

(S. B. 778)

(No. 137-2013)

(Approved November 27, 2013)

AN ACT

To amend Section 3; subsections B and E of Section 4; Section 6; subsection H of Section 8; Section 10; subsections K and Q of Section 11; subsection C of Section 13; subsections B and C of Section 18; subsection H of Section 28; Section 29; subsection B of Section 30; Sections 37, 39, 40, 41, 45, and 46; and add a subsection R to Section 11 and Sections 11-A and 11-B to Article 1 of Act No. 93-2013, as amended, known as the “Investment Companies Act of 2013,” and amend Sections 1010.01, 1112.01, and 1112.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico” with regard to the rules related to investment companies.

STATEMENT OF MOTIVES

After the approval of Act No. 93-2013, it was necessary to make a few technical amendments to ensure the contents thereof. The purpose of such amendments is to strengthen its job creation potential and protect our financial system.

Such amendments specify the registration process and make clarifications. They also increase the degree of transparency by requiring the publication of all reports filed by investment companies. Furthermore, such amendments strengthen the provisions regarding mutual funds-related transactions between companies, particularly those pertaining to the offering of advice to security issuers. They also specify that exempt trusts may invest in cooperatives. Moreover, such amendments incorporate provisions related to the ethic of persons related to investment companies and the independence of their directors. They also clarify tax provisions relative to investment companies. Eligible companies shall invest in economic activity after July 31, 2013 and their tax rate is reduced from 7% to 0%. The

rehabilitation of properties not in use is included as an eligible economic activity. Thus, we reactivate the economy and protect the structure of existing mutual funds as well as the stability of their governing bodies in complying with the provisions of Act No. 93-2013. Furthermore, the creation of truly independent boards of directors is required, thus ensuring a higher degree of transparency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 3 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 3.- Definitions.- For purposes of this Act, the following terms shall be defined as provided below:

A. ...

B. ...

C. ...

D. ...

E. ...

F. ...

G. ...

H. ...

I. ...

J. ...

K. ...

L. ...

M. ...

N. ...

O. ...

P. ‘Interested Person’ of another person means:

(1) ...

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...

(g) Any natural person whom the Commissioner by order has 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 because he/she or a member of his/her immediate family (i) is a member of its board of directors, advisory board or an owner of its securities, or (ii) has received loans from an affiliate person of such company in the regular course of business under substantially the same terms, including interest rates and collateral prevailing at that time for similar transactions with the general public up to one hundred thousand dollars (\$100,000) or a different amount as determined by the Commissioner should he/she determine that such amount is not reasonable. 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) ...
- (a) ...
- (b) ...

(c) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, fiduciary, 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; provided, however, that no person shall be deemed to be to be an interested person of said investment adviser or principal underwriter solely by reason of his/her being the holder or his/her membership in the immediate family of a holder of less than five percent (5%) of the outstanding shares of said investment adviser or principal underwriter or by a controlling person of such investment adviser or principal underwriter.

(d) ...

(e) ...

(f) ...

(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 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 adviser or principal underwriter solely because he/she or a member of his/her immediate family (i) is a member of its board of directors, advisory board or an owner of its securities, or (ii) has received loans from an affiliate person of such company in the regular course of business under substantially the same terms, including interest rates and collateral, prevailing at that time for similar transactions with the general public up to one hundred thousand dollars (\$100,000) or a different amount as determined by

the Commissioner should he/she determine that such amount is not reasonable. 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.

...”

Section 2.- Section 4 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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 about the differences in the types of investment companies.

A. By their type of investment.- ...

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 seventy-five percent (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 five percent (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 twenty-five percent (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 Government of the United States of America, 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 stated herein in only one issuer. Provided, further, that ‘non-diversified’ investment companies, also classified as exempt investment trusts,

may invest up to seventy-five percent (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 ninety percent (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.- ...

D. By their capacity to redeem shares.- ...

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 issued preferred stocks. Provided, further, that leverage restrictions provided in this Section shall not apply to investment companies classified as exempt investment trusts that are subclassified 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 their leverage level. Provided, however, that leverage limits shall not apply to investment companies operating under the ‘Small Business Investment Act of 1958.’”

Section 3.- Section 6 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

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

...

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.

...”

Section 4.- Section 8 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 8.- Sanctions Against Ineligible Persons.-

...

A. ...

B. ...

C. ...

D. ...

E. ...

F. ...

G. ...

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

1. 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.

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

Section 5.- Section 10 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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 interim orders. The Commissioner is authorized to prescribe the necessary adjudicative procedure by regulations. Furthermore, the Commissioner is hereby authorized to charge reasonable registration fees at the time of the registration of the investment company, whose registration fees shall be at least 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 6.- Section 11 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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. ...
- B. ...
- C. ...
- D. ...
- E. ...
- F. ...
- G. ...
- H. ...
- I.
- J.

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 or that such transactions are carried out

in accordance with the policy on transactions with affiliates adopted by the board of directors and a majority of directors who are not interested persons of the registered investment company, provided, that such policies have been filed with the Commissioner and that compliance with such provisions has been verified by the Auditor of the registered investment company.

L. ...

M. ...

N. ...

O. ...

P. ...

Q. In the event that it has purchased securities issued by the Commonwealth of Puerto Rico, the United States, any state or territory of the United States, or any instrumentality or political subdivision thereof, 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) exempt investment trusts, including those eligible under Section 1112.02 of Act No. 1-2011, (e) eligible activities and business as defined in Section 1112.02(d), (e), (g), and (h) of Act No. 1-2011; or (f) any other investment that the

Commissioner may prescribe through administrative determination, order, or regulations.

R. Purchase securities at initial public offering if the investment adviser of the registered investment company is an interested person of an entity that has been contracted by the issuer of such securities to provide financial advice services for the issue of such securities, provided that an underwriter contracted by an issuer is not offering financial advice services solely for being acting as the underwriter of securities of the issuer that contracted him/her. Exempt investment trusts making investments in compliance with Section 18(C) of this Act are exempt from this requirement.”

Section 7.- Section 11-A is hereby added to Article 1 of Act No. 93-2013, as amended, to read as follows:

“Section 11-A.- Code of Ethics.- The Commissioner may prescribe by regulations a Code of Ethics which shall apply to officers, members of a board of directors and advisory boards, and investment advisers of registered investment companies. The boards of directors of the registered investment companies may, in turn, adopt Code of Ethics that shall be binding for their members, officers, employees, and contractors.”

Section 7[sic].- Section 11-B is hereby added to Article 1 of Act No. 93-2013, as amended, to read as follows:

“Section 11-B.- Buying on Margin.-

As of the effective date of this Act, no person may grant or cause loans to be granted, or extend other type of credit to buy securities issued by a registered investment company under this Act when such loans or credit are, in turn, backed by such securities. Loans granted or other type of credit extended to buy securities of any issuer in accordance with the applicable rules provided in Regulation T

issued by the Board of Governors of the Federal Reserve System, or any other federal regulations superseding it, shall be exempt from this prohibition.”

Section 8.- Subsection D of Section 13 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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 its 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)(34) 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.”

Section 9.- Section 18 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

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

A. ...

(1) ...

(2) ...

(3) ...

B. ...

(1) ...

(2) ...

(3) Organize companies of any type, in accordance with their investment policies under Section 6 of this Act, to do business, the characteristics of which are stated in Section 18(C) of this Act.

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). It also includes the purchase of shares in cooperatives organized under Act No. 239-2004. However, the following restrictions are imposed in the operation of exempt investment trusts:

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...”

Section 10.- Section 28 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 28.- Annual Reports to Stockholders.-

A. ...

B. ...

C. ...

- D. ...
- E. ...
 - 1. ...
 - 2. ...
 - 3. ...
 - 4. ...
- F. ...
- G. ...

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

I. ...”

Section 11.- Section 29 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 29.- Books 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 and for the protection of investors. All these records shall be available at all times for reasonable and periodic inspection by the Commissioner.

The registered investment company shall publish all the reports filed with the Commissioner on the designated webpage, as well as its prospectus, offering circular of securities, annual and quarterly reports, securities in the fund’s portfolio at the time of filing of the quarterly reports stating their market value and the net asset value, the credit rating of such securities if available, leverage ratio of each

fund and its financing source, and any other required information, except for privileged information under Commonwealth or Federal laws.”

Section 12.- Section 30 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 30.- ...

A. ...

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

C. ...

D. ...”

Section 13.- Section 37 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“Section 37.- Regulations and Determinations.- The Commissioner shall have authority to make administrative determinations, issue, amend, and repeal regulations and orders as necessary to exercise the powers conferred on 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.”

Section 14.- Section 39 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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, determines 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 disclosed to the public within thirty (30) after the issuance thereof and shall be posted on the web page of the Commissioner. Provided, however, that in the event that any order or other kind of 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 disclose his/her determination for a term that shall not exceed six (6) months following the issue of the determination or thirty (30) days after the date of issue of such securities, whichever comes first. If the requirements of this Section with regard to 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 and the net asset value corresponding to common stocks, updated every week. Registered investment companies and dealers of securities shall report such transactions and information to the Commissioner on a weekly basis, in a manner that preserves the privacy of stockholders. The Commissioner shall not be held accountable for any error or inaccuracy in any information offered by the registered investment company. The Commissioner shall publish every quarter a disclosure of the market value of the twelve-month (12) debt to equity ratio of each registered investment company. It shall also include the financial statements and other reports required under Section 28(H) of the registered investment companies corresponding to the immediately preceding five (5) fiscal years.”

Section 15.- Section 40 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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, including the provisions of Section 11 of this Act.”

Section 16.- Section 41 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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 shall be void *ab initio*. This Section shall not be construed to void the lawful portion of a contract that may be severed from the unlawful portion thereof. Moreover, it shall not have the effect of precluding a cause for action for unjust enrichment.”

Section 17.- Section 45 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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 declaration of public policy set forth in Section 2 of this Act. Every determination or action taken under the authority granted to the Commissioner under this Section shall be public, in accordance with Section 39.”

Section 18.- Section 46 of Article 1 of Act No. 93-2013, as amended, is hereby amended to read as follows:

“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(K), 11(R), and 25.

B. The Commissioner shall adopt, within six (6) months from the effective date of this Act, regulations establishing the requirements and mechanisms for investment companies registered under Act No. 6 to elect to be subject to this Act rather than to Act No. 6. Registered investment companies wishing to avail themselves of the provisions of this Act shall fully meet the requirements set forth in the regulations and this Act; however, the Commissioner may suspend the application subsection E of Section 4 to registered investment companies that elect to be subject to the provisions of this Act as necessary to carry out the transition.

C. ...

D. ...

E. An investment company registered under Act No. 6 that elect to be subject to this Act and has a board of directors whose composition does not meet the requirements of this Act shall begin to meet such requirements as the current terms of the directors expire.”

Section 19.- Paragraph (33) is hereby amended and a new paragraph (34) 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.-

(a) As used in this Subtitle, insofar as they are not incompatible with the purposes thereof-

(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. The terms ‘Investment Company,’ or ‘registered investment company,’ or ‘Investment Company registered’ exclude exempt investment trusts, as defined in paragraph (34) of subsection (a) of this Section.

(34) Exempt Investment Trust.- The term ‘exempt investment trust’ shall only include investment companies classified as exempt investment trusts, as defined in the ‘Puerto Rico Investment Companies Act of 2013.’ Provided, that exempt investment trusts 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 exempt investment trusts that have filed an election to be treated as such. The Secretary shall prescribe the form and manner to make such an election, as well as the deadline for the filing thereof.”

Section 20.- 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, shall be subject to taxation in accordance with the provisions applicable to domestic corporations, except that:

(1) ...

(2) ...

(b) Registered Investment Company Stockholders.-

(1) ...

(A) ...

(i) ...

(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, and

- (B) ...
- (2) ...
- (c) ...
- (d) ...
- (e) ...

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

The Secretary shall prescribe by regulations, circular letter, or any other general communication the tax treatment of the interests over notes issued by registered investment companies.”

Section 21.- Section 1112.02 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 1112.02.- Taxation of Exempt Investment Trusts and their Stockholders or Partners.-

(a) Special Tax Rate or Income Tax Exemption.- Any exempt investment trust, as defined in Section 1010.01(a) (34) that fulfills during its entire taxable year the requirements and conditions established in the ‘Puerto Rico Investment Companies Act of 2013,’ and the requirements of subsections (b) or (c) of this Section, as applicable, shall be subject to the following special tax treatment:

(1) Exempt investment trusts shall enjoy full tax exemption on their taxable income, if such trusts file as a domestic corporation;

(2) The tax rate of stockholders provided in Section 1023.06(b) on eligible distributions of the exempt investment trust is reduced from ten percent (10%) to zero percent (0%) of the total amount received by the eligible person; or

(3) Stockholders, members, or partners of the exempt investment trust shall enjoy full tax exemption on the taxable income of such partners from the registered investment company, if such trust elects to file as a partnership, as provided in Section 1010.01(a)(34).

(b) Requirements for Exempt Investment Trusts Filing as Domestic Corporations.- An exempt investment trust filing 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 its stockholders shall not qualify for the special 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 exempt investment trust, or on a previous taxable year has made an election which remains in effect;

(2) ...

(3) ...

(c) Requirements for Partners of Exempt Investment Trusts Filing as Partnerships.- An exempt investment trust filing as a partnership and the partners 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 exempt investment trust files an election with the Department of the Treasury to be treated as an eligible exempt investment trust or on a previous taxable year has made an election which remains in effect;

(2) The exempt investment trust 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) ...

(4) The exempt investment trust 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 exempt investment trust and attesting to the fact that it has filed with the Department of the Treasury an election to be treated as an eligible exempt investment trust; and

(5) ...

(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, excluding activity existing as of July 31, 2013. Any activity related to assets that are not in use as of July 31, 2013 shall not be deemed to be an existing activity. The Secretary of Economic Development shall define, through regulations, what would constitute an eligible activity under this Section, using as guidelines:

(1) ...

...

(e) Activities Automatically Eligible.- In addition to those established in the regulations set forth in subsection (d) of this Section, Eligible Activities shall include:

(1) Loans granted after July 31, 2013, for or investment in 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, in projects started after July 31, 2013, even if the credits under this Act have not been issued by the Department of the Treasury;

(3) Investment made after July 31, 2013 in businesses financed through loans secured or originated by the Economic Development Bank or the Government Development Bank subject to the limitations established by the Secretary through regulations, administrative determination, circular letter, information bulletin or any other general communication;

(4) Loans granted after July 31, 2013 for the construction of real property or the acquisition of intangible property for eligible businesses;

(5) ...

(6) Investment in eligible businesses, as such term is defined in subsection (g) of this Section;

(7) The purchase of obligations or stocks in businesses organized or created after July 31, 2013 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 organized or created after July 31, 2013, as defined in Section 1082.01.

(f) Termination of Election.-

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

(2) Revocation.- An election, in the case of a exempt investment trust 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 exempt investment trust shall not be eligible to make another election for any taxable year prior to the fifth (5th) taxable year beginning after the first taxable year for which such termination or revocation is effective.

(4) Exception Related to the Eligible Income Requirement.- An exempt investment trust 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 exempt investment trust 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) ...

(C) ...

(5) Exemption Related to the Eligible Assets Requirement.- Every exempt investment trust 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 all its 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. An exempt investment trust 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 paragraphs (4), (5), and (6) of subsection (e) of this Section, eligible business shall be:

(1) ...

(2)

(3) ...

(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; and

(6) The acquisition of the facilities of a closed manufacturing plant in order to rehabilitate them and operate a manufacturing business similar to that previously operating in such facilities.

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

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...”

Section 22.- This Act shall take effect on November 27, 2013, except for Chapter 20, which shall take effect on January 1, 2014.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 137-2013 (S. B. 778)** of the **2nd Session of the 17th Legislature** of Puerto Rico:

AN ACT to amend Section 3; subsections B and E of Section 4; Section 6; subsection H of Section 8; Section 10; subsections K and Q of Section 11; subsection C of Section 13; subsections B and C of Section 18; subsection H of Section 28; Section 29; subsection B of Section 30; Sections 37, 39, 40, 41, 45, and 46; and add a subsection R to Section 11 and Sections 11-A and 11-B to Article 1 of Act No. 93-2013, as amended, known as the “Investment Companies Act of 2013,” and amend Sections 1010.01, 1112.01, and 1112.02 of Act No. 1-2011, as amended, known as the “Internal Revenue Code for a New Puerto Rico” with regard to the rules related to investment companies.

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

In San Juan, Puerto Rico, on this 14th day of February, 2014.

Juan Luis Martínez Martínez
Acting Director