end investment company to offer for sale, sell, or deliver after sale any security of which such company is the issuer, pursuant to a written contract which was in effect prior to the effective date of this Act; unless such contract is renewed in such form that it complies with the requirements of subsection (a) or (b), as the case may be, and is approved in the manner required by this section.

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

**SEC. 15. Board of directors; election; term vacancies; and salaries.**—No person shall serve as a director of a registered investment company unless he is a Filipino citizen and elected to that office by the holders of the outstanding voting securities of such company, at an annual or a special meeting duly called for that purpose; except that vacancies occurring between such meetings may be filled in any otherwise legal manner if immediately after filling any such vacancy at least two-thirds of the directors then holding office shall have been elected to such office by the holders' of the outstanding voting securities of the company at such an annual or special meeting. In the event that at any time less than a majority of the directors of such company holding office at that time were so elected by the holders of the outstanding voting securities, the board of directors or proper officer of such company shall forthwith cause to be held as promptly as possible and in any event within sixty days a meeting of such holders for the purpose of electing directors to fill any existing vacancies in the board of directors unless the Commission shall by order extend such period. The foregoing provisions shall not apply to members of an advisory board.

No member of the Board of Directors or any executive official shall receive any salary or emolument from the investment company at a rate higher than that fixed by the Commission after taking into consideration; the experience and qualifications of the official concerned; the amount and nature of securities issued by the company; the size and nature of the company in the business community; the volume of business done by the company; the number of years the company has been in business; and other pertinent conditions and circumstances: *Provided, however,* That in no case shall the operational expenses of such company exceed ten per cent of the total investment fund received from the investors: *And provided, finally,* That non-compliance with the provisions of this Act shall cause the cancellation of its registration and the liquidation of its assets for redistribution to investors.

**SEC. 16. Transactions of certain affiliated persons and underwriters**—(a) It shall be unlawful for any affiliated person or promoter of or principal underwriter for a registered investment company (other than a company of the character described in section nine (b) (3) (A) and (B) or any affiliated person of such a person, promoter, or principal underwriter, acting as principal—

(1) knowingly to sell any security or other property to such registered company or to any company controlled by such registered company, unless such sale involves solely (A) securities of which the buyer is the issuer, 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 registered company, or from any company controlled by such registered company, any security or other property (except securities of which the seller is the issuer): or

(3) to borrow money or other property from such registered company or from any company controlled by

such registered company (unless the borrower is controlled by the lender) except as permitted in section twenty (b).

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

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

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

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

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

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

(e) It shall be unlawful for any affiliated person of a registered investment company, or any affiliated person of such person—

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

(2) acting as broker, in connection with the sale of securities to or by such registered company or any controlled company thereof, to receive from any source a commission, fee, or other remuneration for effecting such transaction which exceeds (A) the usual and customary broker's commission if the sale is effected

on a securities exchange, or (B) two *per centum* of the sales price if the sale is effected in connection with a secondary distribution of such securities, or (C) one *per centum* of the purchase or sale price of such securities if the sale is otherwise effected unless the Commission shall, by rules and regulations or order in the public interest and consistent with the protection of investors, permit a larger commission.

(f) Every registered investment company shall place and maintain its securities and similar investments in the custody of (1) a duly organized local commercial bank of good repute; or (2) a company which is a member of a securities exchange as defined in the Securities Act, 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. Rules, regulations, and orders of the Commission under this subsection, among other things, shall make appropriate provision with respect to such matters as the earmarking, segregation, and hypothecation of such securities and investments, and shall 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 who trades in securities for his own account may act as custodian except in accordance with rules and regulations prescribed by the Commission for the protection of investors.

(g) The Commission is authorized to require by rules and regulations or orders for the protection of investors that any officer and employee of a registered 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, be bonded by a reputable fidelity insurance company against larceny and embezzlement in such reasonable minimum amounts as the Commission may prescribe.

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

In the event that any such instrument does not at the effective date of this Act comply with the requirements of this subsection and is not amended to comply therewith, such company may nevertheless continue to be a registered investment company and shall not be deemed to violate this subsection if each such director or officer shall immediately file with the Commission a

waiver in writing of any protective provision of the instrument to the extent that it does not comply with this subsection, and each such person subsequently elected or appointed shall before assuming office file a similar waiver.

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

In the event that any such contract or agreement does not at the effective date of this Act comply with the requirements of this subsection and is not amended to comply therewith prior to the expiration of said one year, this subsection shall not be deemed to have been violated if prior to said expiration date each such investment adviser as principal underwriter shall have filed with the Commission a waiver in writing of any protective provisions of the contract or agreement to the extent that it does not comply with this subsection.

SEC. 17. *Capital structure of investment companies.*—

(a) It shall be unlawful for any registered closed-end company to issue any class of senior security, or to sell any such security of which it is the issuer, unless—

(1) if such class of senior security represents an indebtedness —

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

(B) provision is made to prohibit the declaration of any dividend (except a dividend payable in stock of the issuer), or the declaration of any other distribution, upon any class of the capital stock of such investment company, or the purchase of any such capital stock, unless, in every such case, such class of senior securities has at the time of the declaration of any such dividend or distribution or at the time of any such purchase an asset coverage of at least three hundred *per centum* after deducting the amount of such dividend, distribution, or purchase price, as the case may be, except that dividends may be declared upon any preferred stock if such senior security representing indebtedness has an asset coverage of at least two hundred *per centum* at the time of declaration thereof after deducting the amount of such dividend; and

(C) provision is made either—

(i) that, if on the last business day of each twelve consecutive calendar months such class of senior securities shall have an asset coverage of less than one hundred *per centum*, the holders of such securities voting as a class shall be

entitled to elect at least a majority of the members of the board of directors of such registered company, such voting right to continue until such class of senior security shall have an asset coverage of one hundred and ten *per centum* or more on the last business day of each of three consecutive calendar months, or

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

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

(A) immediately after the issuance or sale it will have an asset coverage of at least two hundred *per centum*;

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

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

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

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

(b) The assets coverage in respect of a senior security provided for in subsection (a) may be determined on the basis of values calculated as of a time within forty-eight hours (not including Sundays or holidays) next preceding the time of such determination. The time of issue or sale shall, in the case of an offering of such

securities to existing stockholders of the issuer, be deemed to be the first date on which such offering is made, and in all other cases shall be deemed to be the time as of which a firm commitment to issue or sell and to take or purchase such securities shall be made.

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

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

(e) The provisions of this section shall not apply to any senior security issued or sold by any registered closed-end company—

(1) pursuant to any firm contract to purchase or sell entered into prior to the effective date of this Act;

(2) for the purpose of refunding through payment, purchase, redemption, retirement, or exchange, any senior security of such registered investment company except that no senior security representing indebtedness shall be so issued or sold for the purpose of refunding any senior security which is a stock; or

(3) pursuant to any plan of reorganization (other than for refunding as referred to in subsection (e) (2)), provided—

(A) that such senior securities are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities, and if such senior securities represent indebtedness they are issued or sold for the purpose of substituting or exchanging such senior securities for outstanding senior securities repre-

senting indebtedness, of any registered investment company which is a party to such plan of reorganization; or

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

(f) (1) It shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer, except that any such registered company shall be permitted to borrow from any bank: *Provided*, That immediately after any such borrowing there is an asset coverage of at least three hundred *per centum* for all borrowing of such registered company: *And provided, further*, That in the event that such asset coverage shall at any time fall below three hundred *per centum* such registered company shall, within three days thereafter (not including Sundays and holidays) or such longer period as the Commission may prescribe by rules and regulations, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least three hundred *per centum*. Notwithstanding the provisions of this section, however, a registered open-end company may guarantee the senior securities of a controlled person: *Provided*, That such guarantee is limited to a percentage of the value of the senior securities equivalent to the percentage of the company's interest in the controlled person: *And provided, further*, That such senior securities have an asset coverage by the said controlled person of at least two hundred *per centum*.

(2) "Senior security" shall not, in the case of a registered open-end company, include a class or classes or a number of series of preferred or special stock each of which is preferred over all other classes or series in respect of assets specifically allocated to that class or series: *Provided*, (A) That such company has outstanding no class or series of stock which is not so preferred over all other classes or series; or (B) that the only other outstanding class of the issuer's stock consist 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 one *per centum* of the issuer's outstanding voting securities.

(g) Unless otherwise provided: "Senior security" means any bond, debenture, note, or similar obligation or instru-

ment constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends; and "senior security representing indebtedness" means any senior security other than stock.

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

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

(i) Except as provided in subsection (a) of this section, or as otherwise required by law, every share of stock hereafter issued by a registered investment company shall be a voting stock and have equal voting rights with every other outstanding voting stock: *Provided*, That this subsection shall not apply to shares issued pursuant to the terms of any warrant or subscription right outstanding prior to the effective date of this Act, or any contract entered into before the effective date of this Act, to purchase such securities from such company, nor to shares issued in accordance with any rules, regulations, or orders which the Commission may make permitting such issue.

SEC. 18. *Dividends*.—It shall be unlawful for any registered investment company to pay any dividend, or to make any distribution in the nature of a dividend payment, wholly or partly from any source other than—

- (1) such company's accumulated undistributed net income, determined in accordance with good accounting practice and including profits or losses realized upon the sale of securities or other properties; or
- (2) such company's earned surplus so determined for current or preceding fiscal year;

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

It shall likewise be unlawful to advertise such dividends in terms of centavos or pesos per share without also stating the percentage they bear to the par value per share.

SEC. 19. *Proxies; voting trusts.*—(a) It shall be unlawful for any person except the duly constituted custodian to solicit or to permit the use of his name to solicit any proxy or consent or authorization in respect of any security of which a registered investment company is the issuer in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors: *Provided, however,* That no proxies shall be used as a device to control the management of any investment company.

(b) It shall be unlawful for any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate relating to any security of a registered investment company, or any underwriter of such a certificate to offer for sale, sell, or deliver after sale, in connection with a public offering, any such voting-trust certificate. The prohibitions of this subsection shall not apply to a class of voting-trust certificates, if any certificate of such class was made the subject of a public offering by the issuer or by or through an underwriter prior to the effective date of this Act.

SEC. 20. *Loans by investment companies.*—It shall be unlawful for any registered investment company to lend money or property to any person, directly or indirectly, if—

(a) the investment policies of such registered company, as recited in its registration statement and reports filed under this Act, do not permit such a loan; or

(b) such person controls or is under common control with such registered company; except that the provision of this paragraph shall not apply to the extension or renewal of any such loan made prior to the effective date of this Act or to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except directors' qualifying shares.

SEC. 21. *Investment Company prohibited to guarantee obligations.*—It shall be unlawful for any investment company to guarantee any obligation of whatever kind or nature.

SEC. 22. *Distribution, redemption, and repurchase of securities.*—(a) 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: *Provided, however*, That nothing in this subsection shall prevent a sale made (i) pursuant to an offer of exchange permitted by section 10 including any offer made pursuant to clause (1) or (2) of section ten (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 section eleven (b): *Provided, further*, That no investment Company shall sell any security issued by it to any person who is not a Filipino citizen or any company or entity sixty per cent of the capital of which is not owned by Filipino citizens, when the effect of such sale would be a violation or circumvention of Section one, Article XIII of the Constitution on the limitation of the disposition, exploitation, development or utilization of the natural resources of the Philippines nor shall said company sell any such security to any person when the effect of such sale would be a violation or circumvention of Section thirteen, subparagraph five of the Corporation Law regarding the limitation of ownership by individuals or corporations to fifteen per cent of the capital of corporations engaged in mining or agriculture.

(b) The provisions of the Corporation Law (Act Numbered Fourteen hundred and fifty-nine, as amended) notwithstanding, no registered investment company shall suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms as appears in its prospectus, for more than seven days after the tender of such security to the company or its agent designated for that purpose for redemption except—

(1) for any period (A) during which the Manila Stock Exchange is closed other than customary weekend and holiday closings or (B) during which trading on the Manila Stock Exchange is restricted;

(2) for any period during which an emergency exists as a result of which (A) disposal by the company of securities owned by it is not reasonably practicable or (B) it is not reasonably practicable for such company fairly to determine the value of its net assets: or

(3) for such other periods as the Commission may by order permit for the protection of security holders of the company.

The Commission shall by rules and regulations determine the conditions under which (i) trading shall be deemed to be restricted and (ii) an emergency shall be deemed to exist within the meaning of this subsection. Any company which, prior to the effective date of this Act, was required by provision of its charter, certificate of incorporation, articles of association, or trust indenture, or of a by-law or regulation duly adopted thereunder, to postpone the date of payment or satisfaction upon redemption of redeemable securities issued by it, shall be exempt

from the requirements of this subsection; but such exemption shall terminate upon the expiration of one year from the effective date of this Act, or upon the repeal or amendment of such provision, or upon the sale by such company after the effective date of this Act of any security (other than short-term paper) of which it is the issuer, whichever first occurs.

(c) No registered open-end company shall restrict the transferability or negotiability of any security of which it is the issuer except in conformity with the statements with respect thereto contained in its registration statement nor in contravention of such rules and regulations as the Commission may prescribe in the interests of the holders of all of the outstanding securities of such investment company.

(d) No registered open-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(e) The pertinent provisions of section seventeen of the Corporation Law (Act Numbered Fourteen hundred and fifty-nine, as amended) or any other provision of the said law in conflict with this section, shall not apply to a registered open-end company.

SEC. 23. *Distribution and repurchase of securities; closed-end companies.*—(a) No registered closed-end company shall issue any of its securities (1) for services; or (2) for property other than cash or securities (including securities of which such registered company is the issuer), except as a dividend or distribution to its security holders or in connection with a reorganization.

(b) No registered closed-end company shall sell any common stock of which it is the issuer at a price below the current net asset value of such stock, exclusive of any distributing commission or discount (which net asset value shall be determined as of a time within forty-eight hours, excluding Sundays and holidays, next preceding the time of such determination), except (1) in connection with an offering to the holders of one or more classes of its capital stock; (2) with the consent of a majority of its common stockholders; (3) upon conversion of a convertible security in accordance with its terms; (4) upon the exercise of any warrant outstanding prior to the effective date of this Act or issued in accordance with the provisions of section eighteen (d); or (5) under such other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

(c) No registered closed-end company shall purchase any securities of any class of which it is the issuer except—

(1) on a securities exchange or such other open market as the Commission may designate by rules and regulations or orders: *Provided*, That if such securities are stock, such registered company shall, within the preceding six months, have informed stockholders of its intention to purchase stock of

such class by letter or report addressed to stockholders of such class; or

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

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

SEC. 24. *Registration of securities under the Securities Act.*—(a) In registering under the Securities Act any security of which it is the issuer, a registered investment company, in lieu of furnishing a registration statement containing the information and documents specified in section seven of the said Act, may file a registration statement containing the following information and documents:

(1) such copies of the registration statement filed by such company under this Act and of such reports filed by such company pursuant to section twenty-seven or such copies of portions of such registration statement and reports, as the Commission shall designate by rules and regulations; and

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

(b) Where the registration statement which an investment company filed under this Act includes a description of its securities and the requirements for the registration and/or licensing thereof under the Securities Act have already been complied with, no separate registration of such securities under the latter Act shall be necessary.

(c) It shall be unlawful for any registered open-end company or for any underwriter for such a company, in connection with a public offering of any security of which such company is the issuer, to transmit any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors unless three copies of the full text thereof have been filed with the Commission or are filed with the Commission within ten days thereafter.

(d) The Commission is authorized to require, by rules and regulations or order, that the information contained in any prospectus relating to any periodic payment plan certificate registered under the Securities Act on or after the effective date of this Act be presented in such form and order of items, and such prospectus contain such summaries of any portion of such information, as are necessary or appropriate in the public interest or for the protection of investors.

(e) The exemption provided by section five of the Securities Act shall not apply to any security of which an investment company is the issuer, except that periodic payment plan certificates issued by a registered investment company or its agent, sub-agent, or underwriter or by a dealer pursuant to a contract with said company, or its agent, sub-agent, or underwriter, the proceeds of the payments under which are invested wholly in securities of which the registered investment company is the issuer, need not be registered under the Securities Act: *Provided*, That (1) the said securities purchased with the proceeds of the payments under the periodic payment plan certificates shall be issued in the name of the holder of the said certificates and (2) the said securities of the issuer investment company are registered under the Securities Act: *And provided*, That an exemption from such registration is secured from the Commission.

SEC. 25. *Reorganization plans, reports by Commission.*—

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

(b) No plan for the reorganization of a registered investment company shall be carried out without the prior approval of the Commission.

SEC. 26. *Periodic payment plans.*—(a) It shall be unlawful for any registered investment company issuing periodic payment plan certificates, or for any underwriter for such company, to sell any such certificates, if—

(1) the sales load on such certificates exceeds eight *per centum* of the total payments to be made thereon;

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

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

(4) the first payment on such certificate is less than ten pesos or any subsequent payment is less than ten pesos.

SEC. 27. *Reports and financial statements of investment companies and affiliated persons.*—(a) Every registered investment company shall file with the Commission—

(1) such information and documents including financial statements as the Commission may require, on a semiannual or quarterly basis, to keep reasonably current the information and documents contained in

the registration statement of such company filed under this Act; and

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

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

(b) The Commission shall issue rules and regulations permitting the filing with the Commission or copies of periodic reports, or of extracts therefrom, filed by any registered investment company pursuant to subsection (a).

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

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

(2) a list showing the amounts and values of securities owned on the date of such balance sheet;

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

(4) a statement of surplus, which shall be itemized at least with respect to each charge or credit to the surplus account which represents more than five *per centum* of the total charges or credits during the report covered by the report;

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

(6) a statement of the aggregate peso amounts of purchases and sales of investment securities, other than Government securities, made during the period covered by the report: *Provided*, That if in the judgment of the Commission any item required under this subsection is inapplicable or inappropriate to any specified type or types of investment company, the Commission may by rules and regulations permit in lieu thereof the inclusion of such item of a comparable character as it may deem applicable or appropriate to such type or types of investment company.

(d) Financial statements contained in annual reports required pursuant to subsections (a) and (c), if required

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

(e) Every person who is directly or indirectly the beneficial owner of more than ten *per centum* of any class of outstanding securities (other than short-term paper) of which a registered closed-end company is the issuer or who is an officer, director, member of an advisory board, investment advisor, or affiliated person of an investment adviser of such a company shall in respect of his transactions in any securities of such company (other than short-term paper) be subject to the same duties and liabilities as those imposed by section twenty-six (a) of the Securities Act upon certain beneficial owners, directors, and officers in respect of their transactions in certain equity securities.

SEC. 28. *Accounts and records.*—(a) Every registered investment company, and every underwriter, broker, dealer, or investment adviser which is a majority-owned subsidiary of such a company, shall maintain and preserve for such period or periods as the Commission may prescribe by rules and regulations, such accounts, books, and other documents as constituting the record forming the basis for financial statements required to be filed pursuant to section twenty-seven of this Act, and of the auditor's certificates relating thereto. Every investment adviser not a majority-owned subsidiary of, and every depositor of any registered investment company, and every principal underwriter for any registered investment company other than a closed-end company, shall maintain and preserve for such period or periods as the Commission shall prescribe by rules and regulations, such accounts, books, and other documents as are necessary or appropriate to record such person's transactions with such registered company.

(b) All accounts, books, and other records, required to be maintained and preserved by any person pursuant to subsection (a), shall be subject at any time and from time to time to such reasonable periodic, special and other examinations by the Commission, or any member or representative thereof, as the Commission may prescribe. Any such person shall furnish to the Commission, within such reasonable time as the Commission may prescribe, copies of or extracts from such records which may be prepared without undue effort, expense, or delay, as the Commission may by order require.

(c) The Commission may, in the public interest or for the protection of investors, issue rules and regulations providing for a reasonable degree of uniformity in the

accounting policies and principles to be followed by registered investment companies in maintaining their accounting records and in preparing financial statements required pursuant to this Act.

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

SEC. 29. *Accountants and auditors.*—(a) After one year from the effective date of this Act, it shall be unlawful for any registered investment company to file with the Commission any financial statement signed or certified by an independent certified 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 a majority of those members of the board of directors who are not investment advisers of, or affiliated persons of an investment adviser of, or officers or employees 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 board of directors;

(3) the employment of such accountant shall have been conditioned upon the right of the company by vote of a majority of the outstanding voting securities at any meeting called for the purpose to terminate such employment forthwith without any penalty; and

(4) such certificate or report of such accountant shall be addressed both to the board of directors of such registered company and to the security holders thereof:

*Provided,* That 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 then at a subsequent meeting which shall be called for the purpose.

(b) No registered investment company shall file with the Commission any financial statement in the preparation of which the controller or other principal accounting officer or employee of such company participated, unless such controller, officer or employee was selected, either by vote of the holders of such company's voting securities at the last annual meeting of such security holders, or by the board of directors of such company.

(c) The Commission is authorized, by rules and regulations or order in the public interest or for the protection of investors, to require accountants and auditors to keep reports, work sheets, and other documents and papers relating to registered investment companies for such period or periods as the Commission may prescribe, and to make

the same available for inspection by the Commission or any member or representative thereof.

**SEC. 30. Report of settlement of civil actions.**—(a) 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 capacity against an officer, director, investment adviser, trustee, or depositor of such company for an alleged breach of official duty, which such action or claim is commenced or asserted after the effective date of this Act, shall transmit, unless already transmitted to the Commission, the documents specified in subsection (b) if—

- (1) such action has been compromised or settled and such settlement or compromise has had the approval of a court having jurisdiction to approve such settlement or compromise; or
- (2) a final judgment has been entered on the merits in such action.

(b) Within thirty days after such settlement or compromise or final judgment, copies of all pleadings and any written record made in such action, together with a statement of the terms of settlement or compromise, if such terms be not included in the record, shall be transmitted to the Commission; and any information contained in any such documents may be used by the Commission in connection with any report or study which may be made by the Commission of lawsuits whether of investment companies or companies generally: *Provided*, That the names of persons involved shall not be disclosed.

**SEC. 31. Destruction and falsification of reports and records.**—(a) It shall be unlawful for any person, except as permitted by rule, regulation, or order of the Commission, willfully to destroy, mutilate, or alter any account, book, or other document the preservation of which has been required pursuant to section twenty-eight (a) or twenty-nine (c).

(b) It shall be unlawful for any person to make any untrue statement of a material fact in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this Act or the keeping of which is required pursuant to section twenty-eight (a). It shall be unlawful for any person so filing, transmitting, or keeping any such document to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. For the purposes of this subsection, any part of any such document which is signed or certified by an accountant or auditor in his capacity as such shall be deemed to be made, filed, transmitted, or kept by such accountant or auditor, as well as by the person filing, transmitting, or keeping the complete document.

**SEC. 32. Unlawful representations and names.**—(a) It shall be unlawful for any person, in issuing or selling any security of which a registered investment company is the issuer, to represent or imply in any manner whatsoever that such security or company has been guaranteed, sponsored, recommended, or approved by the Republic of the Philippines or any agency or officer thereof.

(b) It shall be unlawful for any person registered under any section of this Act to represent or imply in any manner whatsoever that such person has been sponsored, recommended, or approved, or that his abilities or qualifications have in any respect been passed upon by the Republic of the Philippines or any agency or officer thereof.

(c) No provision of subsection (a) or (b) shall be construed to prohibit a statement that a person or security is registered under this Act or the Securities Act if such statement is true in fact and if the effect of such registration is not misrepresented.

(d) It shall be unlawful for any registered investment company hereafter to adopt as a part of the name or title of such company, or of any security of which it is the issuer, any word or words which the Commission finds and by order declares to be deceptive or misleading. The Commission is authorized to deny the registration of an investment company using such name or title.

SEC. 33. *Injunctions against gross misconduct and abuse of trust.*—The Commission is authorized to require a registered investment company to remove or suspend a person serving or acting in one or more of the following capacities who has been found guilty, after proper investigation and hearing by said Commission, of gross misconduct or gross abuse of trust in respect of any such investment company for which such person so serves or acts:

(1) as officer, director, member of an advisory board, investment adviser, or depositor; or

(2) as principal underwriter, if such registered company is an open-end company.

The suspension shall be for such period of time as the Commission, in its discretion, shall deem appropriate.

SEC. 34. *Theft and estafa.*—Whoever steals, unlawfully abstracts, unlawfully and wilfully converts to his own use or to the use of another, or embezzles any of the moneys, funds, securities, credits, property, or assets of any registered investment company shall be deemed guilty of a crime, and upon conviction thereof shall be subject to the penalties provided in section forty of the Securities Act.

SEC. 35. *Rules, regulations, and orders; general powers of Commission.*—(a) The Commission shall have authority from time to time to make, issue, amend, and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission elsewhere in this Act, including rules and regulations defining accounting, technical, and trade terms used in this Act, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For the purposes of its rules or regulations the Commission may classify, persons, securities, and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

(b) The Commission, by such rules and regulations or order as it deems necessary or appropriate in the public interest or for the protection of investors, may suspend the operation of the stocks of companies registered in the stock exchange the quotations for which are

greatly in excess of the book value of the shares of stocks and may authorize the filing of any information or documents required to be filed with the Commission under this Act by incorporating by reference any information or documents heretofore or concurrently filed with the Commission under this Act.

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

SEC. 36. *Rules and regulations; procedure for issuance.*—The rules and regulations of the Commission under this Act, and amendments thereof, shall be effective upon publication in the manner which the Commission shall prescribe, or upon such later date as may be provided in such rules and regulations.

SEC. 37. *Orders; procedure for issuance.*—(a) Orders of the Commission under this Act shall be issued only after appropriate notice and opportunity for hearing. Notice to the parties on a proceeding before the Commission shall be given by personal service upon each party or by registered mail or confirmed telegraphic notice to the party's last known business address. Notice to interested persons, if any, other than parties may be given in the same manner.

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

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

SEC. 38. *Hearings by Commission.*—Hearings may be public and may be held before the Commission or any officer or officers of the Commission designated by it, and appropriate records thereof shall be kept.

SEC. 39. *Enforcement of this Act.*—(a) The Commission may make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Act or of any rule, regulation, or order thereunder, or to determine whether any action in any court or any proceeding before the Commission shall be instituted under this Act against a particular person or persons, or with respect to a particular transaction or transactions. The Commission shall permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(b) For the purpose of any investigation or any other proceeding under this Act, the Commission, or any officer thereof designated by it, empowered to administer oaths and affirmations, subpoena witnesses, compel their atten-

dance, take evidence, and require the production of any books, papers, correspondence, memoranda, contracts, agreements, or other records which are relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the Commission may avail itself of its powers under Republic Act Numbered Eleven hundred forty-three or, if the same is ineffective, may invoke the aid of any Court of First Instance within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, contracts, agreements, and other records. And such court may issue an order requiring such person to appear before the Commission or officer designated by the Commission, there to produce records, if so ordered, or to give testimony touching the matter under investigation or in question; any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who without just cause shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in his or its power so to do, in obedience to the subpoena of the Commission, shall upon convictions, be subject to a fine of not more than two thousand pesos or to imprisonment for a term of not more than one year, or both.

(d) No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commission, or in obedience to the subpoena of the Commission or any officer designated by it, or in any cause or proceeding instituted by the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise, after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(e) Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or of any rule, regulation, or order thereunder it may, after proper investigation and hearing, order such person to desist from committing such act or practice and enforce the same in accordance with its powers under Republic Act Numbered Eleven hundred forty-three. The Commission, in its discretion, may also bring an action in the Court of First Instance of Manila to enjoin such acts or practices and to enforce compliance with this Act or any rule, regulation, or order thereunder. Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction

or decree or restraining order shall be granted without bond: *Provided, however,* That no such certificate of authority shall be issued by the Securities and Exchange Commissioner unless the applicant for agent, sub-agent or investment solicitor shall have passed a written examination given for the purpose by the Securities and Exchange Commission or the said applicant possesses a college degree. In any proceeding under this subsection to enforce compliance with section seven, the court as a court of equity may, to the extent it deems necessary or appropriate, take exclusive jurisdiction and possession of the investment company or companies involved and the books, records, and assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, who with the approval of the court shall have power to dispose of any or all of such assets, subject to such terms and conditions as the court may prescribe. The Commission may transmit such evidence as may be available concerning any violation of the provisions of this Act or of any rule, regulation, or order thereunder to the Secretary of Justice, who, in his discretion, may institute the appropriate criminal proceedings under this Act.

**SEC. 40. Agents and Investment Solicitors.**—No investment company doing business within the Philippines or agent thereof shall pay any commission or other compensation to any person for services in obtaining investments in an investment company unless such person, after passing mental and moral test, holds a certificate of authority issued by the Securities and Exchange Commissioner to act as an agent or investment solicitor of such company as hereafter provided. No person shall act as an agent, sub-agent, or investment solicitor in the solicitation or procurement of investment or application for investment in an investment company or receive for services for obtaining such investments any commission or other compensation from any investment company doing business in the Philippines or from the agent or underwriter thereof, without first getting a certificate of authority so to act from the Securities and Exchange Commissioner, which must be renewed annually in the first day of January and not later than the fifteenth day of March. Such certificate shall be issued by the Securities and Exchange Commissioner only upon the written application of the person desiring such authority, such application being approved and countersigned by the investment company or its agent or underwriter, and shall be upon a form approved by the Securities and Exchange Commissioner. The Securities and Exchange Commissioner shall have the right to refuse to issue or renew and to revoke any such certificate in his discretion. No such certificate shall be valid, however, in any event after the fifteenth day of March of the year following the issuance of said certificate. A renewal certificate may be issued upon application of the company, its agent or underwriter represented by such agent or investment solicitor.

Any person who for compensation solicits or obtains investments on behalf of any investment company or its agent or underwriter or transmits for a person other than himself an investment or application for investment in

an investment company or offers or assumes to act as an agent or investment solicitor of an investment company, shall be an investment agent or investment solicitor within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities, and penalties to which such a person is subject.

Any person or company violating the provisions of this section shall upon conviction, be subject to a fine of five hundred pesos. Upon the conviction of any person acting as agent, sub-agent, investment solicitor, or broker for the commission of any offense connected with the business of an investment company, the Securities and Exchange Commissioner shall immediately revoke the certificate of authority issued to him and no such certificates shall thereafter be issued to such convicted person.

The Securities and Exchange Commissioner shall issue such rules and regulations as he may deem necessary for the enforcement and implementation of the provisions of this section.

**SEC. 41. Court review of orders.**—Any person or party aggrieved by an order issued by the Commission under this Act may obtain a review of such order in accordance with the provisions of section thirty-five of the Securities Act, as amended.

**SEC. 42. Disclosure of information filed with Commission; copies.**—(a) The information contained in any registration statement, application, report, or other document filed with the Commission pursuant to any provision of this Act or of any rule or regulation thereunder (as distinguished from any information or document transmitted to the Commission) shall be made available to the public, unless and except insofar as the Commission, by rules and regulations upon its own motion, or by order upon application, finds that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. It shall be unlawful for any officer or employee of the Commission to use for personal benefit, or to disclose to any person other than an official or employee of the Philippine Government, for official use, or for any such official or employee to use for personal benefit, any information contained in any document so filed or transmitted, if such information is not available to the public.

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

**SEC. 43. Reports by Commission.**—The Commission shall submit from time to time, a report to the Congress covering the work of the Commission under this Act, with such information, data, and recommendations for further legislation in connection therewith as it may find advisable.

**SEC. 44. Fees; additional personnel; Commissioner's Compensation.**—(a) The Commission is authorized to charge and collect the following fees:

- (1) For registering an investment company—One hundred pesos. If the securities of the company are likewise registered, the schedule of fees prescribed in the Securities Act shall instead be applied.

- (2) For every examination of the financial condition of an investment company—One hundred pesos. The Commission is authorized to conduct such examination as often as may be necessary in the public interest or for the protection of investors.
- (3) For each exemption—Thirty pesos.
- (4) For every determination granting a right or privilege—thirty pesos.
- (5) For each certificate of authority issued to an agent or investment solicitor—Ten pesos.
- (6) For each instrument, document, or paper not required to be filed but which an interested party desires to be attached to the records of an investment company—Five pesos.

Every right, privilege, exemption or registration under this Act shall be sought from the Commission in the form of a petition for which the corresponding fee herein authorized to be collected shall be paid before any action is taken thereon. The grant or denial of the petition shall be in the form of an order issued by the Commission. No denial, withdrawal or abandonment of the petition shall be a ground for the refund of the fee paid therefor.

(b) For the effective implementation and enforcement of this Act, the following additional positions in the Securities and Exchange Commission are hereby authorized to be created by the Commission:

- One Legal Officer at six thousand five hundred fifty-two pesos *per annum*.
- Three Legal Officers at five thousand three hundred seventy-six pesos each *per annum*.
- Five Examiners at five thousand three hundred seventy-six pesos each *per annum*.
- One Stenographer at three thousand one hundred eight pesos *per annum*; and
- Two Clerks at two thousand four hundred fifty-four pesos each *per annum*.

Any person entering the government service who may be appointed to any of said positions shall start at the initial rate of the salary corresponding to his position, as provided under the pertinent laws, rules and regulations.

The Commission shall take charge of the enforcement and implementation of the provisions of this Act. The Securities and Exchange Commissioner shall receive the compensation and enjoy all the privileges of Judges of the Court of First Instance.

SEC. 45. *Appropriation; assessment.*—To carry out the purposes of this Act, the Commission is hereby authorized to spend its income under this Act. Should the Commission's total income under this Act in any year be less than its total expenditures as certified by the Securities and Exchange Commissioner, the difference shall be pro-rated among all investment companies in business, and the Commission is authorized to assess and collect from each of them its corresponding share which shall not exceed one-half of one *per centum* of its net asset value.

SEC. 46. *Validity of contracts.*—(a) Any condition, stipulation, or provision binding any person to waive compliance with any provision of this Act or with any rule, regulation or order thereunder shall be void.

(b) Every contract made in violation of any provision of this Act or of any rule, regulation, or order thereunder, and every contract heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act or any rule, regulation, or order thereunder, shall be void (1) as regards the rights of any person who, in violation of any such provision, rule, regulation, or order, shall have made or engaged in the performance of any such contract, and (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, regulation, or order.

SEC. 47. *Prohibited violation of Act; obstructing compliance.*—(a) It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this Act or any rule, regulation, or order thereunder.

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

SEC. 48. *Penalties.*—Unless otherwise specifically provided elsewhere in this Act, any person who violates any provision of this Act or of any rule, regulation, or order thereunder, or any person who in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to this Act or the keeping of which is required pursuant to section twenty-eight (a) of this Act makes any untrue statement of fact or omits to state any fact necessary in order to prevent the statements made therein from being materially misleading in the light of the circumstances under which they were made, shall upon conviction be fined not more than fifty thousand pesos or imprisoned for not more than five years, or both.

SEC. 49. *Effect on existing law and repealing clause.*—The rights and remedies provided by this Act shall be in addition to any and all other rights and remedies that may now exist, but no person permitted to maintain a suit for damages under the provisions of this Act shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of.

Paragraph (v) of section one hundred ninety-four of Commonwealth Act Numbered Four hundred sixty-six, as amended by section three of Republic Act Numbered Forty-two, is further amended to read as follows:

"Stockbroker" includes all persons whose business it is, for themselves as such brokers or for other brokers, to negotiate purchases or sales of stock, bonds, exchange, bullion, coined money, bank notes, promissory notes, or other securities; but does not include underwriters for one or more investment companies as defined in the Investment Company

Act; "dealer in securities" includes all persons who for their own account are engaged in the sale of stock, bonds, exchange, bullion, coined money, bank notes, promissory notes or other securities."

All laws, Acts, parts of Acts, Rules of Court, executive orders, and administrative regulations which are inconsistent with this Act are hereby repealed.

SEC. 50. *Separability of provisions.*—If any provision of this Act shall be held invalid, the remainder of the Act shall not be affected thereby.

SEC. 51. *Effective date.*—This Act shall take effect upon its approval.

Approved, June 18, 1960.