

(S. B. 232)

**(No. 93-2013)**

(Approved July 30, 2013)

## **AN ACT**

To create jobs by reforming the legislation regarding investment companies; create the “Puerto Rico Investment Companies Act of 2013”; facilitate and incentivize the investment and raising of capital in Puerto Rico through investment companies; modify the tax treatment to be granted to such investment companies; amend Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico”; and for other related purposes.

### **STATEMENT OF MOTIVES**

The pressing need of increasing investment in our economy has always been considered as the centerpiece of Puerto Rico’s economic development model, since it is essential to improve our present and future standard of living. Attracting foreign capital was the first step toward Puerto Rico’s full development. Such capital financed the wave of industrialization that brought Puerto Rico out of extreme poverty. The Economic Development Company promoted foreign investment, which spearheaded our economic growth during such period.

However, foreign capital was only the first stage of a much more comprehensive plan. The economic expansion brought about by foreign capital would not be sustainable without raising Puerto Rican capital that could also contribute to our development. It was unhealthy for our economy to be mostly consumerist and unproductive; it was necessary to integrate production. The goal was simple: for Puerto Rican capital to fully contribute to our economic development and, for the result of the work and efforts of Puerto Ricans to remain

in Puerto Rican hands. Raising Puerto Rican capital would render our development more permanent and create a virtuous circle whereby our economy would continue developing at a steady pace.

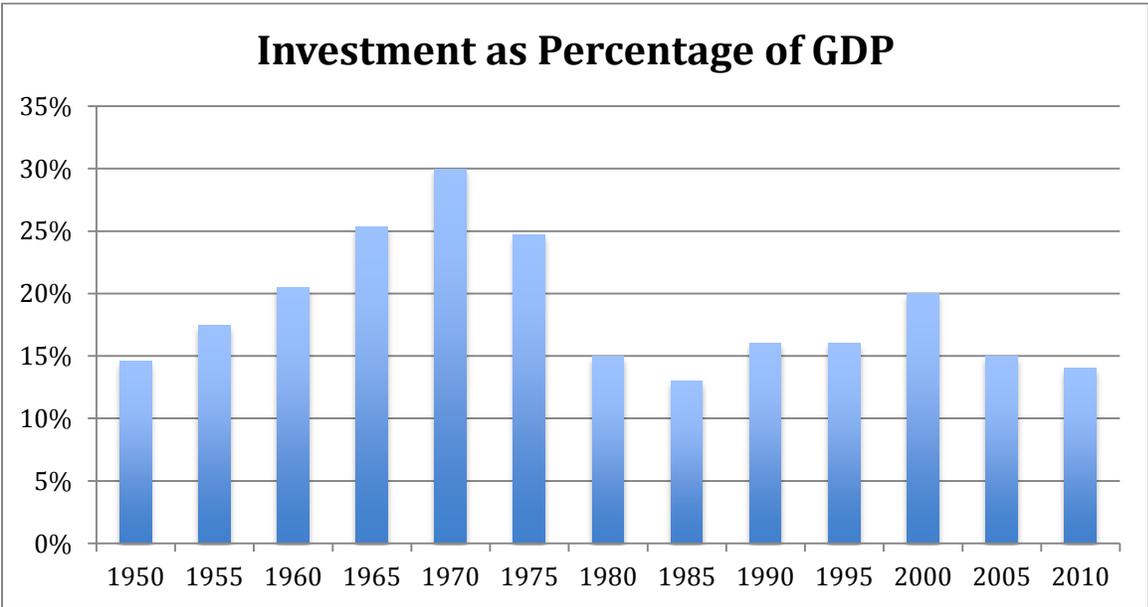
In the mid 1970s, Section 936 of the Internal Revenue Code became the centerpiece of our economic development effort. The tax exemptions provided under such Federal provision made our Island particularly attractive to foreign capital. Such exemptions led to the creation of hundreds of thousands of jobs in Puerto Rico. On the other hand, the funds deposited in our banks by the so-called 936 companies increased the lending capacity of our financial institutions. Such increase in the lending capacity of our banking institutions was essential for the economic growth we experienced toward the end of the 1980s. Such lending capacity allowed Puerto Rico to progressively invest more in itself, especially in local sources of capital that are in dire need of help and support.

Our economy is one of those in the world in which a higher proportion of local resources are consumed, while a lower proportion is invested in the future. The United States economy consumes 71% of its local resources, whereas ours consumes 91%. The gap between the two countries is due to our tendency to import large amounts of resources, and not exporting an equivalent amount to pay for such imports. To solve this issue, we must raise local investment the return of which shall allow us to close the gap between what we produce and what we consume.

Our lack of investment becomes evident when we review the amount of investment in our economy. According to the statistics of the U.S. Department of Commerce and the Puerto Rico Planning Board, in 2011, the United States invested one (1) dollar for every five (5) it consumed, whereas Puerto Rico invested one (1) dollar for every (6) it consumed. That is, the United States, whose accumulated capital is much higher than that of Puerto Rico, invested 25% more

than the Island in proportion to the size of both economies. This means that Puerto Rico must increase its investment rate by at least 25% in order to keep up or be on par with the United States in the medium term. Investments provide us with the means to boost our economic growth. Rather than any other consideration, the absence of economic growth has led credit rating agencies to cast doubt on our ability to pay the debts of our Government. In summary, without economic growth, the Government will not have the revenues to pay its obligations.

In 2006, the Government Accounting Office (GAO) stated that the main challenge for our economy was to increase the current rate of our Gross Domestic Product (GDP) from 15% to 20%, which is the rate in the United States. According to the GAO, only this would narrow the economic gap between Puerto Rico and the United States. If the data examined by the GAO is taken to the present time, our investment rate constituted only 14% of GDP in 2010, alarmingly close to the investment levels during the 1980s recession, which is 13%. While our investment in the economy remains stagnant (or even worse, decreases, as has been the trend in the past four years) we will never be able to experience favorable economic development in Puerto Rico.



As shown in the above figure, which contains data from the GAO and the Planning Board, investment rates during the 1950-1970 period constituted up to 30% of our GDP. Such investment resulted from Operation Bootstrap (Operación Manos a la Obra) efforts to attract foreign investment. During such decades, it was possible to narrow the economic gap between Puerto Rico and the United States. After the oil crisis in the early 1970s, Section 936 was identified as a vehicle to reach Operation Bootstrap's goal: to increase investment in our economy. In 2000, the heyday of Section 936, investment rates reached 20% of our GDP. Since then, Puerto Rico has been unable to reach such investment rate levels again.

Even worse, Puerto Rico's consumption and import patterns are economically unsustainable. A large part of our consumption is not financed by our production, but by Federal aid, which promotes consumption but does not help us to achieve progress by our own effort. If production does not increase, there is no way we can create the jobs that we need.

The repeal of Section 936 in 2005, posed an existential challenge to our economy that has not been properly addressed. Although we recognize all the efforts made toward the approval of Section 933-A, our economy needs more than that. It is necessary to find a mechanism to replace Section 936 and the next driving force that shall promote investment in our economy. Our goal is to increase the investment rate of GDP from fifteen percent (15%) to twenty percent (20%), as recommended by the GAO.

To achieve this, we must increase local investment in order to create more jobs and boost our economy. Thus, we must establish a self-sustainable basis to promote our economic growth without depending exclusively from fluctuating external sources. Without such basis, our economic growth shall come to a halt and depend on financial aid that is not necessarily recurrent and does not satisfy our lofty aspiration to improve Puerto Rico's economy. Therefore, the intent of this

Act is to promote local investment through investment companies in order to create much needed jobs and boost our economy.

Investment companies are an essential part of any economic development strategy. Investment companies offer a way to pool the savings and capital of many persons to establish and finance new businesses. On the one hand, most people do not have the time or the interest to invest their savings in new businesses. On the other hand, most entrepreneurs lack the necessary capital to establish new businesses that, in turn, would create the jobs that Puerto Rico needs.

Investment companies allow the middle, working class to invest their savings in high-return activities. Thus, the large scale investments that our economy needs to create jobs and reactivate itself can be made. Investment companies allow for Puerto Rican capital to be used more effectively. It provides the middle, working class with the means to obtain higher-yielding savings. It also allows our large scale investors to make investments by pooling their resources in a reliable, government regulated manner.

In the United States, investment companies are an essential part of the economic activity. Harvard Law School Professor John C. Coates published a paper entitled "Reforming the Taxation and Regulation of Mutual Funds," which shows that by 2007, the United States held more than \$13 trillion in mutual fund assets, plus \$4 trillion invested in other investment companies not regulated by the Investment Company Act of 1940. This means that there are \$17 trillion in financial assets in the United States invested through investment companies. These investment companies transact in many instruments with various degrees of risk and return. They invest in government bond issues, stocks, and local and international private business debts.

Puerto Rico's legislation governing investment companies is not appropriate. The effects of the contents thereof show the lack of development of local investment companies. In truth, we have directed our resources toward acquiring debt and failed to invest in businesses that are vital for future generations and for promoting our Trade.

Sources of capital in the private sector must be broadened. The lending capacity of the banking sector is limited by Federal regulations. Consequently, banks cannot lend beyond certain limits; and part of the investment must be made by stockholders. If no one buys such shares, banks are very limited as to the types of loans they can offer. In reality, loans cannot be the only way to finance our economic development. Banks must partner with investors so that they may jointly assume the risks that any business entails. If there is no investment capital for such new businesses, loans will have a limited effect.

This measure is an essential step to bring Puerto Rico back to the path of economic growth. Our legislation in effect, which governs investment companies, dates from 1954 and, since it has not been updated, it is not attuned to the demands of our time. Analogous legislation in the United States dates from 1940 (Investment Company Act of 1940). However, it has been kept updated, especially after the changes introduced by the Dodd-Frank Act in 2010. Regulatory activity has also kept such law current through well-thought exceptions that show the competence of the Securities and Exchange Commission (SEC). Our regulatory agency, the Office of the Commissioner of Financial Institutions, has been limited by the flaws of our legislation. The regulations of such agency were issued on May 6, 1955, and have not been modified since. In fact, due to the restrictive nature of our current legislation, it seems that it would be useless to review it, given that investment companies have been ruled out as a viable mechanism.

This measure is a step towards the future with regards to the regulation of our investment companies. The realities of the modern market call for dramatic actions in order to adjust ourselves to the circumstances. At present, the flow of capital is more dynamic than back in 1954. Today's investment companies need tools to take advantage of investment opportunities and be more competitive in a globalized world. Our regulatory scheme must be streamlined in order to adjust it to the needs of the globalized world of the 21<sup>st</sup> century.

On the other hand, this measure takes into account that investment companies shall manage the savings of investors. To protect the consumers of these financial products, this Act establishes rules for transparency in the finances of investment companies. The only way to persuade consumers to trust their savings to investment companies is by promoting investors' trust in the safety of their investments. This measure fosters an environment of safety and trust through guarantees of transparency that prevent fraud.

Therefore, this legislation seeks to attain the goal of increasing our investment rate of GDP from 15% to 20%. To achieve such purpose, this Act introduces a comprehensive reform of our investment laws based on two guiding principles: swiftness and transparency. Following such criteria, this legislation provides for:

**A- Opening our doors to a higher local investment in our economy.** By establishing swifter regulations and eliminating obsolete barriers that have no connection whatsoever with the realities of today's market, investment returns shall be higher, thus attracting more investment while stimulating the emergence of a new generation of Puerto Rican entrepreneurs. Since this investment shall not depend on loans, it shall reduce our dependence on debt to finance the development of our Island.

**B- Making foreign capital investment in Puerto Rico feasible, along with our own capital.** Increasing the access of Puerto Rican capital to investment facilitates the formation of partnerships with investors from all over the world in order to multiply the effectiveness of our capital.

**C- Making regulatory requirements regarding the choice of investment more flexible.** This Act relieves the Office of the Commissioner of Financial Institutions from the burden of overseeing compliance with obsolete regulations, so that it may focus its resources on carrying out its main mission of protecting consumers.

**D- Ensuring that investments are made honestly and transparently.** By establishing stringent requirements regarding reports to the Commissioner and to investors the integrity of the transactions is protected and fraud is prevented. Investors can also stay informed of the status of their investments and call managers to account if the results are not as expected. Furthermore, the Board of Directors herein established shall be required to include among its members at least a majority of persons who are independent from the company so as to guarantee the transparency of operations. Since they are not subordinate to managers, independent directors can oversee managers to protect the interest of those who invest in investment companies.

**E- Exempt investment trusts to be exempt from double corporate taxation for purposes of their investments.** This Act creates an investment company classification, known as investment trusts, which has more tools to create business and is designed for higher return investments. Such trusts are not required to distribute their income to their stockholders, so they may reinvest the proceeds thereof in productive activities and obtain even higher returns.

**F- The establishment of a new 30%-tax exemption from the income derived from activities that are essential for jobs creation.** Investment companies that earn 75% or more of their income from such activities in Puerto Rico may benefit from this tax incentive. Thousands of potential middle-class investors in such businesses, as well as those who may find jobs with these investments, shall benefit from this.

**G- The establishment of a special tax credit to incentivize the participation of conservative investors in activities that are especially important for the creation of jobs.** The vast majority of Puerto Rican investors are conservative or moderate in terms of their tolerance to risk, and strong preference for not having to pay taxes. In order to encourage their participation in the activities to be incentivized, a special credit is hereby established, which allows them to take a \$5 investment credit for every dollar they receive from the aforementioned activities. Thus, a fully exempt portfolio consisting of 70% of the debt of the Government of Puerto Rico, and up to 30% of eligible activities may be structured. In this manner, conservative investors can generate additional economic activity without losing the exempt status that compensate them for assuming higher risks and greater participation in the creation of jobs. Given that there are approximately \$20 billion in mutual fund assets, this credit may have a dramatic effect on investments in Puerto Rico if it is used entirely.

**H- Granting tax incentives to investments in Puerto Rico.** In order to incentivize investment in Puerto Rico and to finance any other costs that this legislation may entail, the investment rate outside Puerto Rico through mutual funds is hereby increased by fifty percent (50%).

In summary, this legislation has a dramatic economic potential. Investment in Puerto Rico is approximately \$10 billion a year, which is 25% less than the investment in the United States if we take into account the proportion of our economy. If we succeed in reducing such difference from 25% to 19%, it would represent an additional annual investment of approximately seven hundred (700) million dollars. For every million dollars invested, 33.3 jobs are created in Puerto Rico. Seven hundred million dollars in additional investments would create nearly 23,000 jobs. This statistic represents a conservative estimate of the effect of this legislation. The restrictions and lack of transparency resulting from the Investment Company Act in effect are, to a great extent, responsible for our lag in investments. If there are no vehicles to invest in, the private economy comes to a halt. Removing these barriers will lead to a buoyant economic growth in the future.

The tools of the Commonwealth enable us to carry out the goals of this legislation. The repeal of Section 936 has left us with a lack of capital. For such reason, we have created our own capital investment mechanism, very similar to a local 936.

The time has come to use the tools proposed herein to come up with Puerto Rican solutions for Puerto Rican problems. We cannot wait any longer. Our economy is in crisis. Now, more than ever before, we need to promote new strategies; to continue our quest for new solutions to address the needs of our people. Economic growth is the means whereby we shall reach higher levels of social justice and prosperity.

This Act is the key to use our resources and knowledge to find solutions adjusted to our social needs and circumstances. The past had its strategies. It is now our turn; the chance for this generation to devise its own strategy. Tomorrow will be too late.

***BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:***

Article 1.- The “Puerto Rico Investment Companies Act of 2013” is hereby created to read as follows:

“Section 1.- Title.- This Act shall be known as the ‘Puerto Rico Investment Companies Act of 2013.’

Section 2.- Public Policy.- It shall be the public policy of the Commonwealth of Puerto Rico to promote the raising and investment of capital through investment companies. To stimulate this activity, a special tax treatment, as well as tax exemptions, shall be granted to businesses engaged in activities that particularly foster job creation. The framework of this policy gives leeway to investors, insofar as they meet the requirements of full disclosure of necessary information and of honesty and transparency in the management of the funds and operations of a company. The Commissioner is hereby empowered to adopt regulations whenever necessary, and to consider or determine, if so required, whether an action is consistent with public interest. Furthermore, the Commissioner shall consider, in addition to protecting investors, whether an action to be taken shall promote efficiency, competition, and the raising of capital.

Section 3.- Definitions.- For purposes of this Act, the following terms shall be defined as provided below; be it understood, that the terms originating from the Investment Company Act of 1940 shall be interpreted consistently with such Act.

A. ‘Investment Adviser’ of an investment company means:

(1) Any person (other than a director, officer, employee, trustee, member of an advisory board, or employee of such company) 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.

(2) Any other person who, pursuant to a contract with a person described in paragraph (1), regularly performs the duties of a person described in said paragraph (1). However, it 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, alienation or encumbrance of such securities; (c) a company furnishing such services at cost to one or more investment companies from Puerto Rico or abroad, insurance companies, or other financial institutions; (d) any person the capability, 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 regulations or order, determine not to be within the intent of this definition.

B. 'Commissioner' means the Commissioner of Financial Institutions.

C. 'Company' means any corporation, partnership, limited partnership, limited liability company, or trust, or any organized group of persons whether incorporated or not; or its successor in interest.

D. 'Investment Company' means any issuer who is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. The Commissioner may adopt, within six months after the approval of this Act, a regulations which shall be public, establishing exemptions for companies that have been excluded from the definition of 'Investment Company' using as a guide Sections 3(b) and 3(c) of the Investment Company Act of 1940, and the public policy set forth in Section 2.

The entities that are excluded as ‘investment companies under Sections 3(b), 3(c)(1), and 3(c)(7) of the Investment Company Act of 1940, shall not be deemed to be excluded in such definition until the Regulations take effect.

E. ‘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 25% of the voting securities of a company shall be presumed to control such company. Any person who does not so own beneficially, either directly or through one or more controlled companies, 25% or more 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.

F. ‘Director’ means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated.

G. ‘Beneficial Owner’ means a person who enjoys the benefits of ownership of securities, even though title is in another name.

H. ‘Issuer’ means any person who issues or proposes to issue any security, or has outstanding any security which it has issued.

I. ‘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. The term *suscriptor* in Spanish shall correspond to the term ‘underwriter’ in English. The term shall not include a person whose interest is limited to a commission from an underwriter not in excess of the usual and customary commission. As used in this paragraph, the term ‘issuer’ shall include, in addition to an issuer, any person directly or indirectly 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.

J. 'Principal underwriter' 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 an issuer, or pursuant to contract has the right from time to time to purchase from an issuer, any such security for distribution, or who as agent for an issuer sells or pursuant to contract has the right to sell any such security to a dealer or to the public or both. The term 'principal underwriter' does not include a dealer who purchases securities from an investment company through a principal underwriter acting as agent for such company. 'Principal underwriter' for a closed-end company or an 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, (i) is in privity of contract with the issuer; (ii) acting alone or in concert with one or more other persons, initiates or directs the formation of an underwriting syndicate; or (iii) is allowed a rate of gross commission, spread, or other profit greater than the rate allowed another underwriter participating in the distribution. The term *suscriptor principal* in Spanish corresponds to the term 'principal underwriter' under the Investment Company Act of 1940; the term *sindicato de suscripción* in Spanish corresponds to the term 'underwriting syndicate' in English; and the term *tasa bruta de comisión* in Spanish corresponds to the term 'rate of gross commission' in English.

K. 'Advisory Board' means a board, whether elected or appointed, which is distinct from the board of directors of 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' for purposes of this Act, which board has advisory functions as to investments but has no power to determine that any security or other investment shall be purchased, sold, or encumbered by such company.

L. 'Board of Directors' means the entity in charge of governing the business affairs of a Corporation as such term is defined in Section 4.01 of the General Corporations Act of the Commonwealth of Puerto Rico. It includes the operating equivalent in any other business entity, other than a corporation, organized under the laws of the Commonwealth of Puerto Rico.

M. 'Member of the Immediate Family' means any spouse, ascending, descending, or collateral relative up to the fourth degree of consanguinity and second of affinity or adoptive relationship.

N. 'Person' means a natural person or a company.

O. 'Affiliated Person' of another person means:

(1) Any person directly or indirectly owning beneficially, controlling, or holding at least 5% of the outstanding voting securities of such other person.

(2) Any person that at least 5% of its outstanding voting securities are directly or indirectly owned beneficially, 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, official, partner, or employee of such other person.

(5) If such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof.

P. 'Interested Person' of another person means:

(1) When used with respect to an investment company:

(a) Any affiliated person of such company.

(b) Any member of the immediate family of any natural person who is an affiliated person of such company.

(c) Any interested person of any investment adviser of or principal underwriter for such company.

(d) Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years of such company has acted as legal counsel for such company.

(e) Any person or any affiliated person of a person (other than a registered investment company) that, at any time during the six-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed securities for:

(i) The investment company.

(ii) Any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services.

(iii) Any account over which the investment company's investment adviser has brokerage placement discretion.

(f) Any person or any affiliated person of a person (other than a registered investment company) that, at any time during the six-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to:

(i) The investment company.

(ii) Any other investment company having the same investment adviser as such investment company or holding itself out to investors as a related company for purposes of investment or investor services.

(iii) Any account for which the investment company's investment adviser has borrowing authority.

(g) Any natural person whom the Commissioner, by administrative determination, shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two completed fiscal years of such company, a material business or professional relationship with such company or with the principal executive officer of such company or with any other investment company having the same investment adviser or with the principal executive officer of such other investment company; provided, that no person shall be deemed to be an interested person of an investment company solely by reason of his/her being a member of its board of directors or advisory board or an owner of its securities, or his/her membership in the immediate family of any person specified above. The Commissioner may modify or revoke any order entered under this paragraph whenever he/she deems that such order is no longer consistent with the facts.

(2) When used with respect to an investment adviser of or principal underwriter for any investment company:

(a) Any affiliated person of such investment adviser or principal underwriter.

(b) Any member of the immediate family of any natural person who is an affiliated person of such investment adviser or principal underwriter.

(c) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as fiduciary, trustee, executor, or depositor of any legal interest in, any security issued either by such investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter.

(d) Any person or partner or employee of any person who at any time since the beginning of the last two completed fiscal years has acted as legal counsel for such company.

(e) Any person or any affiliated person of a person (other than a registered investment company) that, at any time during the six-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has executed any portfolio transactions for, engaged in any principal transactions with, or distributed securities for:

(i) Any investment company for which the investment adviser or principal underwriter serves as such.

(ii) Any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such.

(iii) Any account over which the investment adviser has brokerage placement discretion.

(f) Any person or any affiliated person of a person (other than a registered investment company) that, at any time during the six-month period preceding the date of the determination of whether that person or affiliated person is an interested person, has loaned money or other property to:

(i) Any investment company for which the investment adviser or principal underwriter serves as such.

(ii) Any investment company holding itself out to investors, for purposes of investment or investor services, as a company related to any investment company for which the investment adviser or principal underwriter serves as such.

(iii) Any account for which the investment adviser has borrowing authority.

(g) Any natural person whom the Commissioner by order shall have determined to be an interested person by reason of having had at any time since the beginning of the last two completed fiscal years of such investment company a material business or professional relationship with such investment adviser or principal underwriter or with the principal executive officer or any controlling person of such investment adviser or principal underwriter. Provided, that no person shall be deemed to be an interested person of an investment company solely by reason of his/her being a member of its board of directors or advisory board or an owner of its securities, or his/her membership in the immediate family of any person specified above. The Commissioner may modify or revoke any order entered under this paragraph whenever he/she deems that such order is no longer consistent with the facts.

Q. 'Lend' and 'Borrow': includes a purchase coupled with an agreement by the vendor to repurchase.

R. '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.

S. 'Reorganization' means:

(1) A reorganization under the supervision of a court of competent jurisdiction.

(2) A consolidation, voluntary liquidation, or dissolution.

(3) A sale of more than 75% of the assets of a company.

(4) A redistribution of the capital of a company, or an exchange of securities issued by a company for any of its own outstanding securities.

(5) A recapitalization or other procedure or any transaction which has for its purpose the alteration, modification, or elimination of any of the rights, preferences, or privileges of any class of securities issued by a company.

(6) An exchange of securities issued by a company for outstanding securities issued by another company or companies, preliminary to and for the purpose of effecting any of the foregoing.

T. 'Value' with respect to assets of registered investment companies, means:

(1) With respect to securities for which market quotations are readily available, the market value.

(2) With respect to other securities, the fair value as determined by the board of directors, subject to the regulations or administrative determination issued by the Commissioner. The board of directors may delegate the determination of the fair value of such securities to nationally recognized security valuation providers. The term *para los que hay precios en el mercado bursátil fácilmente disponibles* in Spanish corresponds to the term 'for which market quotations are readily available' in English, and the term *justo valor* in Spanish corresponds to the term 'fair value' in English.

If the Commissioner deems it necessary, he/she may modify the manner to determine value through regulations and for just cause in accordance with the public policy set forth in Section 2 of this Act.

U. 'Security' means any note, common or preferred stock, treasury stock, security future, bond, or participation of any kind as owner, member, or partner in a limited liability company or any kind of partnership; evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, investment contract, preorganization certificate or subscription, certificate of deposit for a security, any fractional interest of any kind on any security or group or index of securities (including any interest therein or based on the value thereof), or any option or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any instrument commonly known as a 'security', or any certificate of interest or participation in or right to subscribe to or purchase any of the foregoing.

V. 'Preferred Stock' means:

(1) Any bond, note or similar obligation, any obligation or instrument that constitutes a security and evidence of indebtedness; and

(2) Any shares or participation in a profit-sharing agreement, partnership interest, membership in a limited liability company or security of any class which has priority over any other class in the distribution of assets or payment of dividends.

Section 4.- Types of Investment Companies.- Investment Companies may be categorized into various types. The Commissioner shall prescribe through regulations the manner in which investors shall be clearly communicated on the differences in the types of investment companies.

A. By their type of investment.- Investment companies may be differentiated between ‘mutual funds’ and ‘exempt investment trusts,’ depending on the nature of the investments they make. ‘Mutual funds’ invest or proposes to invest at least ninety percent (90%) of its assets, other than cash, in all classes of stocks. The exempt investment trust may invest in all classes of stocks and may also acquire or organize, in whole or in part, businesses of any kind for the purposes of operating them and use their return for the benefit of the trust.

B. By their diversification.- Investment companies may be classified as ‘diversified’ and ‘non diversified’ companies depending on the different types of risk to which they are subject. In ‘diversified’ companies at least 75% of the value of its total assets is represented by cash and securities for the purposes of this calculation limited, in respect of any one company or issuer to an amount not greater than 5% of the value of the total assets of such investment company (including cash) and to not more than ten percent (10%) of the voting securities of such company or issuer. ‘Non-diversified’ companies cannot have more than 25% of its assets, including cash, in the securities of one company or issuer. Provided, however, that investment companies may invest in securities issued or guaranteed by the Commonwealth of Puerto Rico, the United States of America or the states of the United States of America, or any of their respective political subdivisions, instrumentalities, public corporations or agencies, in each case in excess of the investment limit in only one issuers stated herein. Provided, further, that in the case of ‘non-diversified’ investment companies, also classified as exempt investment trusts, may invest up to 75% of its assets, including cash, in securities of one company or issuer. Notwithstanding the foregoing, a ‘non-diversified’ investment company classified also as an exempt investment trust may invest up to 90% of its assets in securities of one company or business, insofar as such company is

organized expressly to diversify its operations within two (2) years after its registration.

C. By what they offer in the market.- Investment companies may be differentiated between 'open-end companies' and 'closed-end companies.' Open-end companies, periodically offer for sale or has outstanding any redeemable security of which it is the issuer. 'Closed-end companies' are companies other than open-end companies.

D. By their capacity to redeem shares.- Investment companies may be differentiated between 'redeemable at will' and 'not redeemable at will'. Investment companies 'redeemable at will' are those in which the investment company issues and redeems its shares in the hands of its investors, according to the net value of its assets calculated periodically. Such redemption period and all other details shall be prescribed by the Commissioner through regulations. Investment companies categorized as 'not redeemable at will' are companies other than those 'redeemable at will.'

E. By the use of the debt.- Investment companies may be differentiated between 'leveraged' and 'non-leveraged' companies. 'Non-leveraged' investment companies may incur debt of up to five percent (5%) of the value of their assets with the authorization of the Commissioner. 'Leveraged' investment companies may incur debt up to fifty percent (50%) of the value of their assets and up to an additional five percent (5%) with the authorization of the Commissioner. For purposes of leverage, debt shall be understood as the sum of the amount of the loans with banks, repurchase agreements, issuance of preferred stocks, or the existence of outstanding preferred stocks. Provided, further, that the leverage restrictions provided in this Section shall not apply to investment companies categorized as exempt investment trusts that are also classified as leveraged, and which shall have no restrictions as to the debt they may incur. Only leveraged

investment companies shall emphasize on their nature and classification under this subsection. The Commissioner shall determine the disclosure requirements that investment companies shall meet with respect to the investment level of their debt. Provided, however, that leverage limits shall not apply to investment companies operating under the Small Business Investment Act of 1958.

Section 5.- Registration Requirement.- No investment company organized or created under the laws of the Commonwealth of Puerto Rico and no promoter or underwriter of such investment company, unless registered in accordance with Section 6 of this Act or pursuant to the provisions of Act No. 6 of October 19, 1954, as amended, shall directly or indirectly:

A. Offer for sale, sell, or deliver after sale, in the Commonwealth of Puerto Rico, any security or any interest in a security when there is reason to believe that such security or interest will be offered for sale, sold or delivered in the Commonwealth of Puerto Rico.

B. Control any investment company which performs any of the acts listed in subsection (A) of this Section.

C. Engage in any business in the Commonwealth of Puerto Rico.

D. Control any company which is engaged in any business in the Commonwealth of Puerto Rico.

Section 6.- Registration Process.- Any investment company organized or created under the laws of the Commonwealth of Puerto Rico shall register for the purposes of this Act and file with the Commissioner a notification of registration, in such form as the Commission shall prescribe by regulations. An investment company shall be deemed to be registered upon receipt by the Commissioner of such notification of registration. Upon registration, the registrant shall file, in such form and containing such information provided by the Commissioner through regulations, an application for registration containing the following:

A. A recital of the policy of the registrant in respect of each characteristic of the investment company within the categories established in Section 4 of this Act.

B. A recital of all investment policies of the registrant, including a statement that it shall concentrate present or future investments in a particular industry or group of industries.

C. A detailed recital of all policies of the registrant related to the issue of preferred stocks and the leverage.

D. A recital of any other policy of the registrant which the registrant deems matters of fundamental policy.

E. The name and address of each affiliated person of the registrant; the name and address of every company of which each such affiliated person is an officer, director, partner or employee; a brief statement of the business experience for the preceding five (5) years of each officer and director of the registrant.

F. Any other information that the Commissioner may prescribe by regulations.

The Commissioner shall issue a certificate of registration (license) to the registrant if, after conducting the appropriate investigation and examination from the best information sources available, he/she verifies that the reputation, responsibility, and general suitability of the persons mentioned in the notification justify such recognition and ensure the likelihood that the businesses to be conducted by the registrant shall be done honestly and efficiently in accordance with the purposes of this Act, and that the public need and convenience warrant the issuance of such license.

If it appears to the Commissioner that a registered investment company has failed to file the information required by this Section or any other report required under this Act or any regulations, or has filed such information, but omitted

therefrom material facts required to be stated therein, the Commissioner shall notify to such company of such violation and fix a date prior to which the registrant or company must meet such requirement. Failure to meet these obligations may result in the revocation of the registration of the investment company.

Section 7.- Ineligibility of Certain Persons.- It shall be unlawful for any of the following persons to serve or act in the capacity of employee, officer, director, member of an advisory board, investment adviser, principal underwriter, or depositor for any registered investment company:

A. Any person who within 10 years has been convicted of aggravated robbery, fraud, identity theft, as defined in the Puerto Rico Penal Code of 2012, any offense involving the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, investment adviser, or any other financial activity; or as an affiliated person, salesman, employee, official, or director of any investment company, bank, insurance company, or any other financial entity.

B. 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, investment adviser, or any other financial activity; or as an affiliated person, salesman, employee, official, or director of any investment company, bank, insurance company, or any other financial entity; 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.

C. A company any affiliated person of which is ineligible, by reason of subsections A and B of this Section.

D. Any person whose license to practice a profession duly regulated by law has been revoked or suspended, provided that the fault that led to the license revocation or suspension was related to an ethical fault.

Section 8.- Sanctions Against Ineligible Persons.- The Commissioner shall, after due notice and opportunity for an adjudicative hearing, by order prohibit, conditionally or unconditionally, either permanently or for such period of time, as he/she in his/her discretion may deem appropriate in the public interest, any person from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or as an affiliated person of any investment adviser, depositor, or principal underwriter. The Commissioner is also authorized to impose fines for noncompliance with the rules of this Section of up to fifty thousand dollars (\$50,000) to natural persons, and up to two hundred and fifty thousand dollars (\$250,000) to juridical persons, for each violation. Determinations under this Section shall be made in accordance with the following guidelines:

A. If the action or omission involved fraud, deceit, manipulation, or wanton or reckless disregard of a regulatory requirement.

B. The harm to third parties either directly or indirectly.

C. The extent to which any person was unjustly enriched, taking into account any restitution made to persons injured by such behavior.

D. Recidivism in this or any other jurisdiction.

E. The need to deter such person and other persons from committing such acts;

F. The ability to pay of the natural or juridical person under investigation.

G. Such other matters as justice may require.

It shall be grounds for issuing an order to prohibit from serving, to issue a fine, or impose both penalties:

A. To willfully make or cause to be made in any notification of registration, application, or report filed with the Commissioner under this Act any statement which, at the time and in the light of the circumstances under which it was made, was false or misleading with respect to any material fact.

B. To willfully omit or cause to omit a material fact in any notification of registration, application, or report to the Commissioner.

Section 9.- Exemption for Ineligible Persons.- Any person who is ineligible, by reason of Sections 7 and 8 of this Act, to serve in the capacities enumerated in such Sections, may file with the Commissioner an application for an exemption from the provisions of such Sections. The Commissioner shall by order grant such application, including conditions if he/she deems appropriate, if it is established that the application of Sections 7 and 8 of this Act is disproportionately severe or that the conduct of such person has been such as not to make it against the public interest to exempt him/her from the application of Sections 7 and 8 of this Act.

Section 10.- The Commissioner may also enter an order requiring disgorgement, including reasonable interest for violations of this Act. Likewise, the Commissioner may enter cease and desist orders when the requirements established in the regulations approved in accordance with this Act are violated, have been violated, or are about to be violated. The Commissioner is also authorized to enter temporary orders. The Commissioner is authorized to prescribe the necessary adjudicative procedure by regulations. Furthermore, the Commissioner is authorized to prescribe by regulations or order reasonable registration fees to be collected at the time of the registration of the investment company, whose registration fees shall not exceed 3/100 percent (0.03%) of the total dollar value of the capital stock issued or intended to be issued by the

investment company and for any other request for action filed before the Commissioner.

Section 11.- Requirements for Registered Investment Companies.- No registered investment company shall have a board of directors the half or more of the members of which are persons who are interested persons of such registered company. It shall not be understood as interested person any director who is an affiliated person of the registered investment company solely by reason of being the director of the same or another such company, or by being an immediate family member of a director who is not an interested person of such registered investment company. No registered investment company shall:

A. 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, unless a majority of the board of directors of such registered company shall be persons who are not such brokers or affiliated persons of any of such brokers.

B. Use as underwriter of securities issued by it any director, officer, or employee of such registered company or any person of which any such director, officer, or employee is an affiliated person, unless a majority of the board of directors of such registered company shall be persons who are not such underwriters or affiliated persons of any of such underwriters.

C. Have as director, officer, or employee any investment banker, or any affiliated person of an investment banker, unless a majority of the board of directors of such registered company shall be persons who are not investment bankers or affiliated persons of any of such investment banker.

D. Have a majority of its board of directors consisting of persons who are officers, directors, or employees of any one bank (together with its affiliates and subsidiaries) or any one bank holding company.

E. Maintain its principal office or records outside of the jurisdiction of the Commonwealth of Puerto Rico.

F. Hold its meetings of directors and stockholders outside of the jurisdiction of the Commonwealth of Puerto Rico.

G. Have less than two directors who are residents of Puerto Rico, and not have at least one of its chair, or vice chair, and its secretary or assistant secretaries who are residents of Puerto Rico.

H. Hire an investment adviser or administrator who (i) has its principal office outside of the jurisdiction of the Commonwealth of Puerto Rico or (ii) less than ninety percent (90%) of its employees are residents of Puerto Rico; provided, however, that this prohibition shall not be construed to impair the right of a registered investment company to hire, directly or indirectly, an investment subadviser to manage a portion of its assets or sub-administrator that do not meet these requirements.

I. Violate the requirements of this Section that a majority of the board of directors of such registered company shall be persons who are not interested persons or the requirements of subsection B of this Section; unless:

(1) At least one of the members of the board of directors is not an interested person of the investment adviser of the registered company, or officer or employee of such registered company.

(2) Such investment company is an open-end company and redeemable at will.

(3) Such investment adviser is registered under the Investment Advisers Act of 1940 and is engaged principally in the business of rendering investment supervisory services.

(4) No sales load is charged on securities issued by such investment company when sold to investors.

(5) Any premium over net asset value charged to investors by such company upon the issuance of any such security, plus any discount from net asset value charged on redemption thereof, shall not in the aggregate exceed two percent (2%) of the net asset value.

(6) The registered company has not incurred sales or promotion expenses, but expenses incurred in complying with laws and regulations related to the issue or sale of securities of such company.

(7) Such investment adviser is the only investment adviser to such investment company, and such investment adviser does not receive a management or advisory fee exceeding one percent (1%) of the value of such company's net assets averaged over the year.

(8) All executive salaries and executive expenses and office rent of such investment company are paid by such investment adviser.

(9) Such investment company has only one class of securities outstanding, each unit of which has equal voting rights with every other unit.

J. Operate, by reason of a vacancy that arises as a result of the death, disqualification, or resignation of any director or officer, without meeting the requirements of this Section for more than thirty (30) days. Vacancies shall be filled within thirty (30) days as provided in the corporate bylaws or the certificate of incorporation of the investment company. The requirements established in this Section may be modified by the Commissioner through regulations.

K. Knowingly acquire, during the existence of any underwriting or selling syndicate, any security (except a security of which such company is the issuer) an underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of such registered company, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person, unless such registered company is

itself acting as an underwriter for the issue. Within nine (9) months after the effective date of this Act, the Commissioner shall adopt regulations that, taking into account Section 2 of this Act, modify the transactions to be covered by this subsection. Such regulations shall exempt any transaction carried out in accordance with the policy regarding transactions with affiliates adopted by the board of directors and a majority of directors not affiliated to any registered investment company, provided, that such policies have been filed with the Commissioner and are consistent with such regulations.

L. Violate, with respect to any advisory board, if any, the requirements established herein for the board of directors.

M. Issue securities, other than preferred stocks, that are not of the same class, and the same voting rights and profit sharing of all other securities other than preferred stocks. This subsection shall not apply to an investment company that is a foreign investment trust exempt under subsection A of Section 4 of this Act, and the issue is authorized by a majority of members of the board of directors, including a majority of directors that are not interested persons. It shall not apply either to different classes of securities, other than preferred stocks, if:

(1) The only difference between classes is the amount of fees collected to investors.

(2) The difference in the amount of fees is due solely to the amount of total investment made by the person.

N. Issue preferred voting stocks.

O. Issue preferred stocks convertible into common stocks, unless the investment company is an investment trust exempt under subsection A of Section 4 of this Act, the issue is authorized by a majority of members of the board of directors, including a majority of directors that are not interested persons, and the requirements of Section 13 are met.

P. Have less than seven (7) security holders entitled to vote and share in the profits after the initial public offering period has elapsed. Not more than fifty percent (50%) of its voting securities shall be controlled by 2 of the holders thereof.

Q. Invest, one year after its date of registration as a registered investment company, less than twenty percent (20%) of its assets in: (a) stocks, bonds, or obligations of a domestic corporation or partnership, or a foreign corporation or partnership not less than eighty percent (80%) of the gross income of which during the last three (3) years constitutes income related to the conduct of a business in Puerto Rico (including, but not limited to, any instrument issued by a company registered in the Puerto Rico Stock Index of the Government Development Bank for Puerto Rico); (b) mortgage loans, or participation in mortgage loans, on residential properties located in Puerto Rico; (c) obligations issued or guaranteed by the Commonwealth of Puerto Rico, its political subdivisions, agencies or instrumentalities; or (d) any other investment that the Commissioner may determine through regulations.

Section 12.- Offers to Investors.- It shall be unlawful for any registered open-end company or redeemable at will or the 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 registered company to acquire or exchange his/her common stock in the same or another such company 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 been approved by the Commissioner or are in accordance with requirements that the Commissioner may prescribe by regulations with regard to such type of transactions.

Section 13.- Authorization of Changes.- No registered investment company shall, unless authorized by the vote of a majority of its issued voting securities, and notifies the Commission after carrying out such affirmative vote:

- A. Change its subclassification under Section 4 of this Act.
- B. Deviate from investments objectives or from any fundamental policy recited in its registration statement pursuant to Section 6 of this Act.
- C. Change the nature of its business so as to cease to be an investment company as defined in Section 3 of this Act.
- D. Change its option to pay taxes as a corporation or partnership as provided in Section 1010.01(a)(33) of Act No. 1-2011, as amended, known as the 'Internal Revenue Code for a New Puerto Rico.'
- E. Issue preferred stocks convertible into common stocks as provided in subsection L of Section 12 [sic].

Section 14.- Requirements of Capital.- No investment company shall be registered or, if registered, make a public offering of securities of which such company is the issuer, unless:

- A. Such company has a net worth of at least one hundred thousand dollars (\$100,000), or
- B. Such company has previously made a public offering of its securities, and at the time of such offering had a net worth of at least one hundred thousand dollars (\$100,000); or
- C. The Commissioner has expressly exempted it from the initial net worth requirement.

Section 15.- Investment Advisers.- It shall be unlawful for any person to act as investment adviser of a registered investment company, except pursuant to a written contract, with such registered company or with an investment adviser of such registered company, which shall be approved by a majority of members of the

board of directors (including a majority of members that are other than interested persons of the registered company or investment adviser) and that:

A. Precisely describes all compensation to be paid thereunder.

B. Shall continue in effect for a period of less than or equal to two (2) years from the date of its execution; provided, that such continuance is specifically approved annually by a majority of the board of directors and directors that are other than interested persons.

C. Provides that the contract may be terminated at any time by a majority of the board of directors of such registered company within not more than sixty (60) days' written notice of such termination.

D. provides that the contract may not be alienated, transferred, or assigned to third parties.

Section 16.- Principal Underwriters.- It shall be unlawful for any principal underwriter for a registered open-end company to sell or deliver after selling any security of which such company is the issuer, except pursuant to a written contract with such company, which:

A. Shall continue in effect for a period of less than or equal to two (2) years from the date of its execution, provided that such continuance is specifically approved annually by a majority of the board of directors or directors that are other than interested persons.

B. Provides that the contract may not be alienated, transferred, or assigned to third parties.

Section 17.- Directors.- No person shall serve as a director of a registered investment company unless elected to that office by the holders of the issued and outstanding voting securities of such company; provided, however, that vacancies in the board of directors may be filled temporarily as provided in the bylaws of the corporation and the certificate of incorporation of the registered investment

company, until the next annual meeting of holders of the securities of such company; provided, that after filling any such vacancy at least two-thirds (2/3) of the directors then holding office shall have been elected to such office by the holders of the securities of the company at such an annual or special meeting held for such purposes. The foregoing shall not be construed to preclude a registered investment company from dividing its directors into classes if its certificate of incorporation, bylaws, or the law under which it is organized, so requires or provides; provided, that no class shall be elected for a shorter period than one (1) year or for a longer period than five (5) years and the term of office of at least one class shall expire each year.

Section 18.- Types of Investments.- Registered investment companies classified as:

A. Mutual Funds are hereby authorized to invest as provided below:

(1) Buy and sell securities of all kinds, in accordance with their investment policy within their subclassification under Section 4 of this Act and their investment policies under Section 6 of this Act; provided, that their portfolio complies with the provisions of subsection Q of Section 11 of this Act.

(2) Issue debt or preferred stocks and borrow money, as restricted by its leverage limit allowed in accordance with its subclassification under subsection E of Section 4 of this Act.

(3) Any other corporate action consistent with these corporate purposes, or required by law or regulations.

B. Exempt Investment Trusts are hereby authorized to invest as provided below:

(1) Buy and sell securities of all kinds, in accordance with their investment policy within their subclassification under Section 4 of this Act and their investment policy under Section 6 of this Act.

(2) Issue preferred stocks and borrow money from a bank or cooperative, as restricted by their leverage limit allowed in accordance with their subclassification under subsection E of Section 4 of this Act.

(3) Organize companies of any type, in accordance with their investment policies under Section 6 of this Act, to do business. Such investment shall have the following characteristics:

C. The exempt investment trust may acquire, organize, encumber, or alienate the business, by itself, or together with other exempt investment trusts or third parties. Such businesses may be organized for any lawful business purposes under the Constitution and the laws of the Commonwealth of Puerto Rico. This includes operating, leasing, selling or otherwise disposing of real property (including real property rights). However, the following restrictions are imposed on the operation of exempt investment trusts.

(1) Companies organized by the exempt investment trust may operate with total liberty to issue debt securities of any type, including preferred stocks, and borrow money; provided, however, that such level of indebtedness shall be properly disclosed to investors.

(2) The investments of an exempt investment trust shall be limited to the securities that the company organizes, acquires, or may acquire in the future. With this exemption, there shall be achieved the most perfect separation of assets between exempt investment trusts and the companies they organize or in which they own issued securities. It shall not guarantee or encumber some or all of its other assets or the assets of its affiliated persons to borrow money or to somehow facilitate the operation of any business it organizes. The participation of the investment company is limited by its classification in subsection B of Section 4 of this Act, and by its investment policies as included in the notification of

registration under Section 6 of this Act. Any agreement that contravenes these provisions of law shall be void *ab initio*.

(3) The corporate veil of a company organized by an exempt investment trust shall be pierced or the different legal personality thereof shall be ignored, for the purpose of reaching the assets of the exempt investment trust, only in the event of fraud.

(4) An exempt investment trust shall have the highest participation possible in the board of directors of a business it organizes. It shall be the duty of the trust, its directors, and officials to reach the maximum participation possible.

(5) The officials, directors, and employees of an exempt investment trust shall have the same responsibilities with all the securities acquired by them and all the companies that issue them.

(6) Any other rule deemed necessary for the protection of public interest prescribed by the Commissioner through regulations.

Section 19.- Distribution of Dividends.- It shall be unlawful, unless the notification requirement under this Section is met, 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:

A. Such company's accumulated undistributed net income, determined in accordance with good accounting practice and not including profits or losses realized upon the sale of securities or other properties;

B. Such company's net income so determined for the current or preceding fiscal year.

If such dividend does not originate from the sources listed in this Section, the payment shall be accompanied by a written statement which adequately discloses the source or sources of such payment. The Commissioner is hereby

authorized to prescribe the form of such statement by regulations taking into account the public interest as defined in Section 2 of this Act.

Section 20.- Other Distributions.- It shall be unlawful for any registered investment company to distribute long-term capital gains, as defined in the Internal Revenue Code, more often than once every twelve months. Provided that, by regulations or administrative order, the Commissioner may exempt registered investment company from this requirement if he/she deems it convenient, taking into account the public interest as defined in Section 2 of this Act.

Section 21.- Prohibited Actions.- The following actions shall be unlawful for representing a risk to public interest:

A. For any person to solicit or to permit the use of his/her 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 the regulations that the Commission may prescribe as appropriate in the public interest.

B. For any registered investment company or affiliated person thereof, any issuer of a voting-trust certificate related 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.

C. For any registered investment company to purchase any voting security if, to the knowledge of such registered company, cross-ownership or circular ownership exists, or after such acquisition will exist, between such registered company and the issuer of such security. If such cross-ownership or circular ownership comes into existence upon the purchase by a registered investment company of the securities of another company, it shall be the duty of the registered investment company to eliminate the same within one year after it first knows of such existence of such cross-ownership or circular ownership.

Cross-ownership shall be deemed to exist between two companies when each of such companies beneficially owns more than three percent (3%) of the issued voting securities of the other company. Circular ownership shall be deemed to exist between two companies if such companies are included within a group of three or more companies, each of which:

(1) Beneficially owns more than three percent (3%) of the issued voting securities of one or more other companies of the group; and

(2) Has more than three percent (3%) of its own issued voting securities beneficially owned by another company, or by each of two or more other companies, of the same group.

The provisions of subsection C shall not be construed to prohibit a registered investment company from investing in non-voting securities that have been issued by other investment companies, or in voting securities issued by investment companies where cross-ownership does not exist, as defined in this subsection C.

Section 22.- Loans.- 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 notification of registration and reports filed under this Act, do not permit such a loan.

B. Such a loan is prohibited by any provision of law or regulations.

C. Such person controls or is under common control with such registered company; except that the provisions of this subsection shall not apply to any loan from a registered company to a company which owns all of the outstanding securities of such registered company, except directors' qualifying securities; provided, however, that this subsection shall not be construed as to limit the ability of investment companies to enter into award contracts with any person or company.

Section 23.- Limitations on Distributions.- No investment company classified as a mutual fund may issue securities for services, or property other than stocks or securities (including securities issued by such registered company), except as a dividend, distribution to its security holders, or in connection with a reorganization.

Section 24.- Closed-end Investment Companies.- No registered closed-end company shall sell any securities of which it is the issuer at a price below the current net asset value of such stock computed on the basis of the current net asset value, except:

- A. In connection with an offering to the holders of its voting securities.
- B. With the consent of a majority of its [sic] voting securities.
- C. Upon conversion of a convertible preferred stock in accordance with its terms.
- D. Under such other circumstances as the Commissioner may permit by regulations or orders for the protection of investors.

Section 25.- No registered closed-end company shall purchase any securities of which it is the issuer except:

- A. On a securities exchange or such other open market as the Commissioner may designate by regulations or orders, according to the notification period and other rules that the Commissioner may determine.
- B. Pursuant to tenders, after reasonable and equal opportunity to submit tenders given to all holders of securities of the class to be purchased.
- C. Under such other circumstances as the Commissioner may permit by regulations 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.

Section 26.- Reorganization Plans.- Any person who solicits or permits the use of his/her 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 submit to the Commissioner, within twenty-four (24) hours, a copy of such plan, any agreement, or any proxy, consent, authorization, power of attorney, ratification, deposit, or instrument of dissent in respect thereto, if such documents have not been previously filed with the Commissioner. The Commissioner is hereby authorized, if so requested by the holders of twenty-five percent (25%) of voting securities of the registered investment company, to render an advisory report in respect of the fairness of any such plan and its effect upon any class or classes of security holders.

Section 27.- Annual Reports to the Commissioner.- Every registered investment company shall file with the Commissioner an annual report including a financial statement audited by a Certified Public Accountant, authorized to practice in Puerto Rico, in accordance with the generally accepted accounting principles in the United States of America (known as GAAP) and with such additional information that the Commissioner may require by regulations or orders and such periodic reports (but at least annually) that the Commissioner may require by regulations.

Section 28.- Annual Reports to Stockholders.- Every registered investment company shall transmit to its security holders, taking into account the penalties established in Sections 38 and 43 of this Act, at least annually, as the Commissioner may prescribe by regulations, a report containing the following information and financial statements or their equivalent, as of a reasonably current date, and the following information:

A. A balance sheet accompanied by a statement of the aggregate value of investments on the date of such balance sheet.

B. A list showing the amounts and values of securities owned by the investment company.

C. A statement of income and expenses 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 percent (5%) of total income or expense.

D. 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 percent (5%) of the total charges or credits during the period covered by the report.

E. A statement of the aggregate remuneration paid by the company during the period covered by the report:

(1) To all directors and to all members of the advisory board for regular compensation.

(2) To all directors and to all members of the advisory board for special compensation.

(3) To all officers.

(4) To each person of whom any officer or director of the company is an affiliated person.

F. A statement of the aggregate dollar amounts of purchases and sales of securities made during the period covered by the report.

G. Any other information that the Commissioner by regulations may deem necessary.

H. Every investment company shall file with the Commissioner any such report that is required by the regulations of the Commissioner, including an annual financial statement by a certified public accountant authorized to practice in Puerto Rico, as well as interim reports and forms design from time to time by the Commissioner.

I. In the event that any director, official, member of the advisory board, investment adviser, or affiliate person of the investment adviser of the company, is directly or indirectly the beneficial owner of more than ten percent (10%) of a specific class of securities, a statement of the amount of the securities of which he/she owns and the gains or losses in connection with transactions related to such securities.

Section 29.- Accounts and Records.- Each registered investment company, and each underwriter, broker, or investment adviser shall maintain such records as the Commissioner, by regulations, may prescribe as necessary in the public interest or for the protection of investors. All these records may be available at all times for reasonable and periodic inspection by the Commissioner.

Section 30.- Financial Statements.- It shall be unlawful for any registered investment company to file with the Commissioner any financial statement audited by a Certified Public Accountant, unless:

A. Such accountant has been selected at a meeting of the board of directors held within ninety (90) days after the beginning of the fiscal year by the vote of a majority of the members of the Board, including a majority of those who are not interested persons of such registered investment company or such accountant.

B. Such selection is notified at the next annual meeting of holders of voting securities, if such meeting be held.

C. The contract of such accountant has been conditioned upon the right of the company by vote of a majority of the voting securities at any meeting called for the purpose to terminate such contract forthwith without any penalty. The vacancy so occurring may be filled temporarily by a vote of a majority of the members of the Board, including a majority of those who are not interested persons of such registered company or such accountant, subject to ratification by a majority

vote of the security holders of the registered investment company at the next annual meeting of security holders of such registered investment company.

D. 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.

Section 31.- Work of Auditors.- The Commissioner shall, by regulations or order, in the public interest or for the protection of investors, require accountants and auditors to keep reports, work sheets, and other documents and papers related to registered investment companies for such period or periods as the Commissioner may prescribe, and to make the same available for inspection by the Commissioner or any representative thereof.

Section 32.- Legal Claims.- Every registered investment company which is a party and every affiliated person of a registered investment company who is a party defendant to any action or claim by a registered investment company or a security holder thereof in a derivative or representative capacity against an officer, director, investment adviser, trustee, or depositor of such company, shall file with the Commissioner a copy of:

- A. All pleadings, verdicts, or judgments in connection with such action.
- B. Any proposed settlement or discontinuance of such action.
- C. Such motions, transcripts, or other documents in connection with such action.

Section 33.- Falsification.- It shall be unlawful for any person, except as permitted by this Act, or a regulation or order of the Commissioner, to willfully falsify or omit a material fact in any report or to destroy, mutilate, or alter any account, book, or other document the keeping and preparation of which has been required pursuant to this Act or any regulation promulgated thereunder. For the purposes of this Section, any part of any such document which is signed or

certified by an accountant or auditor in his/her 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. Any violation of this Section shall be a fourth-degree felony.

Section 34.- Unlawfull Representation.- It shall be unlawful for any person, 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:

A. Has been guaranteed, sponsored, recommended, or approved by the Commonwealth of Puerto Rico, or any agency, public corporation or officer thereof. If an investment company is advised by a bank, or its securities are sold through a bank, such bank shall prominently disclose that an investment in the company is not insured by any government agency. Provided, that if any agency or public corporation of the Commonwealth of Puerto Rico acquires securities of any kind in the investment company, it shall not be banned from representing so to third parties.

B. Has been guaranteed by any bank, agency, or insured depository institution.

Section 35.- Names and Titles.- It shall be unlawful for any registered investment company to adopt as a part of the name or title of such company, or of any securities of which it is the issuer, any word or words that the Commissioner finds are materially deceptive or misleading. The Commissioner is authorized, by regulation or order, to define such names or titles as are materially misleading.

Section 36.- Authority to Bring Actions.- The Commissioner is hereby authorized to bring an action in any Superior Part of a Court of First Instance of the Commonwealth of Puerto Rico, alleging that a past or present officer, director, member of any advisory board, investment adviser, depositor, or underwriter of a

registered investment company within five years of the commencement of the action has engaged or is about to engage in any act or practice constituting a breach of fiduciary duty. If such allegations are established, the court may enjoin such persons from acting in any or all such capacities either permanently or temporarily and award such injunctive, monetary, and other relief against such person as may be reasonable and appropriate in the circumstances, in light of the public policy set forth in Section 2 of this Act.

Section 37.- Regulations and Determinations.- The Commissioner shall have authority to make, issue, amend, and repeal regulations and orders as necessary to exercise the powers conferred upon the Commissioner in this Act. Such authority shall include regulations defining accounting, technical, and trade terms used in this Act, and prescribing the form in which information required in the applications and reports that investment companies are required to file. The public policy set forth in Section 2, the provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission in connection with such legislation shall be used as guidelines.

Section 38.- Fines.- Whenever it shall appear to the Commissioner that any person has violated any provision of this Act, the regulations thereunder, or an order entered by the Commissioner, the Commissioner may bring an action in a Superior Part of the Court of First Instance with jurisdiction to seek the imposition of a fine. This power is in addition to the power of the Commissioner to investigate and impose administrative penalties. The Court shall have jurisdiction to impose:

A. In the case of a violation defined in this Section, a fine that shall not exceed the greater of:

(1) five thousand dollars (\$5,000) for a natural person, or up to fifty thousand dollars (\$50,000) for any other person, or

(2) the gross amount of pecuniary gain to such defendant as a result of the violation.

B. In the case of a violation defined in this Section involving fraud, deceit, manipulation, deliberate or reckless disregard of a regulatory requirement, a fine that shall not exceed the greater of:

(1) fifty thousand dollars (\$50,000) for a natural person, or up to two hundred and fifty thousand dollars (\$250,000) for any other person, or

(2) the gross amount of pecuniary gain to such defendant as a result of the violation.

C. In the case of a violation defined in this Section, involving fraud, deceit, manipulation, deliberate or reckless disregard of a regulatory requirement, and that has also caused, either directly or indirectly, substantial losses to third parties or the risk of substantial losses to third parties, a fine that shall not exceed the greater of:

(1) one hundred thousand dollars (\$100,000) for a natural person, or up to five hundred thousand dollars (\$500,000) for any other person, or

(2) the gross amount of pecuniary gain to such defendant as a result of the violation.

Section 39.- Access to Information.- The information contained in the documents filed with the Commissioner shall be made available to the public, unless the Commissioner, by regulations or order, finds that public disclosure is neither necessary nor appropriate. It shall be unlawful for any member, officer, or employee of the Commissioner to use for personal benefit, or to disclose to any person other than an official or employee of the United States, a State, or the Commonwealth of Puerto Rico for official use, any such information that has not been publicly disclosed. Likewise, orders, circular letters, and all other administrative determinations of the Commissioner shall be made available to the

public within thirty (30) after the issuance thereof and shall be posted in the web page of the Commissioner. Provided, however, that in the event that any order, circular letter, and any other administrative determinations is requested, including opinions or no-action letters in connection with an investment company that has not publicly traded its securities, the Commissioner, at the petitioner's request, may not make public his/her determination for a term that shall not exceed six (6) months or thirty (30) days after the date of issue of such securities, whichever comes first. If the requirements of this Section with regard to the publication are violated, the administrative determinations issued by the Commissioner shall not be fully effective until the provisions of this Section are complied with.

Furthermore, the Commissioner shall post on his/her web page a weekly report of the transactions made in the securities issued by registered investment companies subject to this Act. Registered investment companies and dealers of securities shall report such transactions to the Commissioner on a weekly basis, in a manner that preserves the privacy of stockholders.

Section 40.- Reports to the Legislative Assembly.- The Commissioner shall file an annual report with the Legislative Assembly summarizing the work of the Commissioner during the preceding year and including any information and recommendations that he/she may deem necessary for further legislation in connection with the matters addressed under this Act.

Section 41.- Voidance.- Any contract condition, stipulation or provision binding any person to evade or waive compliance with any provision of this Act or any regulation or order thereunder, and from which said investment company is not exempt, shall be void *ab initio*. This Section shall not be construed to apply to the lawful portion of a contract that may be severed from the unlawful portion of the contract. Moreover, it shall not apply to preclude against any person for unjust enrichment.

Section 42.- Undue Influence.- It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through any other person which it would be unlawful for such person to do under the provisions of this Act or any regulation, or order thereunder. For purposes of Section 38, any person who knowingly or recklessly provides substantial assistance to another person in violation of a provision of this Act, or of regulation issued thereunder, shall be deemed to be in violation of such provision to the same extent as the person to whom such assistance is provided.

Section 43.- Offenses.- Any person who willfully violates any provision of this Act (including the reports requirements under Section 28 of this Act) shall be guilty of a felony and punished by imprisonment for a fixed term of five (5) years. Such penalty may be reduced where there are mitigating circumstances up to one (1) year and increased when there are aggravating circumstances up to eight (8) years. No person shall be convicted of violations of any regulation or order if he/she proves that he/she had no actual knowledge of such regulation or order.

Section 44.- Municipal License Tax Exemption.- Every registered investment company is hereby exempt from the municipal license tax imposed under Act No. 113 of July 10, 1974, known as the 'Municipal License Tax Act,' or any Commonwealth or municipal law of like import or applicability. Provided, that this exemption shall not be construed to limit the right to impose municipal license taxes on the activities of brokerage or similar business which generate the purchase and sale of securities issued by registered investment companies under this Act, if the applicable municipal license tax Act so provides.

Section 45.- Waiver.- The Commissioner shall, through regulations or administrative determination, conditionally or unconditionally, exempt any class of person, security or transaction, from any provision or provisions of this Act or any regulation issued thereunder, to such extent and in such manner as he/she deems

appropriate, if he/she believes that such exemption is necessary or appropriate in the public interest, and consistent with the protection of investors, the purposes of this title, and the public policy set forth in Section 2 of this Act. The rules of the Investment Company Act of 1940 and the regulations of the Securities and Exchange Commission related to such legislation shall be used as guidelines. Every determination or action taken under the authority that this Section confers to the Commissioner shall be public, in accordance with the mandate of Section 39.

Section 46.- Transitory Provisions.- The registration of any investment company after the effective date of this Act shall be made in accordance with the provisions herein. The following transitory measures are hereby established to provide on the applicability of this Act with respect to investment companies registered under Act No. 6 of October 19, 1954, as amended, known as the ‘Puerto Rico Investment Companies Act,’ hereinafter ‘Act No. 6’:

A. Act No. 6 shall continue in effect for investment companies organized before the effective date of this Act, and none of the provisions of this Act shall be construed to impair the continuity of such registered investment companies under Act No. 6. In accordance with the foregoing, an investment company registered under Act No. 6 shall continue to be subject to the provisions of said Act No. 6, except for that which pertains to taxation and Sections 7 to 10, 11(A), 11(B), 11(C), 11(D), 11(K), 11(M), 12 to 17, 19 to 36, 38, 40, and 42 to 45, inclusive.

B. The Commissioner shall adopt, within six (6) months from the effective date of this Act, regulations, which shall be public, establishing the requirements and mechanisms so that investment companies registered under Act No. 6 may elect, if they so wish, to be subject to this Act rather than to Act No. 6.

C. The provisions of Section 11(L) shall begin to apply nine (9) months after the effective date of this Act.

D. Any legal reference to investment companies registered under Act No. 6 shall include investment companies registered under this Act.

Section 2.- A new subparagraph (33) is hereby added to subsection (a) of Section 1010.01 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” to read as follows:

“Section 1010.01.- Definitions.-

(1) ...

(33) Investment Company or Registered Investment Company: The terms ‘investment company,’ or ‘registered investment company,’ or ‘investment company registered’ shall only include investment companies registered under Act No. 6 of October 19, 1954, as amended, known as the ‘Puerto Rico Investment Companies Act,’ and under the ‘Puerto Rico Investment Companies Act of 2013.’ For purposes of this Subtitle, investment companies shall be subject to taxation under the provisions of subchapter B of Chapter 11 of this Subtitle. Provided, however, that investment companies classified as exempt investment trusts, as defined in the ‘Puerto Rico Investment Companies Act of 2013,’ may elect to be treated as partnerships for tax purposes, under the rules applicable to partnerships and partners contained in Chapter 7 of this Subtitle, in which case any reference to partnerships subject to taxation under Chapter 7 of this Subtitle shall be understood to include registered investment companies that have filed an election to be treated as such. The Secretary shall prescribe through regulations the form and manner to make such election, as well as the deadline for the filing thereof.”

Section 3.- Section 1112.01 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” is hereby amended to read as follows:

“Section 1112.01.- Taxation on Registered Investment Companies and Their Stockholders.-

(a) Registered Investment Companies.- Any registered investment company which, during its entire taxable year, fulfills all of the requirements and conditions provided in any law of the Commonwealth of Puerto Rico related to investment companies, which does not elect, as provided in Section 1010.01(a)(33), to be subject to taxation under Chapter 7 of this Subtitle, shall be subject to taxation in accordance with the provisions applicable to domestic corporations, except that:

(1) In computing the net income of such company:

(A) There shall be included in its gross income the amount of dividend or profit distributions received from corporations exempt from taxation under Act No. 184 of May 13, 1948, as amended, under Act No. 6 of December 15, 1953, or under any other tax exemption law of Puerto Rico; and

(B) There shall be disregarded:

(i) Gains or losses from the sale or other disposition of capital assets;

(ii) The net operating loss deduction provided in Section 1033.14; and

(iii) The provisions of Section 1061.24(c).

(2) If such company distributes to its stockholders during the taxable year as taxable dividends or as dividends from industrial development income, as defined in subsection (c), an amount not less than ninety percent (90%) of its net income, computed as provided in this subsection, such company shall be exempt from taxation. For purposes of this subsection, taxable dividends or dividends from industrial development income declared by a registered investment company after the close of the taxable year and prior to the date prescribed by this

Subtitle for filing its return for the taxable year (including any extension thereof) shall, if the company so elects in such return, be treated as paid during such taxable year but only if the distribution of such dividends is actually made to stockholders within the four (4) month period following the close of such taxable year and not later than the date of the first regular dividend distribution made after such declaration.

(b) Registered Investment Company Stockholders.-

(1) Puerto Rico Residents.- All Puerto Rico residents who are registered investment company stockholders shall:

(A) Exclude from their gross income:

(i) Tax-exempt dividends, as defined in subsection (c)(1), plus

(ii) Dividends from industrial development income, as defined in subsection (c)(2), to the extent that the sums to which such dividends amount would be tax-exempt for them if received directly from a tax-exempt corporation under Act No. 184 of May 13, 1948, as amended, under Act No. 6 of December 15, 1953, or under any other tax exemption law of Puerto Rico, plus

(iii) Dividends of registered investment companies from current or accumulated earnings and profits attributable to their income derived from eligible activities described in subsections (d) and (e) of Section 1112.02, excluding the eligible activities listed in subsections (e)(1) and (e)(2) of said Section, up to a maximum of five percent (5%) of their total income, including the income excluded under the provisions of this Section, arising from registered investment company dividends in the taxable year; and

(B) Include in their gross income:

(i) Capital gain dividends, as defined in subsection (c)(3), plus

(ii) Dividends from industrial development income, as defined in subsection (c)(2), to the extent that the sums to which such dividends amount would be taxable for them if received directly from a tax-exempt corporation under Act No. 184 of May 13, 1948, as amended, under Act No. 6 of December 15, 1953, or under any other tax exemption law of Puerto Rico, plus

(iii) The actual and effective amount of taxable dividends, as defined in subsection (c)(4), or

(iv) In lieu of the amount includible under clause (i), the amount of such dividends plus the stockholders' pro rata portion corresponding to stockholders of any income tax, war profits, and excess profits paid to the United States, any possession of the United States or any other part of the United States other than a state, to the Government of Puerto Rico, or any foreign country, by the registered investment company or any subsidiary of which ninety percent (90%) of the stock is owned by the registered investment company, upon or with respect to the profits from which such dividends are deemed to have been paid. If a stockholder chooses to include in gross income such dividends plus such allocable taxes, such stockholder shall be entitled to credit the tax imposed by this Subtitle with the amount of such allocable taxes, subject to the limitations of Section 1051.01, except that in applying said Section, alien residents of Puerto Rico shall be treated in the same manner as residents of Puerto Rico who are United States citizens.

(2) Puerto Rico Nonresidents.- Registered investment companies which pay dividends to nonresident stockholders shall, subject to the limitations of Section 1051.01, credit the tax required to be deducted and withheld under Sections 1062.08 and 1062.11, with such stockholders' pro rata portion of the income, war profit, and excess profit taxes paid to the United States, any possession of the United States, or any other part of the United States other than a

state, to the Government of Puerto Rico, or any foreign country by such registered investment companies or any subsidiaries of which ninety percent (90%) of the stock is owned by such registered investment companies, upon or with respect to the profits from which such dividends are deemed to have been paid. For purposes of determining the gross tax required to be deducted and withheld prior to such credit, dividends paid during the taxable year by such registered investment companies to stockholders shall be regarded:

(A) As excluding the amount of tax-exempt dividends, as defined in subsection (c)(1), and

(B) As including the actual and effective amount of all other dividends, plus the amount of the stockholders' pro rata portion of any income, war profit, and excess profit taxes paid to the United States, any possession of the United States or any part of the United States other than a state, the Government of Puerto Rico, or any foreign country by registered investment companies or any subsidiaries of which ninety percent (90%) of the stock is owned by such registered investment companies, upon or with respect to the profits from which such dividends are deemed to have been paid.

(c) Definitions.- For purposes of this Section:

(1) Tax-Exempt Dividends.- 'Tax-exempt dividend' means any dividend or part of a dividend designated as such by a registered investment company in a written notice mailed to its stockholders at any date prior to the expiration of sixty (60) days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company is greater than its current or accumulated earnings and profits attributable to tax exempt income: (A) under Section 1031.02; (B) under Section 6(b)(1) of Act No. 184 of May 13, 1948; (C) under Section 3 of Act No. 6 of December 15, 1953; (D) under Section 3 of Act No. 57 of June 13, 1963; (E) under any other tax exemption law of Puerto

Rico; or (F) under Section 8 of Act No. 121 of June 29, 1977, as amended, the portion of each distribution which shall constitute tax-exempt dividends shall only be that ratio of the so designated amount that said current or accumulated earnings and profits bear to the accumulated amount so designated.

(2) Dividends from Industrial Development Income.- 'Dividend from Industrial Development Income' means any dividend or part thereof designated as such by a registered investment company in a written notice mailed to its stockholders at any time prior to the expiration of sixty (60) days after the close of its taxable year. If the aggregate amount so designated with respect to a taxable year of the company is greater than its current or accumulated earnings and profits attributable to dividend or profit distributions of tax-exempt corporations or partnerships under Act No. 184 of May 13, 1948, as amended, under Act No. 6 of December 15, 1953, or under any other tax exemption law of Puerto Rico, made by such corporations or partnerships from income derived from the operations thereof covered by the exemption, the portion of each distribution which shall constitute dividends from industrial development income shall only be that ratio of the so designated amount that such current or accumulated earnings and profits bear to the aggregate amount so designated.

(3) Capital Gain Dividends.- 'Capital gain dividend' means any dividend distribution or part thereof, made by a registered investment company out of its current or accumulated earnings and profits attributable to gains, sale or other disposition of property. Such term shall not include, however, any dividend distribution or part thereof made by a registered investment company out of its current or accrued earnings or profits attributable to tax-exempt profits under Section 6(b)(1) of Act No. 184 of May 13, 1948, under Section 3 of Act No. 6 of December 15, 1953, or under Section 3 of Act No. 57 of June 13, 1963, or under any other tax exemption law of Puerto Rico.

(4) Taxable Dividends.- ‘Taxable dividend’ means any dividend distribution or part thereof made by a registered investment company out of its current or accumulated earnings and profits attributable to sources other than those specified in paragraphs (1), (2), and (3).

(5) Registered Investment Company Stockholders.- For purposes of subsection (b)(1), the term ‘registered investment companies’ also includes, subject to the provisions of the regulations promulgated by the Secretary, any registered investment company or real estate investment trust created or organized under the laws of the United States of America or any state of the United States of America that, during the taxable year, meets the requirements of the Puerto Rico Investment Companies Act of 2013.

(d) Treatment of Capital Gain Dividends.- Capital gain dividends shall be treated by stockholders as long-term capital gains.

(e) The provisions of subsection (a) notwithstanding, the separate accounts of an insurer established under the terms and conditions provided in the Insurance Code of Puerto Rico shall not be treated as a registered investment company for purposes of this Code.

(f) Treatment of Interest Over Registered Investment Company Notes.-

(1) Interests paid by a registered investment company to its stockholders or investors shall be exempt from taxation to the extent attributable to the income of such company totally exempt from taxation under any provision of the Code (other than Section 1112.01(a)(2)). The amount of exempt interest paid for a particular taxable year shall, in no case, exceed the total amount of exempt income of the registered investment company received or accumulated prior to the payment of the exempt interests, reduced by the amount of the exempt dividends previously distributed by the registered investment company, plus exempt interest previously paid by said company.

(2) Interests paid by a registered investment company that do not comply with the above paragraph shall be subject to taxation at the regular income tax rate. Every stockholder or investor, including corporations and partnerships, may elect to pay taxes on taxable interests at the special ten percent (10%) rate provided in Section 1023.05 of this Subtitle; provided, that the registered investment company has been authorized to withhold such tax on the date on which the investment is made.

(g) Special Tax Rate for Certain Distributions.- The portion of dividend distributions made by a registered investment company from the income of such company that would not be eligible distributions under Section 1023.06, if received directly by the taxpayer, shall not be deemed to be eligible distributions for purposes of the special tax rate provided in Section 1023.06, and a special fifteen percent (15%) tax rate of the total amount received shall be imposed thereon; provided, that if the income derived from these investments is less than twenty percent (20%) of the total income of the company for the year corresponding to the dividend, the tax rate of such dividend would be ten percent (10%).

(h) Special Credit.- Taxpayers shall be allowed to claim an income tax credit of five dollars (\$5) from registered investment companies distributions that must be otherwise included in their gross income, for every dollar received as distributions excluded under subsection (b)(1)(A)(iii) of this Section. However, taxpayers shall not exclude, under the provisions of this subsection, more than twenty-five percent (25%) of their total income from such dividend distribution from registered investment companies during the taxable year, including distributions excluded from their gross income under the provisions of this Section. The provisions of this subsection shall not affect the exempt-nature of a dividend excluded from gross income under the provisions of this Section.”

Section 4.- Section 1112.02 is hereby added to Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico,” to read as follows:

“Section 1112.02.- Special Rules for Certain Registered Investment Companies and their Stockholders or Partners.-

(a) Special Tax Rate or Income Tax Exemption.- Any registered investment company that meets during its entire taxable year the requirements and conditions established under Act No. 6 of October 19, 1954, as amended, known as the ‘Puerto Rico Investment Companies Act,’ or under the ‘Puerto Rico Investment Companies Act of 2013,’ and the requirements of subsections (b) or (c) of this Section, as applicable, but fails to meet the ninety percent (90%) distribution requirement established in Section 1112.01(a)(2), shall be subject to the following special tax treatment:

(1) Registered investment companies shall enjoy a thirty percent (30%) income tax exemption on their taxable income; registered investment companies which pay taxes as domestic corporations and do not qualify for the tax exemption for corporations described in Section 1112.01(a)(2).

(2) The tax rate of stockholders provided in Section 1023.06(b) on eligible distributions of the registered investment company is reduced from ten percent (10%) to seven percent (7%) of the total amount received by the eligible person; or

(3) Stockholders, members, or partners of the registered investment company shall enjoy a thirty percent (30%) tax exemption on the taxable income of such partners from the registered investment company, if such company elects to pay taxes as a partnership, as provided in Section 1010.01(a)(33).

(b) Requirements for Registered Investment Companies Paying Taxes as Domestic Corporations.- A registered investment company paying taxes as a domestic corporation shall not qualify during a taxable year for the tax exemption

described in paragraph (1) of subsection (a) of this Section and the stockholders thereof shall not qualify for the special seven percent (7%) rate provided in paragraph (2) of subsection (a) of this Section, unless:

(1) It files, together with its income tax return, an election to be treated as an eligible registered investment company, or on a previous taxable year has made an election which remains in effect;

(2) At least seventy-five percent (75%) of its gross income during the taxable year is derived from eligible sources, as defined in subsection (d); and

(3) At the close of every quarter of the taxable year, at least sixty percent (60%) of the market value of its total assets is represented by assets generating income from eligible sources, cash or cash items (including receivables), and securities and obligations of the Government of Puerto Rico or the United States and any instrumentalities or political subdivisions thereof.

(c) Requirements for Stockholders of Registered Investment Companies Paying Taxes as Partnerships.- A registered investment company paying taxes as a partnership and the stockholders thereof shall not qualify during a taxable year for the tax exemption described in paragraph (3) of subsection (a) of this Section, unless:

(1) The company files an election with the Department of the Treasury to be treated as an eligible registered investment company or on a previous taxable year has made an election which remains in effect;

(2) The company files with the Department of the Treasury an annual certification stating in detail all of its gross income items, including those derived from eligible activities and those that are not;

(3) At least seventy-five percent (75%) of its gross income during the taxable year derives from eligible sources, as defined in subsection (d);

(4) The company provides its partners with a certification, which such partners shall attach to their income tax returns, stating the exact amount of their income derived from such company and attesting to the fact that it has filed with the Department of the Treasury an election to be treated as an eligible investment company; and

(5) At the close of each quarter of the taxable year, at least sixty percent (60%) of the market value of its total assets is represented by assets generating income from eligible sources, cash or cash items (including receivables), and securities and obligations of the Government of Puerto Rico or the United States and any instrumentalities or political subdivisions thereof.

(d) Determination of Eligible Activities.- Eligible activities shall be the activities of the private sector with the potential to be particularly effective in the creation of jobs. The Secretary of Economic Development shall define, through regulations, what would constitute an eligible activity under this Section, using as guidelines:

(1) The job creation and preservation potential of such economic activity in Puerto Rico;

(2) The economic support that such economic activity may provide to a geographical area in need of capital investment in Puerto Rico;

(3) The public interest related to such activity in Puerto Rico, giving priority to tourism, manufacturing, scientific research, and technology development; and

(4) Whether such activity promotes the raising of Puerto Rican capital.

(e) Activities Automatically Eligible.- The Regulations provided in subsection (d) of this Section shall include among the eligible activities:

(1) Loans or investment for the construction or renovation of hotels, *paradores* (inns), and for other tourist activities described in Section 2(a)(1) of Act No. 74-2010, as amended, to the extent such investment is eligible for a tourist investment credit under Section 5(a) of said Act;

(2) Eligible investments under Section 4.03(E) and (G) of Act No. 212-2002, to the extent such investment is eligible for such credits;

(3) Investment in businesses financed through loans secured or originated by the Economic Development Bank or the Government Development Bank;

(4) Loans for the construction of real property or the acquisition of intangible property for eligible businesses;

(5) Purchase of obligations, or preferred nonvoting stocks of eligible businesses, in order to provide working capital or refinance short-term obligations whose interest rates exceed eight percent (8%) APR;

(6) Investment in eligible businesses;

(7) The purchase of obligations or preferred non-voting stocks in businesses that are parties to a Public-Private Partnership for investment in new infrastructure, pursuant to Act No. 29-2009; or

(8) Investment in real estate investment trusts, as defined in Section 1082.01.

(f) Termination of Election.-

(1) Failure to Qualify.- An election, in the case of an eligible registered investment company, shall terminate if, in the taxable year the election is made, or in any subsequent taxable year, the company fails to comply with the provisions of this Section. Such termination shall take effect in the taxable year in

which the company fails to comply with the provisions of this Section and for all subsequent taxable years.

(2) Revocation.- An election, in the case of a registered investment company eligible under this Section, may be revoked for any taxable year following the year in which the election was made and must be made not later than ninety (90) days after the beginning of the first taxable year for which the revocation shall be effective. The revocation shall be made in the manner prescribed by the Secretary through regulations.

(3) Election after Termination or Revocation.- Except as provided in paragraph (4), as a result of a termination or revocation the registered investment company shall not be eligible to make an election for any taxable year prior to the fifth (5<sup>th</sup>) taxable year beginning after the first taxable year for which such termination or revocation is effective.

(4) Exception Related to the Eligible Income Requirement.- A registered investment company that has failed to comply with the provisions of paragraph (2) of subsection (b) or paragraph (3) of subsection (c) for a taxable year, shall be considered to have complied with such subsection if:

(A) The company submits to the Department of the Treasury a breakdown of the nature and amount of each gross income item, whether in an attachment to its income tax return under paragraph (1) of subsection (b) or in its annual certification under paragraph (2) of subsection (c);

(B) Any incorrect information included in the report required under subparagraph (A) is not due to fraud with intent to evade tax; and

(C) It is established to the satisfaction of the Secretary that the noncompliance with the provisions of paragraph (2) of subsection (b) or paragraph (3) of subsection (c) is due to reasonable cause and not due to gross negligence.

(5) Exemption Related to the Eligible Assets Requirement.- Every registered investment company that meets the requirements of subsections (b) (3) or (c) (4) at the close of any quarter shall not lose its eligible status for the benefits of this Section by reason of a discrepancy, during any subsequent quarter, between the value of its various investments and such requirements unless such discrepancy exists immediately after the acquisition of any security or other property and is wholly or partly the result of such acquisition. A registered investment company which fails to meet such requirements at the close of any quarter of any fiscal year by reason of a discrepancy existing immediately after the acquisition of any security or other property which is wholly or partly the result of such acquisition during such quarter shall not lose, for such quarter, its eligible status for the benefits of this Section, if such discrepancy is eliminated within thirty (30) days after the close of such quarter and, in such cases, it shall be considered to have met such requirements at the close of such quarter for purposes of applying the preceding sentence. For purposes of this paragraph, the term ‘value’ means, with respect to securities for which market quotations are readily available, the market value of such securities or fair value (when there is no determinable market value) as determined according to the valuation methods established by the Secretary through regulations.

(g) Eligible Business.- For purposes of subsections (e)(4), (e)(5), and (e)(6) eligible business shall be:

- (1) The export of goods or services from Puerto Rico;
- (2) The development of new technologies and processes in Puerto Rico;
- (3) The development of intellectual property rights in Puerto Rico;
- (4) The trading and marketing of new goods and services in Puerto Rico; and

(5) Tourist activities, as defined in Section 2(a)(1) of Act No. 74-2010, as amended.

(h) New Infrastructure.- For purposes of subsection (e)(7), new infrastructure shall be the construction or substantial renovation with an investment of hard costs of at least fifty percent (50%) of the current total value of the partnership, of:

(1) Equipment and transportation systems, including land, air, and sea facilities such as roads, trains, terminals, runways, piers, and ships.

(2) Telecommunications facilities, including the installation of broadband lines;

(3) Training and education facilities;

(4) Sports and convention venues; and

(5) Aqueduct, sewage, solid waste, and electric power facilities.”

Section 5.- Separability.- If any provision of this Act were held unconstitutional, illegal, or void by a competent court with jurisdiction, such holding shall not affect or invalidate the remaining provisions of this Act, and the effect of such holding shall only be limited to the Article, Section, Subsection, Paragraph, Subparagraph, or Clause thus held unconstitutional, illegal, or void.

Section 6.- Effect on Other Laws.- Any Act or part thereof, joint resolution, or administrative provision that is inconsistent with any provision of this Act shall be superseded thereby. Any rule or legal provision that has not been expressly revoked herein or that is not in conflict with the provisions of this Act shall remain in effect.

Section 7.- Effectiveness.- This Act shall take effect thirty (30) days after its approval.

## CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 93-2013 (S. B. 232)** of the **1<sup>st</sup> Session of the 17<sup>th</sup> Legislature** of Puerto Rico:

**AN ACT** to create jobs by reforming the legislation regarding investment companies; create the “Puerto Rico Investment Companies Act of 2013”; facilitate and incentivize the investment and raising of capital in Puerto Rico through investment companies; modify the tax treatment to be granted to such investment companies; amend Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico”; and for other related purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 18<sup>th</sup> day of October, 2013.

Juan Luis Martínez Martínez  
Acting Director