

**SEC 3.09 Open-end investment companies.** The offer or sale of redeemable securities of an open-end management investment company, as defined in the investment company act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The investments of the company shall be restricted in the following respects:

(a) At least 75% of the value of the total assets of a diversified investment company shall be in cash or cash items including receivables, government securities, securities of other investment companies, and other securities, and for each single issuer within the 75%, the investment may not exceed 5% of the value of the total assets of the diversified investment company and may not exceed 10% of the outstanding voting securities of the issuer.

(b) 1. No investment company, other than an investment company that invests more than 80% of its assets in debt securities, may purchase any securities of the classes specified in this subsection, if by reason thereof the value of its aggregate investment in those classes of securities will exceed: 10% of its total assets in securities of issuers which the company is restricted from selling to the public without registration under the securities act of 1933, excluding restricted securities eligible for resale pursuant to Rule 144A under the securities act of 1933 that have been determined to be liquid by the company's board of directors or trustees based upon the trading markets for the securities; 10% of its total assets in the securities of one or more real estate investment trusts or in one or more investment companies; 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than 3 years, and equity securities of issuers which are not readily marketable.

(c) No investment company may invest any part of the total assets in real estate or interests in real estate, excluding readily marketable securities; commodities, other than precious metals not to exceed 10% of the investment company's total assets; commodity futures contracts or options thereon other than as permitted by investment companies qualifying for an exemption from the definition of commodity pool operator under 17 CFR 4.5 (c) (2) (i); or interests in commodity pools or oil, gas or other mineral exploration or development programs.

(d) The fundamental investment policies of the company shall be stated in the prospectus in reasonable detail, except that fundamental investment policies which will involve 5% or less of the company's assets may be disclosed in the Statement of Additional Information prepared by the company under the investment company act of 1940. The fundamental investment policies of the company may not be materially changed in any respect unless authorized by the vote of a majority of the outstanding voting securities of the company.

(2) The policy stated or followed by any investment company, other than one that invests 80% or more of its assets in debt securities, of engaging in any material respect in any of the following or related speculative activities, whether individually or in combination, and the relatively greater risks or costs involved in those activities, shall be disclosed

or clearly referred to in bold face type on the cover of the prospectus or on a prospectus supplement satisfactory in form to the commissioner:

(a) Borrowing money for investment in securities, excluding borrowing for temporary purposes;

(b) Purchasing securities for short-term trading, other than securities issued by the U.S. government;

(c) Purchasing restricted securities as specified in this section;

(d) Purchasing put or call options or combinations thereof; or

(e) Short selling of securities, excluding short selling against the box.

(3) The net assets of an investment company, upon completion of the initial public offering of its securities or within a period of 2 years after the commencement thereof or such additional period as the commissioner may permit, shall not be less than one million.

(4) All payments by an investment company upon redemption of securities of which it is the issuer shall be made in cash or in kind. The redemption fee payable by any shareholder may not exceed 1% of the amount receivable upon redemption of his or her shares, except that if the shares of a company are sold without sales commission, the redemption fee may not exceed 2% of the amount, subject to such conditions as the commissioner may prescribe.

(5) An investment company shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless the transactions, including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting the transactions, are not unfair or unreasonable to the shareholders of the company. The commissioner may require the company to file periodic reports concerning all such brokerage transactions.

(6) Each registered investment company shall notify the commissioner promptly when it is not in compliance with this section, and its registration statements shall be subject to revocation or suspension.

**History:** Cr. Register, August, 1972, No. 200, eff. 9-1-72; renum. from SEC 3.11, am. (intro.) and (3), Register, December, 1977, No. 264, eff. 1-1-78; r. (3), renum. (4) to (7) to be (3) to (6), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a), (b) and (c), (2) (intro.) and (c), (4) to (6), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (b) and (c), (2) (intro.) and (b), Register, December, 1985, No. 360, eff. 1-1-86; r. and recr. (1) (a), am. (1) (d) and (4), Register, December, 1987, No. 384, eff. 1-1-88; am. (1) (b) 1., Register, December, 1990, No. 420, eff. 1-1-91.

**SEC 3.10 Closed-end investment companies.** The offer or sale of securities of a closed-end management investment company, as defined in the Investment Company Act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements:

(1) The company shall not at the time of purchase, as to its total assets:

(a) Invest more than 30% in restricted debt securities, unless permitted by the commissioner upon proper justification;